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INTERNAL DISPLACEMENT AND STATE RESPONSIBILITY UNDER INTERNATIONAL LAW

A LOOK IN TO ETHIOPIA'S CASE

BY

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**INTERNAL DISPLACEMENT AND STATE RESPONSIBILITY UNDER
INTERNATIONAL LAW
A LOOK IN TO ETHIOPIA’S CASE**

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Thesis Approval Page

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Declaration

I, the undersigned, declare that the thesis comprises my own work. In compliance with widely accepted practices, I have duly acknowledged and referenced all materials used in this work. I understand that non-adherence to the principles of academic honesty and integrity, misrepresentation/fabrication of any idea/data/fact/source will constitute sufficient ground for disciplinary action by the University and can also evoke criminal sanction from the State and civil action from the sources which have not been properly cited or acknowledged.

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ACCRONYMS

- ANSA: Armed Non-State Actors
- APRM: African Peer Review Mechanism
- ARSIWA- Articles on State Responsibility for Internationally Wrongful Act
- AU- African Union
- CEWRR-Conflict Early Warning and Rapid Response
- CID- Conflict Induced Displacement
- CIDP- Conflict Induced Displaced People
- CSO- Civil Service Organizations
- FAO- Food And Agriculture Organization
- FGA- Federal Attorney General
- GRID- Global Report On Internal Displacement
- HRP- Humanitarian Response Plan
- HRW- Human Rights Watch
- ICCPR-International Convention For Civil And Political Rights
- ICESCR- International Convention For Economic, Social And Cultural Rights
- ICJ- International Court Of Justice
- ICRC- international Committee of the Red Cross
- ID- Internal Displacement
- IDMC- Internal Displacement Monitoring Center
- IDP- Internally Displaced People
- IGAD- Intergovernmental Authority for Development
- IHL- International Humanitarian Law
- ILC- International Law Commission
- IOM- International Organization For Migration
- MoP- Ministry of Peace
- NDRMC- National Disaster and Risk Management Commission
- NGO- Non-Governmental Organization
- OCHA- United Nations Office for the Coordination of Humanitarian Assistance

- PTSD- Posttraumatic Stress Disorder
- UDHR- Universal Declaration Of Human Rights
- UN- United Nations
- UNDP- United Nations Development Program
- UNGA- United Nations General Assembly
- UNHCR- United Nations High Commissioner For Refugees
- UNICEF- United Nations International Children's Emergency Fund,
- WFP- World Food Program
- WHO- World Health Organization

Chapter One

Introduction

1.1. Background of the Study

Though it is not a new phenomenon, internal displacement is considered as an emerging international agenda as it gets recognition internationally in the 1990's.¹ Coupled with refugee and other human rights crises, it has now reached a worrying dimension. Over 70.8 million people have been forcibly displaced in 2018, which amounts to 1 in 113 people around the world.² The rate of new displacement is also described as in every second 1 person becomes displaced, 20 people were forced from their homes every minute or 28,300 people every day.³ It is also reported that 30.6 million⁴ and 41.3 million people were forcibly displaced in 2017 and 2018 inside their own countries respectively, because of conflict and violence.⁵ Ethiopia is one the nine short list countries reported for being responsible for higher rate of new displacements during 2018.⁶ As of January 2019, 2.9 million people were internally displaced in Ethiopia.⁷

Unlike refugees who are provided protection through an international refugee regime, IDPs do not have the same protections since they remain within their own state. The territorial state has a primary responsibility.⁸ On top of this, the territorial state is often unwilling or unable to act because in most cases it is the state itself, which deliberately creates displacement for ethnic,

¹ Flavia Z. Guistiniani, 'New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa' (2011) 39 Denv J Int'l L & Pol'y 347, p.348

² Choose love: Refugee statistics <<<https://helprefugees.org/refugees-statistics/>>> accessed on February 15, 2019

³ ibid

⁴ Global Report on Internal Displacement Summary May 2018, p 6 << <https://www.internal-displacement.org/global-report/grid2018/>>> accessed on February 17, 2019

⁵ Global Report on Internal Displacement Summary May 2019, p. 6 << <https://www.internal-displacement.org/global-report/grid2019/>>> accessed on February 15, 2019

⁶ ibid, the other eight countries, according to the mentioned report, are: Afghanistan, Brazil, Burundi, Iraq, Madagascar, Mongolia, Senegal and Somalia

⁷ Ethiopia - Complex Emergency Fact Sheet #1, Fiscal Year (FY) 2019 (February 5, 2019)

⁸ Phil Orchard, 'Protection Of Internally Displaced Persons: Soft Law As A Norm-Generating Mechanism', Review of International Studies' (2010) British International Studies Association, p.281

religious, or political reasons.⁹ Because IDPs are not granted a special status under international law, sovereignty has often been raised to avoid international responsibility towards the victim.¹⁰

The application of international law to IDPs and its impact on regional and national developments is still evolving.¹¹ From the vantage point of the concept of state responsibility, protection of IDPs is first and foremost a duty of the concerned state. However, other states not confronted with displacement on their own territory have a moral and legal obligation to contribute to ensuring respect for international human rights and humanitarian law.¹²

This research paper seeks to investigate the responsibilities of states towards IDPs from the vantage point of direct legal instruments such as the UN Guiding Principles on Internal Displacement and the Kampala Convention, international human rights instruments and customary practices.

1.2. Statement of the problem

Internal displacement is one of the top challenges the international community is facing.¹³ Though Ethiopia has been experiencing internal displacement for decades, the magnitude of the problem is highly increasing. For instance, with a record of 2.9 million new displacements in 2018, Ethiopia had the highest number of new internal displacement associated with conflict.¹⁴ Conflicts, mainly in the form of inter-communal violence are considered to be the major causes of the problem.¹⁵ The political crisis since 2016 has caused great tragedy in terms of internal displacement.¹⁶

⁹ *ibid*

¹⁰ Abebe Allehone, 'The Emerging Law of Forced Displacement in Africa : Development and Implementation of the Kampala Convention on Internal Displacement'(2016), Routledge p.7

¹¹ *ibid* p.6

¹² Isabelle G. Truedsson, 'The 'tool box' at states' disposal to prevent displacement: a Swiss perspective, preventing displacement', FMR 41 P.10 << <https://www.fmreview.org/preventing/gomeztruedsson>>> accessed June 25, 2021

¹³ Flavia Z. Guistiniani (n 1) p.347

¹⁴ Global Report on Internal Displacement (May 2019) (n 5)

¹⁵ Ethiopia Humanitarian Crisis Analysis 2019 November 2019, available at

<<<https://www.sida.se/globalassets/sida/eng/how-we-work/humanitarian-aid/hca-2019/hca-ethiopia-2019.pdf>>>

accessed on February 20, 2020

¹⁶ *ibid*

The problem has affected much of both rural and urban parts of the country.¹⁷ Ethnic violence in Guji and Gedeo zones, in Benishangul and in Jijiga had displaced millions of people.¹⁸ Similar incidents were also evident from the outskirts of Addis Ababa and many other parts of the country since 2016.¹⁹ The many humanitarian needs that follow from internal displacement and premature resettlement have threatened the lives of IDPs.

International law has showed significant developments in providing guiding principles and rules on internal displacement for both international as well as national protection measures.²⁰ The UN Guiding Principles on Internal Displacement drafted in 1998 under the auspices of the UNHCR was the first ever-international soft law that attempts to address the issue of IDPs solely.²¹ At regional level, the AU introduced African Union Convention for the Protection and Assistance of IDPs, named Kampala Convention, which was adopted in October 23, 2009 and came in to force on December 6, 2012.²² Organizations such as UNHCR are also operationally involved in providing assistance and protection to IDPs. However, the absence of binding law, with the exception of the Kampala Convention, has made the international protection and assistance of IDPs poor. Neither the responsibility of states nor international actors are stated in an articulated manner towards IDPs.

Despite an increment in the growth of recent studies in the area, the issue of internal displacement is hardly studied specially in terms of state responsibility under international law. Particularly, the recent mass internal displacement, which has been taking place in Ethiopia, is not well studied. The study of IDP vis a vis state responsibility is vital to define the responsibility

¹⁷ Yigzaw & Abitew, 'Causes and Impacts of Internal Displacement in Ethiopia' (2019), AJSW Vol.3 << <https://www.ajol.info/index.php/ajsw/article/view/192193>>> accessed on June 24, 2019 p.35

¹⁸ OCHA: Oromia-Somali Conflict-Induced Displacement (2018) Situational Report 4 << <https://reliefweb.int/report/ethiopia/ethiopia-romia-somali-conflict-induced-displacement-situation-report-no-4-20-june>>> accessed July 10, 2021

¹⁹ OCHA, Ethiopia IDP situation Report, may 2019, p.2 << <https://reliefweb.int/report/ethiopia/ethiopia-idp-situation-report-may-2019>>> accessed February 20, 2020

²⁰ The Brookings Institution: Addressing Internal Displacement: A Framework for National Responsibility (2005) p.7 << <https://www.brookings.edu/research/addressing-internal-displacement-a-framework-for-national-responsibility/>>> accessed July 1, 2021

²¹ Weiss, Thomas G., and David A. Korn., 'Internal Displacement : Conceptualization and Its Consequences'(2006) Routledge, ProQuest Ebook Central, p.65

²² Flavia Z. Guistiniani (n 1)

of states to their displaced citizen in their own territories. Therefore, this study will contribute in addressing the above mentioned gaps and could help further studies related to the subject.

1.3. Objective of the research

The overall objective of the research is to critically examine the responsibilities of states for IDPs under international law taking Ethiopia's experience as a case study. Furthermore, the thesis aims to achieve the following specific objectives:

- To identify the causes of recent conflict induced internal displacement in Ethiopia;
- To assess the response and reaction of Ethiopia to its recent IDPs based on the guiding principle on internal displacement, the Kampala Convention and other relevant human rights and humanitarian laws;
- To explore the roles of international actors and institutions in the protection of IDPs in Ethiopia's recent internal displacement based on the aforementioned international law rules; and
- To identify potential measures available at the hands of states, particularly to recommend what Ethiopia should do in the future for the protection of IDPs.

1.4. Research Question

The general research question of the study is stated as: What are Ethiopia's responsibilities for the protection of IDP's under international law? The following specific research questions will be addressed in the research.

- What are the rules and principles of international law regarding internal displacement?
- What are the mechanisms of IDPs protection available at the hands of states in contemporary international law?
- Has Ethiopia implemented the rules of international law in terms of protection of IDPs?
- What are the gaps in international law in defining states responsibility on the protection of IDPs?

1.5. Scope of the study

The problem of conflict induced internal displacement in today's globe has many complex faces. However, the scope of this study is limited to the international norm on state responsibility with respect to conflict induced internal displacement in Ethiopia. The thesis seeks to focus on Ethiopia which become highly affected by the prevalence of CIDP resulted from recurring inter-communal and ethnic conflicts. The time limit of the study is since 2016. The year 2016 saw an outbreak of popular protest, where the issue of Addis Ababa's Master Plan served as an immediate cause, which marked the beginning of a major political turmoil and reform as well as subsequent displacements in the country.

1.6. Significance of the Study

Even though Ethiopia has been affected by the problem of internal displacement for long,²³ the recent same problem differs both in size and in type. A critical and scientific investigation of the issue could help for a better understanding of the problem and for providing an effective solution. Furthermore, Ethiopia's case is worth studying from the international law perspective since it is peculiar in nature from other countries notoriously affected by the problem. Many of the later countries are either failed states or are unable to respond to the problem on their own capacity. Hence, this thesis may contribute in articulating states responsibility for conflict induced problems of internal displacement in Ethiopia.

The outcome of the study could also provide the following major contribution:

- It could identify the gaps in international law in defining and articulating states responsibility with regard to internal displacement.
- It could provide possible measures and responses available at the hands of states for the protection of IDPs.
- It could also serve as a base for future national policy formulation and legal adoption.

²³ Yigzaw & Abitew, (n 17) p.37

1.7. Research Methodology

The main purpose of the research is to explore Ethiopia's response towards internally displaced people.

In order to achieve this objective the research is conducted in an empirical manner. What makes a research empirical is that it is based on observation of the world.²⁴ The data gathered from different means are a term for facts about the world.²⁵ The fact that the research assesses what are the responses of Ethiopia to the internal displacement through different data collection method, which I will discuss later on, makes this research empirical.

There exists a question that what is the best way to study state responsibility of internally displaced persons in Ethiopia. The answer of this in turn leads us to the research approach. The nature of the research problem, the aim of the research and the nature of the research question that the research seeks to answer needs a deep understanding of the issue. Besides, the research questions are only answered whenever there is interaction between the researcher and the research participants. There is a need to explain concepts. And this is only done through a qualitative approach.²⁶ Hence, to the reason mentioned above this research employed a qualitative approach.

1.7.1. Population and Sampling

The researcher for the empirical aspect interviewed the concerned organ regarding state responsibility of internal displacement. As such, MOP, FAG, and NDRMC are the general population selected for this study. While NDRMC and MOP are lead sector authorities for disaster and conflict induced displacements respectively, FAG is responsible in establishing criminal responsibility for causing arbitrary displacement.

The researcher used a non-random/non-probability sampling. This method of sampling is selected because the research approach selected is a qualitative approach, which only goes with non-random sampling. Secondly, the research does not attempt to generalize what it gets from

²⁴ Ian Dobinson and Francis Johns, 'Qualitative Legal Research' in Mike McConville and Wing Hong Chui (eds.), Edinburgh University Press (2007), p.18

²⁵ *ibid*

²⁶ John W. Creswell, "Research Design: Qualitative, Quantitative, and Mixed Approaches", 2nd ed., 1999, pp.205-9

the sample. In addition, this is effective only by employing a non-random sampling. Among non-random sampling technique, the research employs a purposive non-random sampling as it gives a researcher a freedom to consider needs in a research project. Besides, it enables the researcher to handpick subjects based on specific characteristics, which is visible from the issue of the study.

1.7.2. Types of Data

The research employs both primary and secondary data. In relation to the doctrinal aspect, the primary data includes domestic laws (proclamations, regulations, directives), and international laws. It also used different policy and strategy documents. As secondary data, books, articles and situational analyses are used. Coming to the empirical aspect, the researcher used the data gathered through semi-structured interviews as primary data.

1.7.3. Data Collection Method

The researcher employs interview and analysis of document and material as a qualitative data collection method. The research objectives that the research needs to attain and the nature of the research questions that the research meant to answer are only addressed by employing the above data collection methods. The research needs interaction between the researcher and the research participants, which could be effective through interview.

From different types of interview, the researcher prefers to employ a semi-structured interview. Semi-structured interview is flexible in a sense that it gives a freedom to the researcher to modify questions and to give explanation for some questions.²⁷ The detailed issues are not known by many even by the academia. Hence, there might be a need to give explanation to the interviewees and modify the questions as per the backgrounds of the interviewees. Therefore, using a semi-structured interview in this research is imperative. The interviews are directed to experts from FGA, NDRMC, and MOP.

1.7.4. Data Analysis

The researcher used a qualitative data analysis method. The research uses this method because of the fact that the data are collected through a qualitative data collection tools, hence, needs to be

²⁷ *ibid.*

analyzed in the same way. Accordingly, the data collected will firstly be prepared before analysis and this involves transcribing interviews, typing up field notes, or sorting and arranging the data into different type. Then the next step is to categorize the relevant one to the research focus by identifying the main theme and then interpretation will follow. In this process, the researcher will code the data and categorize it in to different theme and then a conclusion will follow.

1.8. Reference and citation

As per the LLM Thesis Guideline of the School of Law of Addis Ababa University, OSCOLA referencing style is used in the thesis. For domestic laws and court cases, I will follow the rules of citation of the Journal of Ethiopian Law.

1.9. Limitations of the research

The path of conducting a research is not all the way an easy task because of the existence of many hindrances while conducting it. At the risk of stating the obvious, data is at the heart of empirical researches. Thus, the fact that necessary data are not collected hampers the output of this research. This failure, in turn, attributed to unwillingness on the part of the MoP.

The concept of state responsibility did not yet get full attention by scholars in Ethiopia. Thus, if mention is necessary, the study is limited by the fact that there are only little written materials available and accessible. Therefore, readers should take in to consideration of the aforementioned limitations.

1.10. Organization of the Study

This research would generally be classified into five chapters. The first one, the introduction would be dedicated to the overview of the study in which the research background, problem, scope, questions, objectives, significance and methodology would be included. The second chapter would be all about an introduction to state responsibility and internal displacement in which a theoretical and legal frame work analysis of the two issues would be done. The third chapter would be discussing the issue of state responsibility towards IDPs. To this end it will explore international law rules up on which state responsibility is established. Chapter four digs in to the application of the abovementioned international rules in Ethiopia. It will evaluate whether Ethiopia has undertaken its national responsibility as a case study. It goes through the

discussion of the statistics and the particular reasons for it. The final chapter would be all about the conclusions to be made from the study and the recommendations that would naturally follow.

Chapter Two

Internal Displacement and Internally Displaced People

2.1. Internal Displacement: An overview

2.1.1. Conceptualizing Internal Displacement

The definition of “internally displaced person” has not been embodied in a universally binding document. The term – displaced person merely was employed to refer the category of internally displaced persons in terms of other respective Resolutions of the General Assembly.²⁸ The concept “displaced persons” was given an unclear explanation, although it, particularly, incorporated and largely referred to the term of internally displaced persons.²⁹

The issue of IDP has been part of international discourse since 1972: when UN officially used the term in a resolution concerning refugees and displaced persons in Sudan.³⁰ Nonetheless, the first formal definition was incorporated in Analytical Report in 1992 by the then UN Secretary-General Boutros B. Ghali in his.³¹ The definition was criticized that it unnecessarily provides time-based and numerical benchmarks.³²

The IOM proposed definition include “returnees who, having fled to another country, subsequently return to their own country but are unable to return to their original place of residence.”³³

The UN Guiding Principles on Internal Displacement provides a definition which is to be considered the broadest descriptive stipulation of the classification of internally displaced

²⁸ UN General Assembly Resolution 3454 (XXX) of 9 December 1975

<<<http://www.worldlii.org/int/other/UNGA/1975/88.pdf>>> accessed September 7, 2020

²⁹ Ivor C. Jackson, ‘The Refugee Concept in Group Situations’ (1999) Series: Refugees and Human Rights’ Vol.3 p.416-420

³⁰ UN General Assembly Resolution 2958 (XXVII), 12 December 1972

<<<http://www.worldlii.org/int/other/UNGA/1975/88.pdf>>> accessed on April 8, 2020

³¹ United Nations Commission on Human Rights: Analytical Report of the Secretary-General on IDPs, UN Doc. E/CN.4/1992/23 (14 Feb.1992), Para. 17.

³² Admasu Alemayehu, ‘The African Internal Displacement Problem and the Responses of African Union: An Examination of the Essential Features of the AU IDPs Convention’ (Thesis, Addis Ababa University, 2010) p.17

³³ IOM “Internally displaced persons“, Contribution of the IOM to the meeting of the United Nations Inter-Agency Standing Committee (IASC) (February 1993) p.11

persons.³⁴ The key elements of the given definition of internal displacement are the forced movement within the borders of the state.³⁵ However, according to some authors, the definition deserves some criticism as far as it does not relate to the persons who were forced to migrate from their homes for economic reasons effecting in huge violation of their economic rights.³⁶

In Africa, prior to the adoption of the Kampala Convention in 2009, there had been attempts to incorporate norms regulating internal displacement in regional treaties and relevant instruments.³⁷ These regional instruments provide explicit *de jure* recognition to IDPs.³⁸

In all of the above instruments, we can generalize that forced movement and remaining within national territory, without crossing international boarder, are the two essential foundations of the definitions.³⁹ While, the existence of forced departure distinguishes IDPs from individuals who left their homes voluntarily and could have otherwise safely stayed or return, remaining in national territory clarifies why IDPs are not refugees.⁴⁰ Moreover, the abovementioned definitions, with the exception of the one provided under the Kampala Convention, are descriptive rather than a legal definition. They do not grant a distinct legal status for IDPs in the same way that recognition as a refugee does.⁴¹ This is because unlike refugees, IDPs do not

³⁴ United Nations, Guiding Principles on Internal Displacement, introduction, paragraph 2, (E/CN.4/1998/53/Add.2, 11 February 1998 << www.refworld.org/pdfid/4c51531f2.pdf>> accessed October 23 2019 (here in after called as “UN Guiding Principles on ID”)

³⁵ Roberta Cohen, ‘The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting’ (2004) Global Governance 10 p. 466
<<https://www.brookings.edu/wpcontent/uploads/2016/06/cohenr_20041001.pdf>> accessed on December 27, 2019

³⁶ 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’ (Diploma paper, University of Warsaw 1989), p.13

³⁷ Abebe, Allehone, (2016) (n 10)

³⁸ African Union Convention For The Protection And Assistance Of Internally Displaced Persons In Africa (Kampala Convention), art 1(k) here after called as The Kampala Convention
<<www.eods.eu/library/AU_KAMPALA_CONVENTION_2009_EN.pdf>> accessed on November 15, 2019

³⁹ Mike Asplet Internal Displacement: Responsibility and Action, (2013), Handbook for Parliamentarians No 20 (UNHCR), p.19 <<<https://www.refworld.org/docid/528b1a444.html>> accessed on 7 September 2020

⁴⁰ Protecting Internally Displaced Persons: A Manual for Law and Policymakers Brookings Institution—University of Bern (2008) << www.brookings.edu/.../0605_internal_displacement.pdf>> accessed on December 27, 2019

⁴¹ Hand Book for the Protection of Internally Displaced Persons, Global Protection Working Group, Geneva, (2007) Provisional Release p6 << www.unhcr.org/47949ab92.pdf>> accessed January 23, 2019

require formal recognition as they remain in their own territory and enjoy all the rights and privileges as citizens and other habitual residents of the state.⁴²

2.1.2. Causes of Internal Displacement

Several authors have identified different cause and categories of internal displacement. Causes of displacement can be grouped into two main categories, natural disasters and manmade which is usually linked to conflict and violence.⁴³ The following four general categories by Mike Asplet are helpful to thoroughly discuss various reasons to forced displacement in general and internal displacement in particular.⁴⁴

I. Armed Conflict

The occurrence of internal armed conflict or internal violence usually results in conflict-induced displacement.⁴⁵ In most cases due to fear of attacks and as a result of a breakdown of the socioeconomic structures during armed conflict, people are usually left with no option than to flee.⁴⁶ According to the IDMC survey report, 41.3 million people were estimated to be living in internal displacement due to conflict and violence in 55 countries by the end of 2019.⁴⁷ It is reported that conflict and violence have triggered 10.8 million new displacements worldwide in 2019.⁴⁸

II. Human Rights Violations

“War crimes, crimes against humanity, ethnic cleansing, persecution, torture, discrimination and racism, cultural or traditional practices, domestic violence and trafficking” are the most common factors identified in this category.⁴⁹ The victims of human rights violation usually flee in search of protection. Human rights violations may also be committed in a generalized form of violence

⁴² Mike Asplet (n 39) p.19

⁴³ Fatima K. Mohammed, ‘The Causes and Consequences of Internal Displacement in Nigeria and Related Governance Challenges’ (April 2017) Working Paper FG 8 SWP Berlin, p5

⁴⁴ Mike Asplet (n 39)

⁴⁵ Yigzaw & Abitew, (n 17), p33

⁴⁶ *ibid*

⁴⁷ Global Report on Internal Displacement Summary May 2019 (n 5)

⁴⁸ *ibid*

⁴⁹ Tizazu Ayalew, ‘International Responses for the Protection of Conflict Induced Internally Displaced Persons Since 1991 In Sudan’s Darfur and Somalia’ (Thesis AAU 2014) P15

where there is no specific target.⁵⁰ This form of unrest usually leaves the population unprotected and vulnerable that results in displacement.⁵¹

III. Development Induced Displacement

According to a study published by Makerere University, Uganda, about 15 million people every year are forced to leave their homes to give way for huge development projects such as dams, highways, and mining.⁵² More development induced displacements can be seen in developing regions of Asia and Africa. For instance, the Three Gorges Dam in China has displaced around 1.13 million people for more than two decades.⁵³ In India also development projects especially dam construction has displaced over 60 million people, subjecting them to suffering and poverty for many years.⁵⁴ In Africa, Kariba Dam construction in Zambia displaced approximately 57,000 people.⁵⁵ While countries like China and India lead the world in the number of persons displaced by development projects, it is stated that the proportion of population and territory affected by even the largest of projects in these countries is much lower than in some projects in African countries. For example, the Akosomboss Dam in Ghana has displaced 80,000 people that amount to 1 per cent of the country's population, while in India the Narmada Sardar Sarovar Dam has displaced 127,000 people, about 0.013 per cent of the country's population.⁵⁶

⁵⁰ Nasa'i M. Gwadabe et al, 'Forced Displacement and the Plight of Internally Displaced Persons in Northeast Nigeria' (2018) Humanities and Social Science Research; Vol. 1, No. 1 IDEAS SPREAD, p.101
<<<https://pdfs.semanticscholar.org/6276/151c034d5f66e027dffb5e17aba1e289b61d.pdf>>> accessed on June 30, 2021

⁵¹ ibid

⁵² Caroline Aboda et al, 'Development Induced Displacement: A Review of Risks Faced by Communities in Developing Countries' (2019) Makerere University, Uganda, p 100

⁵³ <<<https://www.britannica.com/topic/Three-Gorges-Dam>>> accessed on September 7, 2020

⁵⁴ ibid p.106

⁵⁵ ibid p.100

⁵⁶ Jason Stanley, 'Development-Induced Displacement And Resettlement'

<<<http://citeseerx.ist.psu.edu/messages/downloadsexceeded.html>>> p.6 accessed on June 30, 2021

IV. Natural and Man-Made Disasters

Disaster happens because of natural causes like drought, earthquake, tsunamis, and so on or due to the activities of man, including phenomena related to climate change and so on.⁵⁷ It usually causes massive displacement of the population.⁵⁸

2.1.3. Impacts of ID

Internal displacement can have devastating effects on the lives of displaced people, their dependents, their hosts and those who are left behind in their community of origin. Consequences are manifested in the dimensions of health, livelihoods, education, housing and infrastructure, security, the environment and social life.⁵⁹ Loss of livelihoods due to internal displacement can limit access to decent shelter, healthcare and education, threaten security and social life.⁶⁰

In terms of health for example, studies reveal higher mortality rates among IDPs, mostly the result of communicable diseases.⁶¹ Displacement has also been linked with several reproductive health issues including lack of contraception and increased risk of sexually transmitted infections (STIs).⁶² There are also security challenges in addition to a limited supply of basic food and non-food items, health facilities, education, and livelihood opportunities.⁶³

The consequence of internal displacement on livelihoods and school systems can reduce access to education and security.⁶⁴ Lower enrolment and achievement rates and higher drop-out rates among displaced children is evident in most countries affected by displacement.⁶⁵ It can also

⁵⁷ Nasa'i M. Gwadabe et al, (n 50)

⁵⁸ ibid

⁵⁹ Christelle Cazaba, 'The Ripple Effect Multidimensional Impacts Of Internal Displacement' (October 2018), IDMC Thematic Serious Report, p.8

⁶⁰ ibid

⁶¹ Mehari Tadele, 'Causes, Dynamics, and Consequences of Internal Displacement in Ethiopia, (2017) Working Paper Division Global Issues, Berlin << https://www.swp-berlin.org/publications/products/arbeitspapiere/Maru_2017_Internal_Displacement_Ethiopia.pdf>> accessed on June 30, 2021

⁶² ibid p5

⁶³ Fatima K. Mohammed (n 43) p. 24

⁶⁴ Ibid p.6

⁶⁵ IDMC, 'The Impacts Of Internal Displacement On Education On Education In Sub-Saharan Africa' (2020) <<<https://reliefweb.int/sites/reliefweb.int/files/resources/2020%20background%20paper%20FINAL%20IDMC.pdf>>> accessed on July 4, 2021

reduce children's potential earnings and livelihood opportunities as adults, creating a poverty trap that endures even after displacement.⁶⁶ Some displaced children are obliged to earn income, putting them in danger in unsafe work and reducing their chances of more secure employment through education.⁶⁷ The other major finding with regard to women and children is the exposure to dangers of sexual harassment and violence. In October 2016, Human Rights Watch (HRW) reported that government officials and other authorities in Nigeria have raped and sexually exploited 43 women and girls displaced by the conflict with Boko Haram.⁶⁸

The devastating effects of internal displacement is not only limited to the displaced people. The effects of forced displacement are highly evident on host communities within migrants' countries.⁶⁹ Though the existing literature on the effect of the arrival of IDP on housing and food prices, holistic poverty indicators, and private and public consumption is limited, the economic impact that internally displaced people put on host communities is very much significant.⁷⁰ In terms of food price, for example the arrival of IDPs will result in an increase in food prices, particularly for the lower income section.⁷¹ Another possibility working in the opposite direction from a demand shock is the existence of food aid programs that could depress food prices by introducing a positive supply shock.⁷² For instance, it has been shown for Tanzania that food aid may negatively affect some food prices.⁷³ There is also evidence suggesting that IDP inflows indeed reduce the wages of unskilled urban workers.⁷⁴

⁶⁶ Christelle Cazaba, (n 59) p. 8

⁶⁷ *ibid*

⁶⁸ Human Rights Watch, 'Nigeria: officials abusing displaced women, Girls Displaced by Boko Haram and Victims Twice Over' << <https://www.hrw.org/news/2016/10/31/nigeria-officials-abusing-displaced-women-girls>,>> accessed on September 2, 2020

⁶⁹ Veronika Fajth et al, 'How do refugees affect social life in host communities? The case of Congolese refugees in Rwanda' <<<https://comparativemigrationstudies.springeropen.com/articles/10.1186/s40878-019-0139-1>>> accessed on June 30, 2021

⁷⁰ Emilio D. Chauvin & Rafael J. Santos, 'The Impacts of Internal Displacement Inflows on Host Communities in Colombia' (2017) KNOMAD Working Paper 2017, p. 22

<<<https://www.knomad.org/publication/impacts-internal-displacement-inflows-host-communities-colombia>>> accessed on May 21, 2020

⁷¹ *ibid*

⁷² J. Alix-Garcia and D. Saah. 'The Effect of Refugee Inflows on Host Communities.' (2010) World Bank Economic Review 24 (1): 148–70 << <https://academic.oup.com/wber/article/24/1/148/1734945>>> accessed May 8, 2020

⁷³ *ibid*

⁷⁴ V. Calderon and A. M. Ibáñez, 'Labour Market Effects of Migration-Related Supply Shocks: Evidence from Internal Refugees in Colombia.' (2015) Journal of Economic Geography, p 707

The economic impacts of internal displacement per IDP appear heavier in poor countries compared to lower-middle or upper-middle income countries.⁷⁵ This may be because the population was already in a critical condition before the crisis and their capacity to respond to its impacts is very limited.⁷⁶ Crises that endure for the longest period displacing highest number of people eventually result in the highest economic impacts.⁷⁷

2.2. International Normative and institutional frame works of protection of CIDs

2.2.1. Normative Frameworks

A. The UN Guidelines on Internal Displacement

The bringing IDPs to the forefront of a legitimate international concern had long been campaigned by the human rights movement.⁷⁸ In this regard the UN has gone, in some instances, to the extent of authorizing the use of force to realize the provision of assistance and to afford protection for IDPs.⁷⁹ Such determinations and change in attitude necessitated the formulation of the Guiding Principle on Internal Displacement under the auspices of the UN.⁸⁰ The prevailing view at the time of the drafting process was even though a common relevant norm might exist, a consolidated and separate law was necessary for the special status and specific needs of the IDP.⁸¹

According to Roberta Cohen, the following three reasons are the main factors for the decision to develop the Guiding Principles as a soft law.⁸² The fear that there will be no support from governments for a convention since the issue of internal displacement was still too sensitive due to sovereignty issue was the first reason.⁸³ The second and third reasons are urgency and the need for a separate law in a form of a unified international instrument that compile the dispersed

<<https://www.researchgate.net/publication/228267177_Labor_Market_Effects_of_Migration-Related_Supply_Shocks_Evidence_from_Internal_Refugees_in_Colombia>> accessed on May 21, 2020

⁷⁵ Christelle Cazaba,(2019) (n 59) p29

⁷⁶ ibid

⁷⁷ Emilio D. Chauvin & Rafael J. Santos (n 70)

⁷⁸ Roberta Cohen, (n 35) p.59

⁷⁹ ibid p.361

⁸⁰ Roberta Cohen (n 35) pp. 364-365

⁸¹ ibid p.464

⁸² ibid p.364-365

⁸³ ibid

norms in several instruments adopting for the urgent and specific needs of the internally displaced.⁸⁴

The Guiding Principles provide guidance to governments, insurgent groups and international organizations, or NGOs and afford a comprehensive international minimum standard for the treatment of IDPs throughout the different stages of displacement.⁸⁵ The two fundamental features of IDP definition are being “coerced to move and remaining within one’s national borders.”⁸⁶ Economic migrants were not incorporated because the element of coercion was not considered to be so clear.⁸⁷

The Guiding Principles reflect an effort to strike balance between state sovereignty and humanitarian necessities. The concept of sovereignty as a form of responsibility is a philosophical foundation behind the principles.⁸⁸ To this end, the Guiding Principles recognize the principal responsibility of national state towards the displaced.⁸⁹ At the same time, according to the principles, aid support from international humanitarian organizations, when the crisis goes beyond the state, should not be considered “as an unfriendly act or interference in a State’s internal affairs.”⁹⁰

The Guiding Principles are not a binding document, though. Despite this, they still play vital “legal significance” and enjoy international application.⁹¹ Walter Kälin has listed the following reasons why it made sense to elaborate a non-binding document on the rights of IDPs.⁹² First, while adopting a binding convention in the area of human rights, in general, has become challenging, even where a text is adopted, there is no guarantee that the treaty is unsuccessful.⁹³

⁸⁴ *ibid*

⁸⁵ UN Guiding Principles on ID, (n 33)

⁸⁶ *ibid* principle 1(2)

⁸⁷ Roberta (n 35) p.466

⁸⁸ *ibid*

⁸⁹ Principle 3(1) (n 33)

⁹⁰ Principle 25 (2) (n 33)

⁹¹ Marion Couldrey & Maurice Herson (Ed), ‘Ten Years of the Guiding Principles on Internal Displacement’ (2008) Forced Migration Review GP 20, p6 << [<https://reliefweb.int/report/world/forced-migration-review-gp10-ten-years-guiding-principles-internal-displacement>>](https://reliefweb.int/report/world/forced-migration-review-gp10-ten-years-guiding-principles-internal-displacement)

⁹² Walter Kälin, ‘How Hard is Soft Law? The Guiding Principles on Internal Displacement and the Need for a Normative Framework’ (2001) Presentation at Roundtable Meeting Ralph Bunche Institute for International Studies CUNY Graduate Center, p.2-4

⁹³ *ibid*

Secondly, it has become more difficult recently to get enough ratifications for new human rights instruments to enter into force.⁹⁴ The 1990 Migrants Workers Convention, which lacked the necessary 20 ratifications for many years, is the most notable example.⁹⁵ Finally, it was considered premature to make a treaty that combines human rights and IHL, and to bring a new treaty; as existing treaties already incorporate the relevant rights of IDPs to a large magnitude.⁹⁶

The launch of the Guiding Principles on Internal Displacement in 1998 was followed by the growing adoption of national instruments on IDPs.⁹⁷ As of mid-2017, 40 States that have experienced internal displacement had introduced around 69 domestic legislative instruments.⁹⁸ Across these laws and policies there is clear acceptance that internally displaced persons (IDPs) require some form of international protection.⁹⁹

The Guiding Principles carry some challenges and dilemmas. For instance, there exist uncertainty around who falls under the category of ‘authorities’, with attendant obligations.¹⁰⁰ It is not clear that certain obligations such as ensuring that displaced persons – children in particular – receive education directly apply to ANSAs.¹⁰¹ Additionally, the prohibition of arbitrary displacement is not absolute and what qualifies as “imperative military reasons” for ordering displacement¹⁰² can be difficult to define.¹⁰³ The Guiding Principles also face implementation challenge in the domestication process of states. In this regard, 73 of the 80 laws and policies analyzed by Carla Ruta address post displacement, including 25 that exclusively

⁹⁴ *ibid*

⁹⁵ The International Convention on Migrant Workers and its Committee Fact Sheet No. 24 (Rev.1), UNHCR, << <https://www.ohchr.org/Documents/Publications/FactSheet24rev.1en.pdf> >> accessed September 8, 2020 see also impact of Ratifying the 1990 UN Convention on the Rights of All Migrant Workers and Members of Their Family: Case Studies of the Philippines and Sri Lanka, Asia Pacific Migration Research Network Working Paper No. 15 (2005) << <http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SHS/pdf/Impacts-of-Rat-of-ICMR.pdf> >> accessed September 8, 2020

⁹⁶ Walter Kälin (n 92)

⁹⁷ *Ibid* p.7

⁹⁸ Phil Orchard, (n 8) p.10

⁹⁹ *ibid*

¹⁰⁰ Carla Ruta, Héloïse Ruaudel and Pascal Bongard, “The Guiding Principles and armed non-State actors” in M. Couldrey & J. Peebles (Ed) ‘Twenty Years of The Guiding Principles On Id’ (October 2018) Issue 59, Forced Migration Review, p.38; see principle 3 (n 28)

¹⁰¹ *ibid*

¹⁰² Principle 6, (n 33)

¹⁰³ Carla Ruta, (n 100) p.38

consider issues related to return, relocation and/or resettlement.¹⁰⁴ Moreover, while the vast majority (55) of the 80 laws and policies analyzed have provisions on ‘protection and assistance’, only one third (29) of all laws and policies analyzed address the pre-displacement phase, making specific provisions to prevent and avoid forced displacement or to minimize the effects of unavoidable displacement.¹⁰⁵ Furthermore, of the 40 domestic legislative instruments and policies introduced as of mid-2017, only 30 laws and policies explicitly mention the Guiding Principles, and only 19 explicitly endorse the IDP definition that the Guiding Principles contain.¹⁰⁶ The phase most addressed by the laws and policies recorded in the Global Database is the post-displacement phase.¹⁰⁷

Furthermore, notwithstanding the global spread of IDP laws and policies, there still seems to be a lack of laws and policies where they are most needed.¹⁰⁸ The case in the Middle East countries is a good example where only Iraq (2008) and Yemen (2013) are the only two states that adopted policy on ID while the region is most affected.¹⁰⁹

B. The Kampala Convention

The African Union Convention for the Protection and Assistance of Internally Displaced Persons – the Kampala Convention, adopted in 2009 – owes its development in large part to the Guiding Principles on Internal Displacement.¹¹⁰ However, according to Beyani Chaloka, the drive for the making of the Kampala Convention had its origin not from the Guiding Principles but from the International Conference on the Great Lakes.¹¹¹ The Conference was the first to adopt a legally

¹⁰⁴ Ileana Nicolau and Anaïs Pago, “Laws and policies on internal displacement: global adoption and gaps” in M. Couldrey & J. Peebles (Ed) ‘Twenty Years of The Guiding Principles On Id’ (October 2018) Forced Migration Review, Issue 59, October 2018 p.9

¹⁰⁵ *ibid*

¹⁰⁶ Phil Orchard, (n 8) p.10

¹⁰⁷ *ibid*

¹⁰⁸ Ileana Nicolau, (n 104) p.9

¹⁰⁹ *ibid*

¹¹⁰ At the time of writing, 40 of the 55 States Members of the African Union had signed the Kampala Convention, while 30 had ratified it. << <https://au.int/sites/default/files/treaties/36846-sl-AFRICAN%20UNION%20CONVENTION%20FOR%20THE%20PROTECTION%20AND%20ASSISTANCE%20OF%20INTERNALLY%20DISPLACED%20PERSONS%20IN%20AFRICA%20%28KAMPALA%20CONVENTION%29.pdf>>> accessed September 8, 2020

¹¹¹ Beyani, Chaloka ‘A View From Inside The Kitchen of The Kampala Convention: The Modernization of the International Legal Regime for the Protection of Internally Displaced Persons’ (2020) International and Comparative

binding treaty, albeit of limited scope, in the form of the 2006 Protocol on the Protection and Assistance to Internally Displaced Persons.¹¹² This doesn't by any means mean that ID has never been an issue. Since 1992, internal displacement has been at the top of the agenda of the OAU/AU.¹¹³ Nevertheless, the Kampala Convention still reinforces the Guiding Principles' pioneering collective framework of international human rights law, international humanitarian law, and the analogical application of international refugee law.¹¹⁴

While reflecting the international human rights and humanitarian law principles embodied in the Guiding Principles it also incorporates relevant aspects of norms from African regional human rights frameworks.¹¹⁵ As a treaty, the Kampala Convention is the first regional treaty of its kind applicable to protecting and assisting internally displaced persons as well as providing for the realization of durable solutions for them.¹¹⁶

As Mehari pointed out the Kampala Convention has the following four objective features. The first objective is to address and fulfill the growing need and the legal protection gap in the region pertaining to governance of internal displacement.¹¹⁷ Secondly, it sets the legal, policy and institutional mechanisms to protect and assist IDPs.¹¹⁸ Third, it provides a set of rights of IDPs and corresponding duties and duty bearers during all phases of internal Displacement.¹¹⁹ Last

Law Quarterly. ISSN 0020-5893 p6 <<http://eprints.lse.ac.uk/103693/1/Modernisation_ICLQ_submission.pdf>> accessed May 20, 2020

¹¹² Walter Kälin, 'The Great Lakes Protocol on Internally Displaced Persons: Responses and Challenges' <<<https://www.brookings.edu/on-the-record/the-great-lakes-protocol-on-internally-displaced-persons-responses-and-challenges/>>> accessed September 8, 2020

¹¹³ OAU, Resolution on Refugees, Returnees and Displaced Persons In Africa, The Council of Ministers of the Organization of African Unity meeting in its Sixtieth Ordinary Session in Tunis, Tunisia, from 6 to 11 June, 1994, <<<http://www.peaceau.org/uploads/cm-res-1521-lx-e.pdf>>> accessed September 9, 2020

¹¹⁴ Beyani, Chaloka (n 111)

¹¹⁵ Romola Adeola, "The Kampala Convention and the right not to be arbitrarily displaced" in M. Couldrey & J. Peebles (Ed) 'Twenty Years of The Guiding Principles On Id' Forced Migration' (October 2018) Review, Issue 59, p.16

¹¹⁶ Mehari T. Maru, 'the Kampala convention and its contribution in filling the protection gap in international law', (2011) journal of internal displacement volume 1 Number 1, p.96

¹¹⁷ *ibid* p.96-99

¹¹⁸ Article 2(b) Kampala Convention

¹¹⁹ The Kampala Convention offers an extensive catalogue of obligations of States Parties under Article 3, 4,5,10,11, 12, and 13

but not list, it established institutions and mechanism to address the causes and consequences of internal displacement.¹²⁰

In line with the Guiding Principles, the Kampala Convention guarantees the equal treatment of all IDP, irrespective of their cause of displacement.¹²¹ It lists grounds on which displacement is not permitted, such as for reasons of ethnic cleansing, religious or racial segregation.¹²² It also prohibits utilizing displacement as an instrument for collective punishment that amounts to genocide, war crimes or crimes against humanity.¹²³ The Kampala Convention permits certain kinds of displacement on specific grounds, for instance in situations of armed conflict for military necessity or for the protection of civilian populations.¹²⁴ In situations of natural disaster, displacement is allowed where required for the safety and health of affected populations.¹²⁵

The Convention has made important advances in articulating protection from arbitrary displacement by enumerating in Art 4(4) an expansive list of acts that may cause it, going further than those in the Guiding Principles. While as per Principle 11, the Guiding Principles prohibit mutilation and gender-specific violence against IDPs, the Kampala Convention under article 4(4)(e) goes further prohibiting harmful practices as a cause of displacement. Reflecting the African context, the Kampala Convention makes a significant departure by making a clear prohibition of displacement “in cases of large-scale development projects, which are not justified by compelling and overriding public interests”¹²⁶

On the issue of domestication and implementation, Article 3 (2) the Convention obliges state parties to enact a law or amend a relevant one combining their obligation on the protection of and assistance to displaced persons. A comprehensive domestic law must at the very least include its standards on internal displacement and address all forms internal displacement holistically irrespective of the causes.¹²⁷ According to Beyani Chaloka, in engaging with African states on the issue of domestication, two main difficulties have been challenging. One lies in the

¹²⁰ *ibid* Art 14,20 and 22,

¹²¹ *ibid* Art 1(k)

¹²² *ibid* Art 4 (4)

¹²³ Romola Adeola (n 115) p.16

¹²⁴ Article 4(4)(b) Kampala Convention

¹²⁵ *ibid* Art 4(f)

¹²⁶ Principle 6(c) (n 33)

¹²⁷ Beyani, Chaloka (n 111) p.15

difficulty faced by African States in applying the Convention and its modern aspects in constitutionalized legal systems.¹²⁸ Another relates to the complexity of both the process and the technical expertise required to prepare appropriate substantive legislation to incorporate or domesticate the Kampala Convention.¹²⁹

2.2.2. Institutional framework

There is no single institution legally entrusted with protection of IDP in international level.¹³⁰ In many places where large-scale humanitarian operations are needed, a number of humanitarian agencies involve.¹³¹ So as to facilitate such efforts the Emergency Relief Coordinator is established under the auspices of coordinate the humanitarian response of the UN system, composed of the six key actors of UNHCR, WFP, UNICEF, FAO, WHO and UNDP.¹³² For our purpose, we shall discuss the UNHCR and the ICRC role so that we can examine institutional frameworks of both UN system and treaty based one.

I. The UNHCR

Institutionally the primary subjects of the UNHCR are refugees not IDPS, but mainly due to its general mandate on displacement its operational involvement in the assistance of IDPS dates back to its activity in Sudan in 1972.¹³³ It has now a leading role in coordinating the activities of international aid organizations in the protection and assistance of IDP.¹³⁴

The extended role of the UNHCR emanates from the similarity between refugees and IDP in not only the very cause and consequence of their displacement but also on their humanitarian needs.¹³⁵ Moreover, the UNHCR extends its assistance and mission for IDP as part of a solution

¹²⁸ *ibid*

¹²⁹ *ibid*

¹³⁰ Jakob Kellenberger, 'The ICRC's response to internal displacement: strengths, challenges and constraints, international review of the red cross' (September 2009) Volume 91 Number 875 p479

¹³¹ *ibid*

¹³² Nicola Reindorp and Peter Wiles, 'Humanitarian Coordination: Lessons from Recent Field Experience: A study commissioned by OCHA, (June 2001) Overseas Development Institute London , p.5

¹³³ Erika Feller, 'UNHCR's role in IDP protection: opportunities and challenges' available at <<<https://www.fmreview.org/brookings/feller.pdf>>>

¹³⁴ Jakob Kellenberger, (n 130) p479

¹³⁵ UNHCR, Internally Displaced Persons: the Role of UNHCR, , (March 2000), p.5 <<<https://www.un.org/ruleoflaw/files/3ae6b33a0.pdf>>> accessed September 9, 2020

of the main refugee problems.¹³⁶ For instance, in a situation where refugees and IDP exist simultaneously, it would be operationally challenging and morally wrong for the UNHCR to assist refugees separately; segregating IDP may worsen their insecurity.¹³⁷ Moreover, when refugees are minor components of huge internal displacement it makes little sense for UNHCR to base international assistance on location criteria.¹³⁸

The operational role of UNHCR on IDP has also evolving legal basis. According to article 9 of the UNHCR Statute, it may “engage in such activities “...as the General Assembly may determine, within the limits of the resources placed at its disposal.”¹³⁹ Furthermore, subsequent UN General Assembly Resolutions have endorsed UNHCR’s extended role in assisting the internally displaced.¹⁴⁰

The specific requirements that needs to be fulfilled and procedures to be followed by the UNHCR so as to extend its role to IDP, are provided in UN General Assembly resolution 48/116 (1993).¹⁴¹ Among others, the UNHCR should get approval from the UN Secretary General or other component organ of the UN and permission of the state concerned.¹⁴²

In general, UNHCR plays significant role in countries where the displacement is occurring – because of its considerable involvement in helping returning refugees settles either back into their home areas, or because of its increased roles on behalf of IDPs.¹⁴³ Furthermore, UNHCR’s particular expertise has led to its being given an even broader role.¹⁴⁴

¹³⁶ *ibid*

¹³⁷ UNHCR, (Protecting Refugees and the role of UNHCR, (2008) p.6

<<<https://reliefweb.int/report/afghanistan/protecting-refugees-role-unhcr-2008-09>>> accessed September 9, 2020

¹³⁸ *ibid*, p.5

¹³⁹ Statute of the office of the United Nations High Commissioner (UNHCR) For Refugees, General Assembly Resolution 428 (V) of 14 (December 1950), << <https://www.unhcr.org/4d944e589.pdf>>> accessed September 9, 2020

¹⁴⁰ The principal criteria governing the organization’s involvement with IDPs are set out in Resolution 53/125 of December 1998<<<https://academic.oup.com/ijrl/article/11/1/232/1585782>>> accessed September 2, 2020

¹⁴¹ Resolution Adopted by the General Assembly [on the report of the Third Committee (A/48/631)] 48/116. UNHCR<< <https://digitallibrary.un.org/record/180222?ln=en#record-files-collapse-header>>>

¹⁴² UNHRC, (March 2000), (n 98) p5

¹⁴³ Nicola Reindorp and Peter Wiles (n 132) P.21 and 74

¹⁴⁴ *ibid*

II. The ICRC

The ICRC's main mandate is to relieve people under armed conflict and other situations of violence from insecurity and harm.¹⁴⁵ To this end, it has two major responsibilities: it is operationally entrusted to help victims of armed conflict and other situations of violence¹⁴⁶ and, it has a mandate of developing and promoting IHL and humanitarian norms.¹⁴⁷ Consequently, since role of the ICRC is to protect and assist persons affected by armed conflict and other situations of violence, it has a direct institutional obligation in the protection and assistance of CIDP.¹⁴⁸ CIDPs are, therefore, direct subjects of ICRC missions.¹⁴⁹

In this regard, the ICRC endeavors to prevent further displacement, in conflict zones, by providing comprehensive services to the population in areas at risk, and by urging all parties to respect their obligations under IHL.¹⁵⁰ The ICRC gives emergency aid to IDPs in camps in exceptional situations. For instance, the ICRC played a significant role on the establishment of the Abu Shok and Kassab camps in Darfur in 2004.¹⁵¹ During return, local integration or relocation the ICRC advocates measures to ensure conditions for the safe, voluntary and dignified return of IDPs to their places of origin, or for them to resettle or relocate.¹⁵² It may also include encouraging the relevant authorities to clear land contaminated with mines and explosive remnants of war, forego further use of such weapons, and conduct mine-risk education programs to make people aware of the risks.¹⁵³

¹⁴⁵ Jakob Kellenberger, (n 130) p.476

¹⁴⁶ The ICRC: Its Mission And Work, ICRC, March 2009, p.3

<<https://www.icrc.org/en/doc/assets/files/other/icrc_002_0963.pdf>> accessed September 9, 2020

¹⁴⁷ Yigzaw & Abitew (n 17), p.33

¹⁴⁸ ICRC: Position On Internally Displaced Persons (IDPs) (May 2006), p.3-4

<<https://www.icrc.org/en/doc/assets/files/other/2006_idps_en_icrcexternalposition.pdf>> accessed September 9, 2020

¹⁴⁹ David P. Forsythe, 'The ICRC: A Unique Humanitarian Protagonist, International Review of The Red Cross, (March 2007), Volume 89 Number 865 p.66

¹⁵⁰ ICRC (n 146) p.5

¹⁵¹ Jakob Kellenberger, (n 130) p.485

¹⁵² ICRC, Internal Displacement in Armed Conflict: Facing up to the challenges, (Nov 2009) p.20

<<https://www.icrc.org/en/doc/assets/files/other/icrc_002_4014.pdf>> accessed September 9, 2020

¹⁵³ Jakob Kellenberger, (n 130) p.489

Chapter Three

State Responsibility For Internal Displacement

3.1. State Responsibility in General

State responsibility is an age-old principle of international law that was developed to protect the rights of aliens.¹⁵⁴ It arises when a state commits an international wrong against another state.¹⁵⁵ In terms of the ARSIWA by the ILC, state responsibility is incurred when two elements are proved.¹⁵⁶ First there should be conduct in terms act or omission that is attributable to the state under international law.¹⁵⁷ Secondly, the conduct must constitute a breach of an international obligation of the state.¹⁵⁸ State responsibility is dependent on the link between the state and the wrongful act — the conduct of a private actor must qualify as an ‘act of a state.’¹⁵⁹

The state as a subject of the international law, infliction of damage to another state and setting the wrongful act of state in time are the three pillars of state responsibility.¹⁶⁰ This is in line with the contents of UN Resolution no 56/83 for International Responsibility of States for International Wrongful Acts.¹⁶¹

¹⁵⁴ Article on Responsibility of States for Internationally Wrongful acts (2001) UNGA Resolution No. 56/83 <<https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf>> September 9, 2020 (here in after called “ARSIWA”)

¹⁵⁵ James Crawford, ‘The International Law Commission’s Articles On State Responsibility: Introduction, Text And Commentaries’ (2003) Cambridge university press, p77

¹⁵⁶ Danwood M. Chirwa, ‘The Doctrine of State Responsibility As A Potential Means Of Holding Private Actors Accountable For Human Rights’ (2004) Melbourne Journal of International Law Vol.5 p4

¹⁵⁷ Art. 2(a) ARSIWA

¹⁵⁸ *ibid* Art 2(b)

¹⁵⁹ Danwood M. Chirwa (n 156)

¹⁶⁰ Milka Dimitrovska, ‘The Concept of International Responsibility of State in The International Public Law System’ (2015) journal of Liberty and International Affairs Vol. 1, No. 2, Institute for Research and European Studies, p4-8. Furthermore, Article 13 ARSIWA affirms this by stipulating that “an act of a state does not constitute a breach of an international obligation unless the state is bound by the obligation in question at the time the act occurs.”

¹⁶¹ Resolution adopted by the General Assembly [on the report of the Sixth Committee (A/56/589 and Corr.1)] 56/83. Responsibility of States for internationally wrongful acts 28 January 2002 <<<https://www.ilsa.org/Jessup/Jessup11/basicmats/StateResponsibility.pdf>>> accessed September 9, 2020

The above concept of state responsibility is linked to the traditional understanding of responsibility *Vis a Vis* an injured alien (third party state).¹⁶² In a broader way according to Article 12 of ARSIWA, a breach of an international obligation is established when an act of the state “is not in conformity with what is required of it by that obligation, regardless of its origin or character.” ICJ decisions also established that “when a State has committed an internationally wrongful act, its international responsibility is likely to be involved whatever the nature of the obligation it has failed to respect.”¹⁶³ This jurisprudence acknowledges the fact that a violation of an international human rights obligation can give rise to state responsibility.

Regarding attribution of acts of non-state actors to the state ARSIWA provided different instances.¹⁶⁴ The conduct of a person or group of persons acting on the “instructions of, or under the direction or control of, a state” can be attributed to the state in question.¹⁶⁵ Where conduct is authorized by the state, liability is incurred regardless of whether the person to whom authorization is given is a private individual.¹⁶⁶ Under Article 9 of the ARSIWA, the conduct of private persons or groups exercising elements of governmental authority “in the absence or default of the official authorities and in circumstances such as to call for the exercise of those elements of authority” can be attributed to the state. Accordingly, the conduct must relate to the exercise of public functions or governmental authority. Hence, there must be “absence or default of official authorities and the circumstances must have justified the exercise of those powers.”¹⁶⁷ Article 10(1) of the ARSIWA also provides that “the conduct of an insurrectional movement which becomes the new government of a state shall be considered an act of that state under international law.”¹⁶⁸ Lastly, a state may be responsible for conduct which is otherwise not attributable to it where the state acknowledged such conduct or adopted it as its own.¹⁶⁹

The state responsible for the internationally wrongful act is under the obligation primarily to “cease that act and to offer appropriate assurances and guarantees of non-repetition.”¹⁷⁰ The

¹⁶² Milka Dimitrovska (n 160) p.4

¹⁶³ Danwood M. Chirwa, (n 156) p.56

¹⁶⁴ ARSIWA Chapter II (Articles 4-11)

¹⁶⁵ *ibid* Art. 8

¹⁶⁶ Danwood M. Chirwa, (n 156) p.27

¹⁶⁷ *ibid* p.8

¹⁶⁸ *ibid*

¹⁶⁹ ARSIWA Art. 11

¹⁷⁰ UNGA Resolution 56/83, (n 152) art. 30).

responsible state has an obligation to make good the damage caused by the internationally wrongful act through: restitution, compensation and satisfaction.¹⁷¹

3.2. International legal frameworks of state responsibility for IDPs

3.2.1. The UN Guideline principle on ID

The notion of ‘sovereignty as responsibility’ lies the foundation of the Guiding Principles.¹⁷² The Guiding Principles on Internal Displacement underscore primary responsibility of national authorities.¹⁷³ They comprehensively set the rights of IDPs and the counter obligations of governments toward them along with providing a framework for better understanding of what national responsibility should entails.¹⁷⁴ Such national responsibility of states should be undertaken in a way that benefits of all people fitting the definition of IDPs provided in the Guiding Principles.¹⁷⁵ Based on the Guiding Principles framework, a national law should address all phases of displacement, stretching from prevention through protection and assistance during displacement all the way to rehabilitation in terms of return, resettlement and reintegration with a particular emphasis to the particular needs of specific groups of IDPs, such as ethnic minorities, indigenous people, women, children and the elderly.¹⁷⁶

Governments have a responsibility to prevent and avoid conditions on their territory that might lead to population displacement, to minimize inevitable displacement and alleviate its adverse effects.¹⁷⁷ Strategies in this regard include, among others, creating enabling environment for the proper implementation of human rights and IHL and adopting early warning and quick response mechanisms to protect populations under threat.¹⁷⁸

¹⁷¹ *ibid* Art. 31 and 34

¹⁷² Angela Cotroneo, “Strengthening implementation of the Guiding Principles by affected States” in M. Couldrey & J. Peebles (Ed) ‘Twenty Years of The Guiding Principles On Id’ (October 2018) Issue 59, Forced Migration Review, p.29

¹⁷³ Principles 3 and 25, (n 33)

¹⁷⁴ The Brookings Institution (2005), (n 20) p.7

¹⁷⁵ *ibid* p.9

¹⁷⁶ *ibid* P.63

¹⁷⁷ Principles 5-9 (n 33)

¹⁷⁸ The Brookings Institution (2005) (n 20) P.12

In such instance, if providing assistance is beyond their capacity and failed to bear out their obligation, states are under obligation to invite and accept international offers of aid.¹⁷⁹ If they expose large number of people in need at risk by rejecting or intentionally hindering access to offers of aid, the international community will assume a right as well as a responsibility to step in and avert the humanitarian danger.¹⁸⁰

However, the implementation of the Guiding Principle has many failures. Phil Orchard enumerated three explanations for the failure of implementation.¹⁸¹ The first is where a government promises to the norms incorporated within the Guiding Principles but is incapable in carrying out its obligation.¹⁸² The second reason is where governments decide to make a strategic rhetorical commitment to the Guiding Principles but have no plan to follow through on implementation.¹⁸³ Thirdly, states may respond to advocacy efforts from international and non-governmental organizations.¹⁸⁴ However, there will never be meaningful implementation without additional pressure.¹⁸⁵

On top of these, the non-binding nature of the Guiding Principles poses an obvious disadvantage, as it cannot hold states accountable if they fail in implementation.¹⁸⁶ However, it is possible to invoke the existing legal provisions of hard law that lies behind the Guiding Principles where needed.¹⁸⁷ Furthermore, they are considered nationalized insofar as governments incorporate them into domestic law or policies or accept them as a valid expression of what human rights conventions ratified by that country mean in situations of internal displacement. Several governments have accepted the authoritative character of the Guiding Principles in this sense.¹⁸⁸

¹⁷⁹ Principles 25(2) and 30 (n 33)

¹⁸⁰ Roberta Cohen (2004), (n 35) p.466

¹⁸¹ Phil Orchard, (n 8) p.10

¹⁸² *ibid*

¹⁸³ *ibid*

¹⁸⁴ *ibid*

¹⁸⁵ Angela Cotroneo (n 172) p.29

¹⁸⁶ Walter Kälin, (2001),(n 92) p.7

¹⁸⁷ *ibid*

¹⁸⁸ *ibid* p.8

Another challenge in terms of state responsibility is that the Guiding Principles come with no monitoring or enforcement machinery.¹⁸⁹

3.2.2. The Kampala Convention

The Kampala Convention addresses the responsibilities and obligations of states and international actors in terms of prevention of internal displacement as well as protection and providing sustainable solution for IDP.¹⁹⁰ In this regard, states are under obligation “to prevent arbitrary displacement,¹⁹¹ to protect IDPs’ fundamental human rights during displacement,¹⁹² and to find durable solutions.”¹⁹³ States also have duty “to identify a national authority or body responsible for responding to internal displacement”¹⁹⁴ Regarding international actors, the Convention tasks the AU to coordinate the efforts of humanitarian agencies and civil society organizations for effective support to the efforts of states in the protection and assistance of IDPs.¹⁹⁵

All people, according to the convention, have a right to be protected against arbitrary displacement.¹⁹⁶ States undertake the obligation of preventing displacement that arise from conflict and the violations of fundamental human rights by adhering their obligations under international law particularly through avoiding situations that might create arbitrary displacement.¹⁹⁷ With regard to displacement caused by natural disasters, the Convention obliges states to implement “early warning systems” and to devise mechanisms for “disaster preparedness and disaster management.”¹⁹⁸ Unless the displacement is justified by “compelling and overriding public interests,” the convention demands states to “endeavor to protect” people

¹⁸⁹ Roberta Cohen, (n 35) p.477

¹⁹⁰ Articles 3, 4, 5, 9, 10, 11, 12, 13 Kampala convention

¹⁹¹ *ibid* Articles 4, 10

¹⁹² *ibid* Articles 3, 5 and 9

¹⁹³ *ibid* Art.11 Kampala convention

¹⁹⁴ AU, ECOSOCC and IDMC, Making the Kampala Convention work for IDPs: Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa, (2010) p13 <<https://www.internal-displacement.org/sites/default/files/publications/documents/2010-making-the-kampala-convention-work-thematic-en.pdf>> accessed September 10, 2020

¹⁹⁵ Article 8(3) Kampala convention

¹⁹⁶ *ibid* Article 3 (1)(a) Particularly sub article (1) (g) and (h) of the same obliges state parties to insure individual and non-state actors accountability “for acts of arbitrary displacement or complicity in such acts.”

¹⁹⁷ Article 4(1) Kampala convention

¹⁹⁸ *ibid* Article 4(2)

who have special cultural or spiritual attachment to and dependency on their land from being displaced from such land.”¹⁹⁹

Similar to the Guiding Principles, the territorial state bear the primary responsibility and obligation of providing protection and assistance to IDPs, “without discrimination of any kind.”²⁰⁰ Accordingly, the Convention imposes obligations on states “to assess the needs and vulnerabilities of IDPs and host communities”²⁰¹ and “to provide adequate humanitarian assistance to IDPs” in all phases of displacement.²⁰² Such assistance, when needed, should also be provided to local and host communities.²⁰³

The particular need of vulnerable groups separated and unaccompanied children, female heads of household, expectant mothers, mothers with young children, the elderly and the disabled has been dealt separately under the Kampala Conventions.²⁰⁴ IDPs, considering their particular situation, should be protected from sexual and gender-based violence, recruitment of children as well as human trafficking and smuggling.²⁰⁵ To this end, states are under obligation to facilitate the role of local and international organizations and humanitarian agencies, and other actors in providing protection and assistance to IDPs.²⁰⁶ States have a duty to request assistance from such organizations when its available facilities are insufficient to protect and assist IDPs.²⁰⁷ Nevertheless, they retain the right to propose the technical arrangements, such as permits for access to relief items, in the activities of aid organizations.²⁰⁸

The Kampala Convention underscores the principles of “non-discrimination, equality and equal protection of the law.”²⁰⁹ Consequently, IDPs are entitled to the enjoyment of full rights “on the same basis as other citizens or habitual residents of the country.”²¹⁰ Nevertheless, special

¹⁹⁹ *ibid* Art. 4(5)

²⁰⁰ *ibid* Art. 4(5)

²⁰¹ *ibid* Art. 5(5)

²⁰² *ibid* Art. 3, 4, 5, 7, 9, 10 and 11,

²⁰³ *ibid* Art. 9(2)(b)

²⁰⁴ *ibid* Art. 9(2)(c)

²⁰⁵ *ibid* Art. 9(1)(d)

²⁰⁶ *ibid* Art. 3(1)(j) and 5(7)

²⁰⁷ AU, ECOSOCC and IDMC (n 194) p.15

²⁰⁸ Articles 5(6)-5(7) Kampala convention

²⁰⁹ *ibid* Articles 3(1)(d), 5(1), 9(1)(a) and 9(2)(a).

²¹⁰ AU, ECOSOCC and IDMC (n 194), p.15

measures may be needed for the proper realization of their specific protection and humanitarian assistance need.²¹¹

With regard to protection and assistance, states must maintain, “a register of all IDPs” and independently of this, “must issue or replace documents necessary for IDPs’ enjoyment of their rights, such as passports, personal identification documents, and birth and marriage certificates.”²¹² Measures should be taken to protect individual, collective and cultural property belonging to IDP, along with the establishment of effective legal frameworks to provide just and fair compensation for damage incurred during displacement.²¹³ IDPs should be informed and consulted regarding their protection and assistance during displacement.²¹⁴ Similarly, people who are going to be displaced by development projects need be informed and consulted about possible options.²¹⁵ As far as families separated during displacement is concerned, states have particular obligation to trace and reunify members of the family and to facilitate the re-establishment of family ties.²¹⁶

In terms of return and durable solution, the convention demands the proper involvement and consultation of both IDP and host communities to enable them to make a free and informed decision.²¹⁷ Furthermore, the safety, security and dignity of IDP, their freedom of movement and choice of residence should be guaranteed during return or resettlement to areas if their life, safety, liberty and/or health would not be at risk.²¹⁸

Finally, unlike the Guiding principle, The Kampala Convention provides for the establishment of a Conference of States Parties to monitor and review the implementation of the objectives of the Convention.²¹⁹ One aspect of the monitoring mechanism is that states are obliged to include the measures they have taken to give effect to the Kampala Convention when they submit reports

²¹¹ *ibid*, p.15

²¹² Art. 13 Kampala convention

²¹³ *ibid*, Articles 9(2)(i), 11(4), 11(5) and 12

²¹⁴ AU, ECOSOCC and IDMC (n 194) p.47

²¹⁵ *ibid*, Articles 9(2)(k), 9(2)(l), 10(2) and 11(2)

²¹⁶ *ibid*, Articles and 9(2)(h), as per article Articles 7(5)(c) this obligation equally applies to non-state armed groups.

²¹⁷ Beyani, Chaloka (2020) (n 111) p.12

²¹⁸ AU, ECOSOCC and IDMC (n 194) p.8

²¹⁹ *ibid*, article 14

under Article 62 of the African Charter on Human and Peoples' Rights.²²⁰ They have further responsibility to include the same when they present their reports under the APRM if they have already joined the peer review mechanism.²²¹

3.2.3. International Humanitarian laws (IHL)

Displacement is often a consequence of violations of humanitarian law during armed conflict, or failure to comply with other norms intended to protect people in situations of violence.²²² Humanitarian law provisions of particular relevance here include "the prohibitions on attacking civilians or civilian property, conducting indiscriminate attacks, starving civilians as a method of warfare, destroying objects indispensable to their survival, and carrying out reprisals against civilians and civilian property."²²³ Hence, IDPs who are victim of armed conflicts, as long as they remain in the same situation, are entitled to the protection afforded to civilians under IHL.²²⁴ The overall rules of IHL, in this regard, are relevant in preventing displacement as well as in providing protection for the displaced during displacement.²²⁵

The Fourth Geneva Convention expressly prohibits the forcible displacement of civilians in case of occupation from their own territory, regardless of the motive.²²⁶ However, the convention allows temporary evacuation for the safety of civilian population or for imperative military reasons.²²⁷ During displacement, according to the same, IDPs should enjoy equal protection and relief from the impacts of conflicts similar to the remaining civilian population.²²⁸

In situations of non-international armed conflicts, they are protected by Article 3 common to the four Geneva Conventions, Additional Protocol II, and the customary international law applicable

²²⁰ *ibid*, article 14(4)

²²¹ *ibid*, article 14(4)) 17

²²² Jakob Kellenberger, (n 130) p.478

²²³ *ibid*, p479

²²⁴ ICRC: International Humanitarian Law: Answers to your Questions, (2002), Geneva, Switzerland, p28 << https://www.icrc.org/en/doc/assets/files/other/icrc_002_0703.pdf>> accessed September 10, 2020

²²⁵ Article 17, Additional Protocol II (AP II)

²²⁶ Fourth Geneva Convention (*ibid*) article 49 (1) expressly prohibits "individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not."

²²⁷ ICRC (n 146)

²²⁸ *ibid*

in such conflicts.²²⁹ The mere fact of civilian displacement is considered as a manifestation for the parties to the conflict that they are disregarding the rights of civilians and failing their responsibility.²³⁰ States and any other parties to conflict are obliged to permit access to passage of relief supplies and the provision of the assistance for the survival of all civilians, regardless of whether they have been displaced or not.²³¹

3.2.4. International Human Rights Law

International Human Rights Law obliges States to “respect, protect and fulfill human rights of all persons without discrimination of any kind including on the grounds of having been internally displaced.”²³² State responsibility in this context occurs following a breach by a state of its legal obligations. Such obligations can be negative or positive, and can give rise to direct and indirect responsibilities.²³³ Direct responsibility follows when the state itself is the agent of harm, whereas the nexus otherwise is indirect.²³⁴

Article 28 of the UDHR, and Article 2(1) of the ICCPR and ICESCR all relate to, and define, the obligations of state parties. The ICCPR provision for instance proclaims a duty of states to: “... respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant.”²³⁵ The first aspect of the quote indicates that it is up to states, and states only, to carry out the obligations established by the Convention. The two aspects defining the obligation (to respect and to ensure), indicate slightly different things. The obligation to respect is a negative obligation, asserting a direct prohibition on state violation of

²²⁹ *ibid*

²³⁰ Jakob Kellenberger, (n 130) p.479

²³¹ Additional Protocol II (n 225) Article 18,

²³² Kennedy Gastorn, ‘IDPs And International Humanitarian Law: The Viability Of Establishment Of Safety Zones,’ addressed at the Fifth Commonwealth Red Cross and Red Crescent Conference on International Humanitarian Law, on the Theme “Celebrating the Geneva Conventions and Building Respect for IHL: A Commonwealth Perspective”, at Kigali Convention Centre, Kimihurura, Kigali, Rwanda, 10-14 June, 2019.

²³³ Viljam Engström, ‘Who Is Responsible for Corporate Human Rights Violations?’ (2002) Åbo Akademi University Institute for Human Rights, p.11

²³⁴ *ibid*

²³⁵ ICCPR Article 2(1) <<<http://www.un-documents.net/iccpr.htm>>> accessed September 17, 2020

human rights.²³⁶ However, the obligation to ensure goes further, indicating that state parties must take positive steps to give effect to the ICCPR rights.²³⁷

Despite the seeming correlation between international human rights law and international rules on state responsibility, the question has arisen whether ARSIWA make sense in the human rights context. As per the ARSIWA, a breach of international obligation is established when an act of a state “is not in conformity with what is required of it by that obligation, regardless of its origin or character.”²³⁸ The Commentary to the Draft Articles explained the fact that the rules on state responsibility do not define the contents of primary rules of obligations giving rise to responsibility.²³⁹ Rather, they constitute the general secondary rules of international law.²⁴⁰ This indicates that the rules on state responsibility do not aim to substitute any other obligations.²⁴¹ Hence, ARSIWA shall apply to the whole field of international obligations of states, irrespective of whether that obligation is owed to states, to an individual, a group, or the international community as a whole.²⁴²

Several ICJ decisions are also built up on such jurisprudence. In *Rainbow Warrior* (New Zealand v France) it was held that ‘any violation by a state of any obligation, of whatever origin, gives rise to state responsibility and consequently, to the duty of reparation.’²⁴³ Likewise, in *Gabčíkovo-Nagymaros Project* (Hungary v Slovakia) the ICJ considered it well established that “when a State has committed an internationally wrongful act, its international responsibility is likely to be involved whatever the nature of the obligation it has failed to respect.”²⁴⁴

²³⁶ Viljam Engström (n 233)

²³⁷ *ibid*

²³⁸ ARSIWA (n 145) article 12

²³⁹ *ibid* article 56 (1)

²⁴⁰ *ibid*

²⁴¹ *ibid* article 56 (2)

²⁴² Article 12 of ARSIWA stipulates that there is a breach of an international obligation when an act of the state ‘is not in conformity with what is required of it by that obligation, regardless of its origin or character.

²⁴³ Reports Of International Arbitral Awards, Case concerning the difference between New Zealand and France concerning the interpretation or application of two agreements, concluded on 9 July 1986 between the two States and which related to the problems arising from the *Rainbow Warrior* Affair 30 April 1990

<<https://legal.un.org/riaa/cases/vol_XX/215-284.pdf>> accessed September 17, 2020

²⁴⁴ *Gabčíkovo-Nagymaros Project* (Hungary v Slovakia), Judgment, 1.C.J. Reports 1997, p. 7 <<<https://www.icj-cij.org/files/case-related/92/092-19970925-JUD-01-00-EN.pdf>>> accessed September 17, 2020

Thus, ARSIWA does not only cover international obligations owed to other states, but all obligations of the state. Especially Part I of the ARSIWA intends to apply also to human rights violations.²⁴⁵ The Commentary also states that whereas the responsibility for a human rights treaty violation may exist towards all other parties, reparation should benefit the individual.²⁴⁶ Although the element of reciprocity in terms right to take countermeasures is not contained in human rights law and the law of state responsibility ARSIWA takes this into account by recognizing that the latter parts of the Articles are not entirely applicable in the case of human rights obligations.²⁴⁷ This way the ILC avoids a situation where human rights obligations could be suspended as a response to another state's breach of international law.²⁴⁸ Since the international law principles of state responsibility are general in character and the human rights rules are more specific, the latter should prevail over the former in the event of a conflict.²⁴⁹

It is worth noting two limitations of the doctrine of state responsibility with regard to the responsibility of the state for violations of human rights in individual capacity. Firstly, it has been shown above that for state responsibility to arise, a connection has to be established between the state and the conduct constituting a violation of international law. This means that many internationally wrongful acts, which constitute violations of human rights by private actors but cannot be said to constitute state action, will not generate international responsibility of the state.²⁵⁰ Secondly, while human rights are entitlements of individuals or groups, the general international law rules of state responsibility do not recognize the right of individuals or groups to enforce international law.²⁵¹ It is only a state that has the right to bring an action against another state for violations of international law.²⁵² This limitation can have a negative impact on the enforcement of human rights obligations, especially where the state was complicit in the violations committed by private actors. Nevertheless, this shouldn't over rule the view that

²⁴⁵ Viljam Engström (n 233) p.16

²⁴⁶ Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001) article 50 (1)(b)

²⁴⁷ Article 50(1)(b) ARSIWA (n 145)

²⁴⁸ *ibid*

²⁴⁹ This position is made explicit in art 55 of the ARSIWA which states that its provisions do not apply 'where and to the extent that the conditions for the existence of an internationally wrongful act or the content or implementation of the international responsibility of a State are governed by special rules of international law'.

²⁵⁰ Danwood M. Chirw, (n 156) p.62

²⁵¹ *ibid*

²⁵² Article 42 ARSIWA (n 145)

violations of human rights law rise state responsibility and the prevailing application of international human rights law in case of conflict.

Chapter Four

The internal displacement and Ethiopia's response

4.1. Cause and Impacts of conflict induced internal displacement in Ethiopia

Both manmade and natural causes and the following impacts of displacement generally discussed under chapter two hold true for Ethiopia's case. Since the end of 2016 up to 2019, the number of conflict-induced displacement has tremendously increased. If we take the 2018 figure for instance, mainly due to ethnic and border based conflicts, Ethiopia recorded the third highest number of new displacements worldwide, with 3,191,000 IDPs.²⁵³ Conflict and inter-communal violence caused almost 2.9 million new displacements in 2018, four times the figure for 2017.²⁵⁴ Conflict has been identified as the primary cause of displacement affecting 66% of IDP population.²⁵⁵

The long-standing conflicts are the results of ethnic drives, competition for scarce resources such as land, water and inadequate social facilities and poor governance.²⁵⁶ According to Mehari the three major causes of CID in Ethiopia are ethnic identity and federalism, religious conflicts and weak implementation of the constitutional protection of minority rights.²⁵⁷ According to him, the

²⁵³ IOM: Ethiopia National Displacement Report 2 Round 19: (2019) September — October 2019. The major CID in 2018 has erupted due to the inter-communal conflict between the Guji and Gedeo ethnic groups that erupted in April and again in June in the West Guji zone of Oromia and the Gedeo zone of SNNP. See GRID 2019 (n 5)

²⁵⁴ More than 62,000 new displacements were witnessed during October and December in 2018 due to ethnic conflicts also broke out between Oromos, Amharas and Gumuz in Benishangul Gumuz Furthermore, 80,000 new displacements was triggered due to similar conflicts between Somali Garreh and Oromo Borena sub clans only within two weeks in December 2019 See GRID 2019 (n 5)

²⁵⁵ Ibid Drought and seasonal flooding account for an additional 29% of the displaced population.

²⁵⁶ In terms of regions, Oromia is the major victim and host for around 2.2 million IDPs living in poor conditions. The long living inter-communal conflicts along the border between Oromia and Somali, Gedeo and West Giji and the recurring clash in Benishangul Gumuz are considered to be the major causes. see SIDA: Ethiopia HUMANITARIAN CRISIS ANALYSIS 2019

<<<https://www.sida.se/globalassets/sida/eng/how-we-work/humanitarian-aid/hca-2019/hca-ethiopia-2019.pdf>>>

accessed September 18,2020

²⁵⁷ Mehari T. Maru (n 61)

ethnic identity and federalism is the cause for conflicts related to regional boundaries;²⁵⁸ conflicts related to referendum questions for recognition and status of ethnic identities as nationalities;²⁵⁹ conflicts over natural resources, including land and water usage.²⁶⁰ These trends show transformation of the country's conflict dynamics, moving from local communal disputes over resources, occasionally triggering displacement, into more widespread, politicized conflicts for which traditional peace-making mechanisms have shown their limitations.²⁶¹

The effect of such displacement is considerably evident from the IDPs through host communities to the entire country's peace and security. In 2019 alone 3.2 million IDP were in need of humanitarian assistance.²⁶² IDPs are forced to leave their land and livelihood and thereby exposed to food insecurity and a high rate of severe malnutrition in Ethiopia.²⁶³ IDPs who have suffered consecutive years of severe drought are forced to lose their productive assets, such as homes, their children, domestic animals, and crops.²⁶⁴ Consequently, deteriorating food insecurity and malnutrition conditions in the country disrupted IDPs access to food and livelihood activities.²⁶⁵ IDPs living in such Post Conflict trauma and crisis situation are vulnerable to a variety of serious mental problems such as long-lasting depression, anxiety, or PTSD.²⁶⁶

The presence of large number of IDP brings huge burden against host communities as it creates informal settlements on communal and private lands.²⁶⁷ Moreover, IDPs create burden in providing basic social facilities and social services such as education, health, and other social

²⁵⁸ In March 2018 1 million IDPs reported along the border between Oromia and Somali see: Doctors without Borders: Displacement and humanitarian response in Ethiopia: challenges and dilemmas in complex crises. (June 2019), Barcelona Spain

²⁵⁹ Many people had fled because of ethnic-based targeting during Sidama statehood crisis <<<https://ecadforum.com/2019/07/24/ethiopias-sidama-statehood-crisis-triggers-new-displacement/>>> accessed September 19, 2020

²⁶⁰ *ibid.* Clashes on the outskirts of Addis Ababa in September, when Oromo youth flocked to the capital to welcome Oromo Liberation Front fighters returning from Eritrea, displaced 15,000 people. See GRID 2019 (n 5)

²⁶¹ Doctors without Borders (n 258)

²⁶² SIDA (2019) (n 256)

²⁶³ UNHCR (2008) (n 137)

²⁶⁴ Yigzaw & Abitew (n 17) p.38

²⁶⁵ *ibid*

²⁶⁶ Mesfin Araya, 'Postconflict internally displaced persons in Ethiopia: Mental distress and quality of life in relation to traumatic life events, coping strategy, social support, and living conditions'(2007) Umeå University, Umeå, p.14

²⁶⁷ Yigzaw & Abitew (n 17) p.38

infrastructures including housing.²⁶⁸ Particularly in host urban areas such resource problems are source of tension between IDPs and the host communities making effective local integration cumbersome.²⁶⁹ Ultimately, it leads to price inflation and cost of living: cost of food, shelter, healthcare and education facilities in the host communities increases.²⁷⁰ Hence, the internal displacement of people in Ethiopia is a real humanitarian disaster that negatively affects the IDPs and the host as well as adjacent communities.

4.2. Prevention of Displacement

Providing protection from arbitrary displacement is one of the three major purposes of the guiding principle.²⁷¹ Consequently, principle 5 of the Guiding Principle obliges state parties to respect their obligations under international law so as to “prevent and avoid conditions that might lead to displacement of persons.” Principle 6 of the same, further guarantee the right of every human being “to be protected from arbitrary displacement. Conflict induced displacement in the form of armed conflict is regarded as such²⁷²”.

It seems, at this point, that the guiding principle is short of recognizing displacements due to non-armed conflict, such as due to communal violence, as arbitrary. However, the definition part of the guiding principle has clearly stipulated situations of generalized violence as a source of displacement. Moreover, the lists of sources of arbitrary displacements under principle 6(2) are mere illustrations. Hence, the guiding principle clearly put obligations on states to prevent arbitrary displacements whatsoever in general as well as all sorts of conflict induced displacements in particular. States have a particular obligation towards indigenous people, minorities, peasants, pastoralists and other groups ‘with a special dependency on and attachment to their lands.’²⁷³

Similarly, the Kampala convention has stipulated the obligation of state parties to prevent arbitrary displacements that may result due to conflicts and generalized violence or violation of

²⁶⁸ ibid

²⁶⁹ ibid p.39

²⁷⁰ ibid

²⁷¹ scope and purpose & principle 1(n 33)

²⁷² ibid principle 5(2)(b)

²⁷³ Principle 9

human rights.²⁷⁴ The convention has provided two significant obligations in this regard. First, state parties are required to designate an authority or body responsible for implementing policies and strategies for prevention of displacement.²⁷⁵ Second, state parties are under obligation to devise early warning system in areas of potential displacement.²⁷⁶ The early warning system should be devised in the context of the continental early warning system.²⁷⁷

A comprehensive system for quickly detecting and responding to potential conflict is critical tool to predict potential conflicts and prevent the resulting crisis including internal displacement. Pursuant to the national policy and strategy on disaster risk management, provision of response should be based on early warning system and assessment information.²⁷⁸ To this end multi-sector early warning system has been adopted.²⁷⁹ As far as conflict induced displacement is concerned the newly organized Ministry of Peace has a leading mandate.²⁸⁰

In this regard, the ministry of Peace has officially launched the reformed Ethiopian Conflict Early Warning and Rapid Response (CEWRR) system pilot project in 2019.²⁸¹ The system is designed according to the federal structure of the government in such a way that response is initiated at woreda level to zonal level all the way to federal level intervention for the most extreme cases.²⁸² It ensures that all potential responders (from kebele to woreda to zone to the regional level) are aware of situations within their jurisdictions, and it helps the next level to promptly intervene if needed. The system upgrades and reforms are being piloted in three national regional states namely Oromia, Southern Nations and Nationalities and Peoples and Gambela, five zonal Administration, 12 Wereda Administration and 60 Kebele Administration

²⁷⁴ Article 4(1) & 4 Kampala Convention the illustrations of causes of arbitrary displacement in the provision is much more exhaustive than the guiding principle. Ethiopia has ratified the convention inserting a reservation clause to article 12 (2) & (3) see African Union Convention (Kampala Convention) for the Protection and assistance of IDPS in Africa Ratification Proclamation No. 1187/2020

²⁷⁵ Article 2(b) & (c) Kampala Convention

²⁷⁶ Article 4(2) Kampala Convention

²⁷⁷ *ibid*

²⁷⁸ National Policy And Strategy On Disaster Risk Management, FDRE (2013) Addis Ababa p.6

²⁷⁹ *ibid*

²⁸⁰ Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 1097/2018 Article 13(1)(m)

²⁸¹ <https://www.fanabc.com/english/ethiopia-launches-alert-system-to-deal-with-disasters/> accessed November 18, 2020

²⁸² <https://www.ena.et/en/?p=9825> accessed November 18, 2020.

and Security Offices.²⁸³ When fully implemented, in addition to responding to individual cases, CEWRR aims at helping officials to conduct trend analyses to better predict conflict, understand and address root causes, and manage conflict in ways that will build sustainable peace.

Moreover as a member of IGAD, Ethiopia is also a beneficiary of the IGAD Conflict Early Warning and Response Mechanism (CEWARM) launched in 2002. The basic underlying mission of CEWARM is to assess situations that could potentially lead to violence or conflicts and prevent escalation.²⁸⁴ The function is carried out by collecting and discussing information regarding the outburst and elevation of probable violent conflict in the region occupied by the IGAD countries, analyzing and processing this data, and coming up with alternative routes of response.

However, both efforts have not been implemented in the country in meaningful level. The public is not accessing the online platforms of the ministry as well as IGAD so far. The occurrence of recurring displacements in the country is a clear manifestation of its failure to fulfill its obligation, under the aforementioned international legal instruments, of predicting and avoiding conditions that might lead to displacements. Moreover, the MoP system is not only at early stage of pilot project, but also its effectiveness has never been tested and told at public.²⁸⁵ Hence, Ethiopia has not implanted effective early warning and prevention mechanism to CIDP in line with the requirements set under the UN guiding principle as well as the Kampala Convention. The latter clearly obliges state parties to devise and implement early warning system designed by designated authority compatible with the continental system.²⁸⁶

²⁸³ <https://www.reportertenders.com/article/4190> accessed November 18, 2020

²⁸⁴ <https://micicinitiative.iom.int/micicinitiative/conflict-early-warning-and-response-mechanism-cewarn> accessed November 17, 2020

²⁸⁵ The researcher has made a tireless effort to get a brief from the concerned officials of the MoP; namely Ato Dereje, Director of communication directorate, Ato Girma Director of Conflict management and sustainable solution directorate as well as Ato Migbaru, Director of Conflict Warning And Response Directorate General. However, none of them were willing neither to give a meaningful information nor to direct to the concerned official

²⁸⁶ article 4(2) Kampala Convention

4.3. Protection of IDPs

Providing protection during displacement is the major issue of the guiding principle. Out of the 30 principles 18 principles²⁸⁷ are categorized under protection. The general principle as provided under principle 1 is that states should ensure that IDP enjoy, in full equality, “the same rights and freedoms as do other persons in their country.” The mere fact of their displacement shall not be a ground of discrimination in the enjoyment of any rights and freedoms.²⁸⁸

However, it offers special privileges relevant to their situation. To mention a few, they have the right to be informed of the whereabouts of their missing relatives,²⁸⁹ family members should be allowed to remain together and where separated to be united as quickly as possible.²⁹⁰ They should also be provided with the necessary medical care and attention,²⁹¹ and their property and possession left behind should be protected.²⁹² The Kampala Convention also reaffirms the same protection rights including “the right to vote and be elected to public office.”²⁹³

Humanitarian aid and related support to IDP throughout the country is performed via several international organizations under the auspices of the NDRMC.²⁹⁴ The national policy demands working relationship and cooperation with regional, sub-regional, and global organizations and states that support disaster risk management efforts.²⁹⁵ The cooperation is implemented based on international laws ratified by the country and on government leadership.²⁹⁶

The protection framework follows decentralized disaster risk management system focusing on “multi-hazard and multi-sector approaches.”²⁹⁷ The NDRMC is responsible to organize both

²⁸⁷ from principle 10-27 (n 33)

²⁸⁸ *ibid* principle 1

²⁸⁹ *ibid* principle 16

²⁹⁰ *ibid* principle 17

²⁹¹ *ibid* principle 19

²⁹² *ibid* principle 21 (3), article 9(2)(i) Kampala Convention

²⁹³ article 9(2)(l) Kampala Convention

²⁹⁴ The NDRMC is established by Regulation No. 363/2015 with objective of “Conducting appropriate activities for the comprehensive implementation and realization of the objectives of the National Disaster Risk Management Policy and Strategy” as well as “coordinating, monitoring, and providing appropriate support with respect to activities carried out by the lead sector institution.” article 4(1) & (2) of the same.

²⁹⁵ National Policy And Strategy (n 278) p.11

²⁹⁶ *ibid*

²⁹⁷ *ibid* p.4

international aid organizations as well as concerned government authorities.²⁹⁸ Support for IDPs is undertaken through two clusters based frameworks.²⁹⁹ The first one is food aid cluster where IDPs are supported with basic food aid related items. The second non-food item cluster is responsible for providing IDPs with emergency non-food basic facilities such as shelter, cloth, medicine, cash, etc.³⁰⁰ WFP and IOM are chief co-coordinators of food and non-food item clusters, respectively. There is also protection cluster, in line with the guiding principle and the Kampala Convention, which provide special care and support for vulnerable groups of IDPs such as women, children and the elderly.³⁰¹

In order to call and organize the required aid and support, NDRMC in collaboration with OCHA prepares a regular humanitarian response plan (HRP) twice a year. For instance, the recent HRP identified 8.4 million people in need of assistance and has targeted 7 million people of which 73 percent have acute humanitarian needs that must be addressed immediately.³⁰² Among the total number of targeted people, 1.78 million are IDPs which 70 percent are displaced because of conflict. It has also identified 1.01 million returnees who have similar humanitarian need.³⁰³

Monitoring evaluation is undertaken in two ways. The implementation of the national policy and strategies in the country is monitored through disaster risk management council established at all levels of administration.³⁰⁴ On the other hand, the performance and activities of the NGOs are monitored through the NDRMC technical working group where all NGOs under different clusters are included.³⁰⁵

Despite the NDRMC and NGOs' efforts, studies show that necessities of IDPs are far from being fulfilled. If we take a two-month survey of IOM for instance, IDPs in Ethiopia face numerous problems starting from shelter.³⁰⁶ The poor quality of shelters has been a problem in several settlements, where this issue was most prominent in West Guji (147 villages) and Gedeo (91

²⁹⁸ n 294

²⁹⁹ Interview with Mr. Dawit Abera, response and logistic officer at NDRMC, NDRMC Head office Addis Ababa (October 16 2020)

³⁰⁰ *ibid*

³⁰¹ *ibid*

³⁰² NDRMC & OCHA, Humanitarian Response Plan Ethiopia 2020: humanitarian program cycle, Jan 2020, p.7

³⁰³ *ibid*

³⁰⁴ National Policy And Strategy (n 278) p.17

³⁰⁵ *ibid*

³⁰⁶ IOM: Ethiopia National Displacement Report Round 18: July — August 2019, 22 October 2019, p.32

villages). The other major concern is the shortage of shelters or overpopulation, as found in 98 villages in West Guji.³⁰⁷

With regard to Accessibility of Water, the 2019 IOM report revealed the absence of water accessibility to all households in 275 villages (48%).³⁰⁸ Along with the problems of scarcity and poor quality, the main water distribution point for most villages takes up a long walk one-way to access the nearest water source.³⁰⁹

There is also a similar problem in accessing health Facilities and education. For instance 491 out of 659 villages (75%), during July-August 2019, do not have a health facility. In the 168 villages while the health facilities in 79 villages (47%) are damaged and need minor maintenances while the health facilities in 42 villages (25%) need major repairs.³¹⁰ On a similar note, of 659 villages during July-August 2019, many children do not have access to in 181 villages (27%).³¹¹ 136 schools (21%) need urgent structural maintenance and school equipment in each.

Legal Access and documentation are not implemented as per the terms of the guiding principle and the Kmapala Convention, in 447 villages (68%), there are systems in place to support returning IDPs who have lost personal identification documents in getting their documents replaced or reissued. However, returning IDPs in 196 villages (30%) do not have access to such services.³¹²

4.4. Law enforcement as a protection mechanism

The responsibility to criminalize perpetrators of internal displacement and thereby insuring the prevalence of rule of law can be considered as one aspect of protection. By indicting those who are responsible for the atrocities caused by displacement from home of habitual residence it also serves as a prevention strategy through its deterrence effect. Hence, the Ethiopian government has a responsibility to bring such criminals before court of law both under international as well as national laws.

³⁰⁷ *ibid*

³⁰⁸ *ibid*

³⁰⁹ *ibid* P.30

³¹⁰ *ibid* P.29

³¹¹ *ibid*

³¹² *ibid* p.35

Trans-boundary and organized crime prosecution directorate under FAG is organized for prosecuting individuals who are responsible among other, for causing internal displacement.³¹³

The prosecutors tacitly interpret internal displacement as a ‘crisis against public security’ and use the provision as an aggravation for those who have participated in causing displacement.

No	Area of Displacement	Death	Injury	suspects	Arrested	Non-Arrested	IDP
1	Benishagul	194	28	210	60	150	
	-Kemashie and Asosa	16	---	53	29	24	83,269
2	Guji-Gedeo zone	526	111	70	68	2	1,046.05
3	Sidama	61	123	50	34	16	2988
4	Somali	59	266	47	17	30	
	-Abdiele						
5	Tepi-Sheka	71	---	215	81	134	55,445
6	Bura	37	---	33	24	9	4566
7	Jawi-Metekel	8	13	56	38	8	2354
Total		974	541	734	351	383	129,608.05

Even if the prosecution charge mentioned internal displacement as a harm caused due to the alleged criminal act in the above-mentioned cases, the defendants were not charged for their direct act of causing displacement. There is no single provision in the criminal law of the country that stipulate internal displacement as a source of criminal responsibility. The single provision in the criminal code that the GA uses to prosecute individuals suspected of causing displacement is article 240 of the criminal code.³¹⁴ The provision criminalizes the act of ‘raising civil war by

³¹³ FAG: Revised Organizational Structure Manual (2020) (unpublished)

³¹⁴ The Criminal code of the FDRE, Proc. No 414/2004,

arming citizens or inhabitants or by inciting them to take up arms against one another.³¹⁵ Crisis against public security and injury against life are put as aggravating circumstances.³¹⁶ We can see that causing displacement is not mentioned as an act of crime or even as a consequence or aggravating circumstance of the predicate offence. The prosecutors simply mention displacement as part of ‘crisis against public security.

Moreover, the provision only covers injuries caused due to armed conflicts. As we have seen so far, many of the displacements are results of communal and inter-communal conflicts where traditional weapons are utilized.³¹⁷ The provision simply does not cover the wide spread cause of displacement. Hence, the mere fact of displacement has never been considered as defining element of the offence in the already mentioned or any other part of the criminal law provision.

As the above table clearly shows, suspects are accused of inciting the displacements of 129,608,000 people. However, of the 734 defendants only 351 are arrested and being tried before court of law. More than half of the suspects have so far escaped justice. Such failure is not only due to the poor law enforcement capacity of the government but also has to do with the fact that in most of the cases government officials including acting regional government president³¹⁸ have direct or indirect involvement in the very crime. Government officials involve directly firstly because the very cause of the conflict is ignited by a political agenda. Officials of Sidama zone took a direct participation in the conflict and the following displacement because the conflict was utilized as an instrument for realizing regional administration.³¹⁹ The tepi-sheka conflict has also a similar nature where government officials such as kebele administrators³²⁰ and police commanders³²¹ were accused for taking part in the conflict arising from the question of

³¹⁵ *ibid* article 240

³¹⁶ *ibid* article 240(2)

³¹⁷ Global Report On Internal Displacement 2018 (n 4), p. 6

³¹⁸ GA vs Abdi Mehamed Oumer *et al* (Criminal File No. 231812, Lideta Federal High Court, prnding/unpublished)

³¹⁹ GA vs Zenebe Dawicha *et al* (Criminal File No. 246094, Lideta Federal High Court, unpublished) and GA vs Tewodros Gebiba *et al* (Criminal File No. 246094, Lideta Federal High Court, unpublished) in this particular pending case the Mayor of Hawasa city is prosecuted.

³²⁰ Interview with Mr. Ephrem Hailu . prosecutor GA at Trans-boundary and organized crime prosecution directorate, AG, Addis Ababa) October 27 2020). It is also evident in pending cases such as GA vs Dirka Nigus *et al* (Criminal File No. 245624 ,Lideta Federal High Court, unpublished/pending), GA vs Wondwosen Wondimu/ Ketema Kebede *et al* (Criminal File No. 245625, Lideta Federal High Court, unpublished/pending)

³²¹ GA vs commander Faruq Bedru *et al* (Criminal File No. 245512, Lideta Federal High Court, unpublished/pending)

zonal self-administration. The direct participation of regional and local officials is also evident in the prosecution of the ethnic based Benishangul- Kemashe conflict and the resulting displacement. In the mentioned conflict the head of the region's peace and security³²² and the Kemashe zone prison head.³²³ Hence, particularly local officials are not cooperative to hand over the suspects with whom they share the same ethnic or party line. The law enforcement therefore has normative problem in criminalizing arbitrary displacement as well as institutional failure in prosecuting all perpetrators according to the magnitude of the problem. Among the prosecuted individuals, as the table shows, the government has failed to bring majority of them before justice.

4.5. Return, Relocation and Resettlement/ Sustainable Solution

Both the UN Guiding principle and the Kampala Convention impose a primary duty and responsibility on competent authorities of the state to establish conditions and provide the means for “voluntary, safe and dignified return to home and habitual residence or to resettlement.”³²⁴ They also demand the full participation of IDPs in the entire process.³²⁵

Apart from the enjoyment of full rights and freedom, during return, resettlement or local integration, IDPs should also be entitled to assistance and effective remedy.³²⁶ In this regard states are required to provide IDPs appropriate ‘compensation or another form of just reparation’ for damaged or destroyed properties. Ethiopia, however, has entered a reservation on article 12 (2) of the convention. Accordingly, the government accepts only the duty of providing assistance for both natural and manmade causes with the exception of development induced displacement.³²⁷

The Federal Government has launched “Strategic Plan to Address ID and a Costed Recovery/Rehabilitation Plan” and implemented full-scale return operation since April 2019.³²⁸

³²² GA vs Assefa Wubet *et al* (Criminal File No. 240747, Lideta Federal High Court, unpublished/pending)

³²³ GA vs commander Erena Babur *et al* (Criminal File No. 246094, Lideta Federal High Court, unpublished/pending)

³²⁴ Principle 28(1) & article 11(1) Kampala Convention

³²⁵ Principle 28(2) on ID & Kampala Convention 11(2)

³²⁶ principle 29(1) Kampala Convention article 12(2)

³²⁷ Article 3(1)(a) Proc. No 1187/2020 (n 233)

³²⁸ OCHA: (2019) (n 18)

As of May 2019, 51,120 IDPs in West Wollega zone reportedly returned to Benishangul Gumuz and 24,404 IDPs returned to border areas of West Wollega zone, making it 90 per cent of the targeted (83,269) IDPs for return. IDP sites are dismantled.³²⁹ According to East Wollega zone authorities, some 97 per cent of the targeted IDPs for return were returned. IDP sites are being dismantled. By the end of 2019, more than 1.2 million IDPs had reportedly returned, and most IDP sites in East and West Wollegas and West Guji and Gedeo zones were dismantled.³³⁰

The government commitment to resettlement of IDP goes to the construction of new villages. For instance, The Somali Regional Government has constructed some 850 houses under the first phase of the construction of Karinka resettlement village, in Shabelle zone.³³¹ The construction includes public facilities including schools, health center and animal veterinary clinic.

The return and resettlement plan of the government has achieved great implementation. For instance, a 26.5% decrease has been reported in July 2019 data collection because of government-led return initiative that has been implemented since April.³³²

However, the return operation has been criticized by international organizations that the government is compelling IDPs towards premature return to unsafe regions and for its poor protection of IDPs in the process.³³³ These included minimal, if any, assistance in the areas of return, destroyed housing and livelihoods, and continued insecurity.³³⁴ Many of the returnees are still in need of protection for full recovery and assistance due to destroyed properties and livelihoods.³³⁵

The issue of shelter and land ownership can be a good manifestation of the problem. Out of 659 villages during July-August 2019, of returning IDPs have found their property in 448 villages, 19% of them returned to totally damaged houses in 85 villages and 3% returned to partially

³²⁹ *ibid*

³³⁰ OCHA: ‘Some 800,000 Displaced People to Return Home around Mid-April: Steering Committee’ (2019) Reliefweb <<<https://reliefweb.int/report/ethiopia/some-800000-displaced-people-return-home-around-mid-april-steering-committee>>> accessed on September 19, 2020

³³¹ OCHA: Humanitarian Bulletin Ethiopia Issue 53| 07-20 May 2018

³³² IOM: (Round 18) (n 306)

³³³ Mark Yarnell, , “The crisis below the headlines: Conflict Displacement in Ethiopia”, Refugees International November 2018, p.17

³³⁴ OCHA (2019) (n 331)

³³⁵ *ibid*

destroyed houses in 15 villages while only 0.9 % IDPs have managed to return to houses in good conditions in 15 villages.³³⁶ In West Guji, the situation of IDPs returning home was also a source of concern: in many cases, individuals were unable to return to their housing because of destruction or security concerns.³³⁷

As far as land ownership is concerned, 22 % returning IDPs could not access to their land in 147 villages.³³⁸ Moreover, even though above 75% returning IDPs in 224 villages have access to tenure documentation and evidence of their HLP rights prior to displacement, in 82 villages it is reported that they do not have access to tenure certification.³³⁹ These have led to a substantial deterioration of the humanitarian situation thereby violates the return standard discussed above.

³³⁶ IOM (Round 18) (n 306) p.32

³³⁷ Doctors without Borders: (2019) (n 258) p.7

³³⁸ IOM (Round 18) (n 306) p33

³³⁹ *ibid* p32

Chapter Five

Conclusion and Recommendations

5.1. Conclusion

The issue of internal displacement particularly CID is not a new global phenomenon. However, mainly do you to the ever-growing incidents of internal conflicts it has become among one of the top international crisis. From the vantage point of international law in general and concept of state sovereignty in particular, it has been difficult to define the role of international actors as well as the responsibility of the concerned state in terms of preventing displacement and protecting IDPs. Since IDPs remain within their own state, the traditional notion of sovereignty was used by states to avoid international responsibility. Though the issue of internal displacement is a primary responsibility of territorial state, international law has evolved a lot in internationalizing the responsibility of states as well as in defining the role of international actors.

Starting from 1972 were where the UN officially used the term in a resolution (resolution No. 3452) to the promulgation of the non-binding UN Guiding Principle on ID a lot of progress has been seen. As briefly discussed in the paper, despite the non-binding status of the principle it has largely influenced international, regional and national laws and institutions. The UNHCR extended role to IDP can also be considered as another manifestation of such progress. The Kampala convention, the first regional binding convention of internal displacement, is the ultimate manifestation of the evolution of international law in terms of ID. The nobility of the convention is not limited to its binding status. Unlike the guiding principle, it has tried to adopt institutions and mechanisms to address the cause and consequence of internal displacement.

The development of international law in this regard has brought a concept of sovereignty as a responsibility changing the age old traditional concept of it were states block international actors involvement to humanitarian crisis even if it is evidently beyond their capacity. Hence, if a state failed to protect IDPs it will be the responsibility of the state to allow access for the international actors to get involved in the aid and support. These efforts and practice has proved the recognition of internal displacement as a global phenomenon.

Despite such promising developments in international law, there exist some problems. Sovereignty is still a challenge. For instance, consent is required for the UNHCR to get involved in humanitarian assistance even if the concerned state is in total failure. Humanitarian intervention by the Security Council may open access. However, the Security Council could only declare humanitarian intervention only when it is believed the crisis pose a threat to peace and security which is very unlikely since IDPs don't cross international border and remain within the territory of their state.

Moreover, responsibility of states for violations of their obligations towards IDPs is not properly defined. Neither the guiding principle nor the Kampala Convention provide consequence of breaches of obligations they enshrine. The question whether the concept of state responsibility in general and the ARSIWA rules in particular make sense in the human rights context still pose a problem. In this regard, it wise to follow the argument that rules of state responsibility do not aim at substituting primary rules of international law. Hence, rules of state responsibility should apply to whole field of international obligations, including the ones at hand owed to individuals and groups, namely IDPs. Even though the general international law rules of state responsibility don't recognize the right of individuals or groups to enforce their rights at international level, utilizing the evolving jurisprudence of human rights which confer the same rights to individuals is one mechanism of realizing international responsibility of states in terms of internal displacement and IDPs.

Given its magnitude and special feature in posing a threat to the international peace and security, the issue of CID and the responsibility of states for it should be dealt separately in international law. However, not only there isn't single international instrument on CID, both the UN Guiding Principle on ID and the Kampala Convention haven't dealt the issue particularly.

Applying IHL has a direct relevance to CID. Since CID is often a consequence of violation of humanitarian law during armed conflict, the general rules of humanitarian law for the protection of civilians can prevent displacement or can offer protection during displacement. It can also serve as a mechanism of realizing liability for failed responsibility of states towards the protection of civilian IDP.

Coming to Ethiopia, even though the cause and impacts of displacement prevalent in international and continental level hold the same, particularly from the end of 2016 conflict has become a major cause of displacement. The vary cause of such conflicts such as ethnic based clashes and conflict over resources have existed for long. However, the magnitude and nature of the conflicts and the resulting displacements have changed due to the political turmoil the country has faced since the mentioned year. According to the Prime Minster report to the parliament, there were 113 conflicts across the country since he's coming to power.³⁴⁰ This along with the data/facts described in the paper makes it evident that conflict has been the primary cause of displacement during the scope period of the research.

Ethiopia as a signatory of the Kampala Convention has an obligation of preventing arbitrary displacement including CID. However, it does not so far, implemented effective preventing mechanism of CID. The recently introduced effort of CEWRR system by the MoP has not been sown on the ground. A lot has to be done in in predicting and preventing potential conflicts. In this regard, Ethiopia is far behind the obligations it undertakes under the Kampala Convention.

The active role-played by the NDRMC in organizing lead sector government authorities and international organizations in mobilizing aid and support can be considered as a good effort in fulfilling relevant protection obligations. However, there still exist problems in providing both basic needs such as food and shelter as well as necessary service such as health and education.

The legal problem particularly the absence of a single for the indictment perpetrators of arbitrary or CID needs to be fixed urgently. The existing criminal code provision that serve as a source of prosecution of perpetrators of CID doesn't not only stipulate causing displacement as a ground of criminal liability, it doesn't also cover the prevailing types of non-armed conflicts evident in communal and ethnic clashes. Such conflicts usually utilize local and traditional deadly weapons³⁴¹ that cannot be considered as arms in the proper sense of the term. The government has also failed in ensuring criminal responsibility of individuals at the existing law. Not only there are few prosecution compared to the increasing magnitude of CID within those years, many including regional/local government officials have escaped justice despite the fact that a formal prosecution has already been lodged against them.

³⁴⁰ <<<https://www.youtube.com/watch?v=7DzlMS6UFbg>>> accessed December 6, 2020

The FDRE government has done a lot in returning and resettling substantial IDP. However, it has highly been criticized for premature return and resettlement. There is no evidence from the government that basic standards of return process provided under both the UN guiding principle and the Kampala Convention such as security, full participation of IDP and availability of basic socio-economic services have been met. Due to this failure, returned IDP have faced second displacement and makes humanitarian assistance for the NDRMC and international actors. Many returned IDPs have lost their properties left behind. On top of this, there is no compensation platform for lost and destroyed properties including land in case of resettlement. This is big problem due to the fact that majority of IDP in the country, being either peasants or pastoralist, do have special attachments to their land.

5.2. Recommendations

- The government should enact a law which criminalize causing arbitrary displacement and that indict perpetrators of the same. The law should be enacted in a way that provides the responsibilities of government officials towards the prevention of CID and the protection of IDPs.
- Article 240 of the criminal code should be amended and should include non-armed conflicts as a source of criminal responsibility for conflict induced displacement.
- The MoP should devise early warning system for CID at federal level in conformity with the continental system with particular emphasis to potential conflict areas.
- The government should formulate a clear policy and promulgate a law which provide/stipulate specific standards of return, relocation and resettlement process from basic requirements to the process where the IDPs themselves participate
- Many returning CID victim IDP have lost their property during return and had no remedy. Hence, though it has entered a reservation in this regard, the government should devise a compensation scheme for lost and destroyed properties of IDP in accordance with the UN Guiding Principle on ID and the Kampala Convention.

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Appendix

Interview Questions response and logistic officer at NDRMC

1. What are the overall mandate and role of the commission? Its task, aim, objective?
Especially with regard to IDPs?
2. How the commission is organizationally structured?
3. Which organ of the commission has a specific and special mandate with regard to IDP?
4. What is the commission's working definition of IDPs?
5. What are the international as well as national legal sources the NDRMC in undertaking its responsibility in terms of IDP?
6. How are the international laws applied in this context? Especially the UN guiding principle and the Kampala convention?
7. Do we have a comprehensive national legal instrument that can address the issue of IDP?
8. How many people are displaced due to conflict induced violence from 2016 up to 2020 each Year?
9. What are the institutional mechanisms the commission employs to predict, protect and avoid conflicts so as to prevent the displacement in the first place and to address humanitarian needs once displacement is occurred?
10. What are the specific accommodations provided to IDP at the time of displacement?
Such as food, shelter, information and other basic rights.
11. Are there special accommodations for displaced women and children? If yes what are they?
12. Who are the international humanitarian and funding organizations actively engaged in protection and assistance of IDPs in Ethiopia collaborating with the commission?
- 12.1. What are their specific role and mandate?

- 12.2. How does the commission monitor and facilitate their activity?
13. With regard to sustainable solution:-
- 13.1. How is relocation or return undertaken?
- 13.2. Does their consent matter?
- 13.3. The government is often criticized for undertaking premature return exposing them for another abuse and displacement. What is your opinion?
14. Is there a platform for protecting properties of IDP left behind or for compensation for it?
15. What are the real sources of CIDP in Ethiopia especially for escalated and increasing number of it since 2016?
16. Has Ethiopia ever reported to the AU conference of state parties, established as per article 14 of the Kampala convention, to review and monitor the implementation through legislative and other measures of the objective of the convention?

Interview Questions to Prosecutors of GA

1. How do you prosecute individuals who are responsible for causing conflicts and the resulting displacement?
2. What are the major causes and types of conflicts witnessed in the pending cases that the directorate prosecute during 2016-2020?
3. What is the major problem and challenge in the criminal code in indicting individuals responsible Causing conflicts and the resulting displacement?