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Addis Ababa University College of Law and Governance Studies

School of Law

**Ethiopia's Ratification of Kampala Convention: the Challenges and
Prospects of its implementation**

By

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September 2021

Addis Ababa, Ethiopia

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A thesis submitted in partial fulfillment of the requirements for the award of Master of Laws (LL. M) in Human Rights Law at School of Law, College of Law and Governance Studies, Addis Ababa University

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September 2021

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DECLARATION

I, Marga Fekadu Angerasa, hereby declare that the thesis entitled “Ethiopia’s Ratification of Kampala Convention: the Challenges and Prospects of its implementation” is my original work and that it has not been submitted for any degree or examination in any other university. I also pledge that, to the best of my knowledge; all sources used in any form are duly acknowledged.

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ACRONYMS

DSI	Durable Solution Initiatives
IDP	Internally Displaced Persons
NDRMC	National Disaster Risk Management Commission
NPSDRM	National Policies and Strategies on Disaster Risk Management
IOM	International Organizations for Migrations
ICRC	International Committee of Red Cross
UNHCR	United Nations High Commissioner for Refugee
APRM	African Peer Review Mechanism
ACHPR	African Charter on Human and Peoples Rights
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
NEBE	Ethiopian National Election Board
EHRC	Ethiopian Human Rights Commission
EIO	Ethiopian Institute of Ombudsman
OLA	Oromo Liberation Army
IDMC	International Displacement Monitoring Center
COSPs	Conference of State Parties
UNGP	United Nations Guiding Principles
UNRSG	United Nations Representative of Secretary General
TPLF	Tigray Liberation Front
DID	Development Induced Displacement

Abstract

The study examines the challenges and prospects of the implementation of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa after its ratification by Ethiopia. Currently, internal displacement becomes one of the most daunting, challenges not only to Ethiopia but also to the world. Adoption of the Convention is a regional normative attempt to curb the problem. Ethiopia ratified it in February 2020 with reservations. The study mainly employed doctrinal legal research and uses qualitative data. In addition to analyzing the existing legal texts, interviews with some key informants in relevant institutions were conducted. It finds out that despite the existence of some efforts made to create conducive legal and institutional environment, the recurring conflicts, reservations made to the Convention, absence of specific IDPs related law and institution, absence of centralized data collection system and financial problems are the major challenges for the implementation of the convention in Ethiopia. Finally, it argues that there is the need to adopt IDPs specific law and institution. It also argues that the reservations made to the Convention should be lifted, the conflict management mechanism should be improved.

Key Terms : Internal Displacement, IDPs Kampala Convention, Ethiopia and Ratification

CHAPTER ONE

1. Introduction

1.1. The Research Background and Problems

Internal displacement, roughly defined as involuntary displacement of persons or groups of persons from their home or habitual residence without crossing the internationally recognized state border¹, is becoming one of the pressing humanitarian and human rights issues at the global level. According to the IDMC (Internal Displacement Monitoring Center) report of 2020, about 50.8 million people were displaced within their country in 2019 among which 33.4 million were those displaced only in the 2019 year.² The causes of displacement include, but are not limited to, armed conflict, a gross violation of human rights, development projects, and other natural or manmade disasters.³ The effect of displacement on the life of the displaced is multi-fold. It breaks family and cuts social ties.⁴ Displacement terminates employment and education opportunities.⁵ It also precludes such displaced persons from access to food and shelter⁶ and as such it thwarts the development of their human person. Beyond its implications on the life of the displaced, internal displacement has a “disastrous impact on peace, security, environment, and development of countries.”⁷ Despite such impacts, hitherto, United Nations has not adopted binding legal instrument that governs the issues of internal displacement.

It was in the 1990s that the UN Commission on Human Rights and the UN General Assembly requested the UN Secretary-General to develop the legal framework for the protection of Internally Displaced Persons (IDPs). Accordingly, the United Nations Secretary General Representative (UNSRG) on IDPs developed Guiding Principles on Internal Displacement (UNGP) in 1998. Since it is developed from the preexisting international norms

¹The UN Guiding Principles on Internal Displacement, U.N. Doc. E/CN.4/1998/53/Add 2 11 Feb (1998) Par 1

² Internal Displacement Monitoring Center (IDMC), ‘Global Report on Internal Displacement Report’ (2019)

³ Brooking Institution, ‘Handbook For Applying the Guiding Principles on Internal Displacement’ Bern University, (1990) 1

⁴ UN Guiding Principles (n 1) 1

⁵ Ibid 1

⁶ Ibid

⁷ MahariTadaleMaru, ‘The Kampala Convention And Its Contribution In Filling The Protection Gap In International Law’ (2011) 1 JID 91, 96

(International Human Right Law, Refugee Law, and International Humanitarian law)⁸, it plays a vital role in establishing norms and standards for the protection of the IDPs. Even though it is not binding on States, it obtained overwhelming acceptance from states and international organizations.

At the regional level, in addition to Great Lakes Protocol (the sub-regional protocol), the AU system came up with a binding convention known as “African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa” (The Kampala Convention) named after the Capital of Uganda. As the continent is hosting a very significant number of IDPs⁹, Africa’s adoption of the Convention was commendable. The Convention is the first and the only binding regional legal document meant for the protection of the IDPs. And, it confers various rights and protections to the IDPs and imposes several forms of obligations on State Parties. Ethiopia signed the Kampala Convention in 2009 and ratified the same in 2020.¹⁰

In the past four years, Ethiopia witnessed a huge number of displacements and it is increasing at an alarming rate. According to the 2018 report of (IDMC), in 2017 there were 1,159,000 new displacements of which 725,000 were triggered by ethnic conflict and 434,000 by drought.¹¹ In 2019 International Organization for Migration (IOM) assessment conducted on 1,163 sites revealed that there were 1,642,458 IDPs in Ethiopia.¹² As per the same report, the biggest cause of displacement was the conflict that displaced 1,089,856 IDPs, followed by drought which affected 424,845 IDPs, and seasonal floods which affected 35,995 IDPs.¹³ Further in 2019, 1,052,000 new displacements took place.¹⁴ According to OCHA report, flooding displaced about 53,158 in various regions of the country.¹⁵ The figures mentioned in the above reports are limited to those displaced as a result of conflicts and natural disasters. However, huge development projects such as dams, roads, and railways, urban planning, and

⁸Handbook (n3)2

⁹According to the 2017 IDMC’s African Report on Internal Displacement there were about 12.6 Million IDPs in Africa in 2016.

¹⁰The Federal Democratic Republic of Ethiopia, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa Ratification Proclamation No1187/2020, Federal Negarit Gazette, 26th year No 24, Addis Ababa, 13 March (2020)

¹¹ Internal Displacement Monitoring Center (IDMC), ‘Global Report on Internal Displacement’ (2018) 17 19

¹²International Organization for Migration (IOM) ‘National Displacement Report for Ethiopia’ (2019)

¹³Ibid

¹⁴IDMC, Global Report on Internal Displacement (2020) 1

¹⁵OCHA, ‘Humanitarian Bulletin Ethiopia’ Issue 13, (27 July – 11 August 2020) 2

mining are also the main causes of displacement in Ethiopia.¹⁶ It should also be noted that, because of the lack of documentation and other factors, the actual number of IDPs can be by far greater than what is provided in these reports.

Annually, millions are displaced from their home and residence. Various reports show, that the IDPs in Ethiopia are suffering from lack of food or malnutrition, insecurity, unemployment, sexual abuse and lack of education. Needless to mention, the vulnerable section of society like women and children are the most affected by internal displacement.¹⁷ However, when it comes to the governance of IDPs in Ethiopia, until very recently, the Ethiopian government denies the very existence of IDPs in the country.¹⁸ As the recognition of the existence of the problem precedes the attempt to prevent, it was very problematic. Literature shows the existing legal and institutional mechanisms are not comprehensive enough for the prevention of displacement and protection of the displaced. There are both normative and institutional gaps in Ethiopia for the protection of IDPs. The Ethiopian government has been blamed for its reluctance in the prevention of displacement and looking for a durable solution for those displaced. Meanwhile, the situations of the IDPs in Ethiopia remain severe.

Ethiopia ratified the Kampala Convention on 13 March 2020. This has been welcomed by various international organizations including UNHCR, expecting it will have a significant contribution to the protection of IDPs in Ethiopia. The Convention imposes ranges of duties and obligations on State Parties. Of these, the major obligations are, taking legislative measures and the formation of the national institution. This study assesses the potential legal and institutional challenges and prospects for the implementation of the Convention.

1.2. The Objective of the Study

The main objective of the study is the examination and investigation of legal and institutional challenges and prospects for the implementation of the Kampala Convention in Ethiopia. specifically, it;

¹⁶Andinet Gizaw, ‘Causes of big development projects: Development induced displacement and its socio-economic impacts on displaced people in Tekeze Dam’(2017) 9 IJSA 114, 116

¹⁷Yigzaw and et,al, ‘Causes And Impacts Of Internal Displacement In Ethiopia’ (2019) 9 AJSW 32, 39

¹⁸Mehari T Maru , ‘Causes, Dynamics, and Consequences of Internal Displacement in Ethiopia’ Working Paper FG8 (2017) 29

- ✚ Investigate whether the existing Ethiopian legal and institutional mechanism are consistent with the State obligations provided under Kampala Convention.
- ✚ Examine the opportunities and identifying the hurdles for the implementation of the Convention and protection of the rights of IDPs in the Ethiopian legal regime.
- ✚ Identify the legal and institutional implication of the ratification of the Convention on Ethiopian IDPs governance and protection.

1.3. Research Questions

- ✚ What rights and entitlements the Kampala Convention provides for IDPs? What duties does it impose on State Parties?
- ✚ What are the legal and institutional measures taken for the protection of IDPs by Ethiopian government so far? Are they adequate?
- ✚ How does the ratification of the Convention help the protection of the IDPs in Ethiopia?
- ✚ What are the challenges and prospects for the Ethiopian government to implement the Kampala Convention?

1.4. Literature Review

From its very inception, the issue of internal displacement raised hot debate among scholars. Among the debates on the *Forced Migration Review*¹⁹, was whether IDPs should be treated as specific groups or not. In this connection, there were two approaches. The first approach, mainly the position of the ICRC, strongly argues that IDPs should not be treated as a specific group of concern from other humanitarian categories.²⁰ For one thing, IDPs are not always the most vulnerable groups in a way that non-displaced civilians can be more vulnerable than the displaced in circumstances.²¹ And, the other thing is that categorization of IDPs as a specific group opposes the very humanitarian principle that states assistance should, solely, be based on need. Based on these two points, they concluded that IDPs should be seen as part of a larger humanitarian category, not as a group in its right. Diametrically opposing this position, and perhaps with overriding acceptance, the second approach argues that the IDPs should be treated as specific groups. Displacement puts those affected in a distinct

¹⁹Many of the debates can be accessed on <https://www.fmreview.org/>

²⁰Cathrine Brun, 'Research Guide on Internal Displacement' Norwegian University of Science and Technology (2005) 4

²¹Jakob Kellenberger, 'The ICRC's Response to Internal Displacement: Strengths, Challenges and Constraints' (2009) 91 IRC467, 477

disadvantage.²² Among other things, lack of shelter, deprivation of food, their susceptibility to health problems, lack of documentation, and their need for a durable solution make IDPs distinct from other vulnerable groups or other general people.²³

The other important points in the 1990s debates regarding the protection of IDPs were the latter's relation with refugees and the need for international protection. The number of IDPs and the degree of their plights in some cases is by far greater than that of refugees.²⁴ Yet, unlike refugees, IDPs lack effective international institutions and a comprehensive normative framework for their protection. This, partly, is attributable to the issue of State sovereignty. IDPs in some cases displaced by the direct or systematic measures of their government and live within the territory of their state. As a result, the attempt to support or take any measure to assist these by the international community without the state consenting amounts to intervention in internal affairs.²⁵ Therefore, sovereignty has been an obstacle to the international efforts for the protection of IDPs.

Africa contributes the greatest number of IDPs.²⁶ Furthermore, the IDPs in Africa were left destitute.²⁷ In 2009, AU adopted the Kampala Convention as a response to IDPs' plight in Africa and to resolve the legal *lacuna* and institutional gap for their protection.²⁸ The Convention tried to provide a wider definition of IDPs and cover the problem of displacement at all levels. There were controversies about whether the lack of development should be a cause of displacement.²⁹ Scholars like Allone Mulugeta, Chaloka Beyani, and Mahari Tadale recognize the adoption of the Convention as an important measure for the prevention of displacement and protection of IDPs and thus, call for States for its ratification and implementation.

²² Erin Mooney, 'The Concept of Internal Displacement and the Case for Internally Displaced Persons as a category of Concern' (2005) 24 RSQ 9,16

²³ Cohen Roberta and Deng, Francis, 'Masses in Flight : The Global Crisis of Internal Displacement', Brookings Institution Press, (1998) 26 29, See also Mooney, (n 15) 22

²⁴ Thomas G Weiss, 'Internal Exiles: What Next for Internally Displaced Persons?' (2003) 24 TWQ 425, 429

²⁵ Michael Barutciski, 'Tensions Between the Refugee Concept and the IDP Debate', Forced Migration Review 3 (1998) 12

²⁶ IDMC, 'Internal Displacement: Global Overview of Trends and Developments in 2009' (2010)

²⁷ Chaloka Beyani, 'Recent Developments: The Elaboration of a Legal Framework for the Protection of Internally Displaced Persons in Africa' (2006) 50 JAL 187,189

²⁸ Maru, The Kampala Convention (n7) 96

²⁹ Allohone Mulugeta, 'The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope, And Enforcement Challenges' (2010) 29 RSQ 29,35

Although the issue of internal displacement is not new in Ethiopia, there is little literature addressing the problem. Mahari Tadale categorized causes of internal displacement in Ethiopia into four general groupings.³⁰ Accordingly, conflict, natural and man-made disasters and huge development projects are the main causes of displacement in Ethiopia.³¹ He argues that the Ethiopian governments frequently denied the existence of the IDPs for sake of their image and political concerns. The finding in his article shows that there are no comprehensive normative and institutional frameworks for the protection of IDPs in Ethiopia.³² There are legal instruments dealing with Development Induced Displacement (DID). Institutionally, the Ethiopian National Disaster and Risk Management Commission has responsibility limited to IDPs displaced by disasters.³³

There are two recent master theses conducted on IDPs in Ethiopia. A thesis by Getnet Ayalew assessed the adequacy of Ethiopia's legal and institutional mechanism provided for the protection of IDPs.³⁴ It found out that there are laws that help for the protection of IDPs in Ethiopia which includes, urban and rural land laws, criminal laws, and expropriation proclamation.³⁵ Supporting his analysis with practical problems that the IDPs in the Gojam area have been facing, he concluded that the existing legal and institutional frameworks are inadequate for the protection of IDPs. He further claimed, "albeit the existence of the various institutions directly or indirectly dealing with IDPs issues, there is lack of coordination among them."³⁶ Based on these findings he called for the adoption of comprehensive laws regulating the issue of IDPs and the adoption of a cluster approach to resolve the lack of coordination that exists among institutions.³⁷ The second research is conducted by Tesfaye Tola.³⁸ He examined whether Ethiopia, as a State, is responding to the plight of the persons displaced from the Somali Regional State and fulfilling its obligation under international

³⁰Maru, causes and dynamics (n18)24See also Yigzaw and et. al, n(17)39

³¹ Ibid

³² Ibid 30

³³ Ibid

³⁴ Ayalew Getnet, 'The Protection Of Internally Displaced Persons: An Assessment Of The Legal And Institutional Framework In Ethiopia' Thesis Submitted in Partial Fulfillment of the Requirements for the Degree of Master of Laws (LL.M) in Criminal Justice and Human Rights at the school of Law, Bahir Dar University (2019)

³⁵ Ibid, 156 157

³⁶ Ibid 158

³⁷ Ibid

³⁸ Tesfaye Tola, 'State Obligation for the Protections of the rights of IDPs: In Case of Oromo People displaced from Ethiopian Somali region' Submitted in partial fulfillment for the requirements of Master of Law Degree in LL.M in Public International Laws at Addis Ababa University School of Law (2019)

human rights law in that regard. The thesis concludes that there is a protection gap for IDPs in Ethiopia.³⁹

In nutshell, the above literature points out that there is a legal and institutional gap for the protection of IDPs in Ethiopia and all of them call for Ethiopia's ratification of the Kampala Convention. Ethiopia ratified the Convention last year. The main focus of the study is the identification of the challenges and prospects for the implementation of the Convention *vis-a-viz* the current normative and institutional setups in Ethiopia.

1.5. Research Methodology and Method

The study, mainly, employs the doctrinal legal research approach and uses qualitative data. A doctrinal legal research method is employed to find the position of law on specific legal problems.⁴⁰ It limits itself to the legal text and cases as opposed to non-doctrinal legal (socio-legal research approach). Doctrinal legal research uses legislations and cases as primary sources of research while books, commentaries, and journal articles can be used as secondary sources of the study.⁴¹ For this very study, both primary and secondary sources are examined, interrogated, and explained. The main legal documents analyzed include the Kampala Convention, UN Guidelines, FDRE Constitution, Penal Code, and other relevant proclamations setting rights and duties for both government institutions and IDPs. Secondary sources, such as books, reports, and journal articles are utilized.

To identify the power and functions, the way they cooperate and approach the prevention of displacement to the plight of millions of IDPs in Ethiopia, some experts from relevant government institutions are interviewed. It is only to understand the effect of institutional setups and their coordination on the implementation of the Convention. The interview will be conducted purposively based on the expertise of the interviewee and the relevance of the institution to the protection and assistance of the IDPs. Accordingly, four legal and other experts from Ministry of Peace (MOP), Ethiopian Human Rights Commission (EHRC) and National Disaster Risk Management Commission (NDRMC) are interviewed. The interview is semi-structured; some questions prepared before interview and some framed during the interview based on the response of the key informants.

³⁹Ibid

⁴⁰ Michael Salter and Julie Mason, 'Writing Law Dissertation' Pearson Education Limited Essex, England (2007) 44

⁴¹ Mike McConville and Wing Hong Chui (eds), 'Research Method for Law' Edinburgh University Press,(2007)

1.6. The Scope and Limitations of the Study

In terms of scope, first, the research is limited to federal laws and institutions. Second, the issues of the most vulnerable sect of IDPs such as children, pregnant women, and persons with disabilities are not dealt with in the necessary details. Third, because of the space and time limits from the causes of displacement, development-induced displacement is given lesser attention though not ignored. While working on this study, the researcher found out that some institutions are reluctant in giving interviews because of the sensitive nature of the study.

1.7. Research Organization

This research is organized under four chapters; each chapter is further sub-divided into various sections. The first chapter is allotted to the introductory points, including the research background, problem, objective, questions and methodologies. The second chapter mainly talks about the Kampala Convention and the protection it provides for IDPs. To give a general background, it highlights international mechanisms. Next, the duty the Convention imposes on state parties and the protection and entailment it provides for IDPs are discussed in detail. The third chapter discusses challenges and prospects for the implementation of the Convention in Ethiopia. To that end, the existing legal and institutional arrangements are discussed. As such, their compliance and adequacy inline with the Convention examined. Finally, chapter four deals with the research findings and recommendations.

CHAPTER TWO

THE KAMPALA CONVENTION AND THE PROTECTION OF IDPS

Introduction

The Chapter has two subsections. The first section gives a general overview of the notion of IDPs such as definition and major international IDP-related laws. Section two discusses Kampala Convention in detail; its development, a duty it imposes on States parties and rights it guarantees.

2.1.1. Unpacking the Notion of the Internally Displaced Persons: The Theoretical Overviews

2.1.1. Definition of IDPs

Defining and identifying IDPs is not an easy task. It has been a bone of contentions for a long. Traditionally, the notion of IDPs was limited to those displaced as a result of armed conflict and those who are otherwise considered a refugee. However, the displacement can be caused by development projects, man-made and natural disasters. The first attempt to define IDPs came from the UNSGR. According to him, IDPs are;

“Persons or groups who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disaster, and who are within the territory of their own country.”⁴²

This definition has been much criticized for the “temporal and numerical criteria” that it imposes.⁴³ The phrase ‘suddenly and unexpectedly’ excludes those displaced systematically by state policies.⁴⁴ The definition also excludes, those displaced in small numbers or even at an individual level.⁴⁵ Later, the UNGP resolved the issue. It defines IDPs;

“Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border”.⁴⁶

In addition to armed conflict and human rights violations, the Guiding Principles incorporated development and other man-made and natural disasters as the grounds for

⁴²United Nations Commission on Human Rights, ‘Analytical Report of the Secretary-General on Internally Displaced Persons’ UN Doc. E/CN.4/1992/23 (14 February 1992) par 17

⁴³ Mooney(n22) 11

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ UN Guiding Principles (n1)

displacement.⁴⁷ The cases of economic migrants were not incorporated in the definition.⁴⁸ Displacement because of lack of development remains controversial for, in many cases, the coercion element is not clear.⁴⁹ The other important element of this definition is the phrase “in particular”. It implies that the lists are illustrative.⁵⁰

The Convention endorsed the UNGP definition. It defines IDPs as;

“Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”⁵¹

In the draft of the Convention, both developments and lack of development were included as grounds of displacement.⁵² This, however, was challenged by many States and, in the end, omitted from the Convention.⁵³

In short, the coercive or involuntary nature of displacement and the fact that such persons remained within the border of their state are the centerpiece of the definition of the IDPs. Of equal importance is that the definition is only descriptive not normative. It only describes their situation rather than granting them special status. The main causes of displacement stated in the definitions include armed conflict, generalized violence, human rights violations, human or natural disasters, and developments projects. The first three causes beg further explanations as they, in many cases, overlap and confuse. Armed conflict is defined by international humanitarian law and it may arise between States or between States and non-State actors or between non-State actors.⁵⁴ Generalized violence, on the other hand, shows the conflict including armed but less of the armed conflict defined under international

⁴⁷Roberta Cohen, ‘The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting’ (2004) 10 GG 459,466

⁴⁸ Ibid

⁴⁹ Mooney (n22) 13

⁵⁰ Walter Kalin, ‘Guiding Principles On Internal Displacement Annotations’ SIL Studies in Transnational Legal Policy No. 32, 3

⁵¹African Union, ‘African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (“Kampala Convention”)’ 23 October (2009)Article 1(k)

⁵²JO Moses Okello, ‘In Lieu of a *TravauxPréparatoires*: A Commentary on the Kampala Convention for IDPs’ (2019) 31 IJRL349, 366

⁵³ Ibid

⁵⁴ UNHCR and IPU, ‘Internal Displacement: Responsibility and Action’Hand Book For Palamentrainas No 20 (2013) 20

humanitarian laws.⁵⁵ Its intensity or level may not rise to that associated with armed conflict. A human rights violation, as the cause of displacement, is the deliberate targeting of specific populations that may result in the displacement of the targeted groups.⁵⁶ The natural and man-made disasters and development projects as causes of displacement are more or less clear.

2.1.2. International Response to the Plight of IDPs

The number of IDPs was considerably larger than that of refugees. Their situation was also severe than that of refugees in many cases. It was with this view that UN Human Rights Commission requested the appointment of UNSGR on the IDPs. Accordingly, the Secretary-General appointed Francis M Deng in 1992.⁵⁷ He was mandated to develop an appropriate normative and institutional framework specific to the protection and assistance needs of IDPs.⁵⁸ This constitutes a landmark step for the international protection of IDPs.

2.1.2.1. Sovereignty as Responsibility: The Philosophical Foundation for International Protection of IDPs?

The usual challenge for international response to the IDPs' plight is the issue of State sovereignty. IDPs remain within the territory of their country and thus, international access to them can be significantly impeded by the negative exercise of sovereignty. It amounts to an intervention in the internal affairs of States. Francis Deng developed the concept of sovereignty as 'responsibility to protect' when he formulated the UN Guiding Principles.⁵⁹ The concept states that sovereignty should not be used as a "negative notion by which States barricade themselves against international scrutiny and involvement."⁶⁰ It underscores that, rather, sovereignty should be considered as a "positive concept entailing responsibility for the protection and welfare of those who are under its jurisdiction".⁶¹ In case of resources limitations, they are expected to seek international cooperation.⁶² If it fails to fulfill their obligation to protect and resist international assistance and as a result, a large number of those under its jurisdiction suffers from human right violations and threatened with death, the

⁵⁵ Ibid

⁵⁶ Ibid

⁵⁷ Francis Mading Deng, 'The Global Challenge of Internal Displacement' (2001) 5 Wash.U.J.L.&POL'Y 141,141

⁵⁸ Ibid 146

⁵⁹ Ibid 144

⁶⁰ Ibid 144

⁶¹ Ibid

⁶² Ibid 145

international intervention becomes imperative.⁶³ The intervention can range from diplomatic intervention to coercive military interventions.⁶⁴ According to him, States should effectively meet their obligation to protect to safeguard their sovereignty.⁶⁵ The notion of the ‘responsibility to protect’ is the philosophical foundation upon which the international response to IDPs concern base. The concept is incorporated in both UNGP and the Kampala Convention. Both tried to strike the balance between state sovereignty and the need to protect IDPs while State is unwilling or unable to protect them.

2.1.2.2. The UN Guiding Principles: The Minimum International Legal Standards for Protection of IDPs?

As mentioned above, the RSG adopted the concept of sovereignty as responsibility in formulating the principles. He came up with the Guiding Principles in his search for the ‘appropriate normative frameworks for the protection and assistance need of IDPs’. Technically speaking, the Guiding Principle is not even soft law in appropriate terms.⁶⁶ It is softer than other soft laws such as declarations or resolutions as it is nothing but the opinion of the legal experts.⁶⁷ However, Walter describes it as even harder than many soft laws.⁶⁸ At the time, there were three factors for the RSG to choose principles over a treaty.⁶⁹ The reluctance of states to accept the binding treaty, the fact that treaty negotiations take a longer time and that, albeit their gaps, there were sufficient international laws applicable to IDP.⁷⁰

The Principles were drawn from the Compilation and Analysis document formulated in 1992. The Compilation and Analysis document underscores that, although there are international laws applicable to IDPs issues, there is a need to further elaborate and sharpen with the specific need of IDPs.⁷¹ It identified areas where there were legal gaps for the protection of IDPs and areas where there are general principles but not suitable to apply to the situation of IDPs as they are.⁷²

⁶³ Francis M. Deng , ‘From ‘Sovereignty as Responsibility’ to the ‘Responsibility to Protect’ Global Responsibility to Protect (2010) 354

⁶⁴ Ibid

⁶⁵ Francis M. ‘The Global Challenge (n57) 145

⁶⁶Walter Kälin, ‘How Hard is Soft Law? The Guiding Principles on Internal Displacement and the Need for a Normative Framework’(2001) 6

⁶⁷ Ibid

⁶⁸Ibid

⁶⁹ Cohen (n47) 464

⁷⁰Ibid 464 465

⁷¹Report of the Secretary-General, ‘Compilation and Analysis of Legal Norms’(1995)

E/CN.4/1996/52/Add.2 Par 4

⁷² Cohen (n47) 464

Thirty principles are provided in the UNGP. Section one of the UNGP provides general principles. The first general principle is that of equality and non-discrimination. Principle one states that “IDPs shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.”⁷³ They should be treated in equal terms with compatriots. It also states that its provisions should be applied to all IDPs without discrimination of any kind, except in the case of vulnerable groups who need special protection.⁷⁴ The second general principle is that the protection of and assistance for IDPs remains the primary duty and responsibility of States. And, sovereignty should be understood as the responsibility to protect.⁷⁵ International actors only play the complementary role. The third general principle recognizes the right of IDPs to seek and enjoy asylum in another country.⁷⁶ It seems this is to prohibit the containment policy.

Principles provided in 5-9 deal with prevention of displacement. At the first level, States are required to prevent and avoid the situations that lead to the displacement of people and guarantee the right of persons not to be arbitrarily displaced in all circumstances.⁷⁷ States should avoid all conditions that lead to displacement including conflict, development projects, human rights violations, and natural and manmade disasters.⁷⁸ It requires that other alternatives less of displacement should be first explored and exhausted in consultation with the concerned people; which is by seeking the free and informed consent of the latter. In case displacement is a must, States should do their best to reduce its adverse effects and there must be a mechanism for compensation and remedies.⁷⁹ This includes ensuring respect for the right to life, human dignity and security of persons. It also provides that indigenous peoples’ right to protection against displacement should be respected. And, their cultural or spiritual attachment with land should also be respected.⁸⁰ By doing so, the GP is the first UN document to recognize the right not to be arbitrarily displaced.⁸¹

Principles provided in 10-23 deal with the protection of the IDPs during displacement. The vulnerability of IDPs makes them susceptible to various forms of abuse. They may be subject to sexual abuse, torture, enforced disappearance, military attack, forced recruitment,

⁷³ UN Guiding Principles (n1)

⁷⁴ Ibid Art 4

⁷⁵ Ibid Art 3

⁷⁶ Ibid Art 2

⁷⁷ Ibid Art 6 and 7

⁷⁸ Ibid Art 5

⁷⁹ Ibid Art 9

⁸⁰ Ibid Art 8

⁸¹ Ibid Art 5

detention and separation from families. Section three of the UNGP provides the standards for the protection of IDPs from such abuses and violation of rights.⁸² Further, it reiterates that the primary duty to provide humanitarian assistance lies up on States.⁸³ Lastly, issues related to the provision of a durable solution for IDPs are provided in principles 28-30. As the ultimate goal is finding durable solutions by avoiding protracted displacement, the principles provided in this section are of special relevance to IDPs. Return to home and resettlement in other parts of the country is considered as a durable solution to the plight of the IDPs.⁸⁴ According to the Guiding Principles, the duty of the States relating to durable solutions includes recovery of lost properties and payment of compensation for damages.

In general, the UNGP plays a pivotal role in filling the existing legal gap in the international protection of IDPs. It covers all phases of displacement and is designed in a way it regulates all stakeholders. Even though not binding, international, regional and sub-regional organizations are increasingly acknowledged and applied in their interaction with IDPs. Several states acknowledge and adopted laws and policies based on the GPs. It serves as minimum legal instruments for the international protection of IDPs.

2.1.2.3. International Institutional Frameworks

The creation of the UN General Secretary Special Representative position marks the first international attempt to institutionalize the protection of IDPs. The creation of specialized agency, the designation of an existing agency to assume full responsibility, and the adoption of a collaborative arrangement were the three options presented by Francis M. Deng.⁸⁵ The creation of a new agency was off the table because of a lack of political willingness and funding problems.⁸⁶ Many argued that designating UNHCR would be the most effective approach for its developed experience in the protection of refugees which has a similar need with that of IDPs.⁸⁷ This, however, is strongly opposed by both UNCHR and other UN agencies because of some practical concerns. First, extending its mandate to IDPs may affect the existing mandate of protecting refugees. Second, the way state perceives the UNHCR about their sovereignty may affect the UNHCR itself.⁸⁸ Because of this, the ‘collaborative

⁸² Ibid Art 10-23

⁸³ Ibid Arti25

⁸⁴ Ibid Art 28

⁸⁵ Francis M, ‘The Global Challenge’ (n57) 150

⁸⁶ Ibid 144

⁸⁷ R Cohen, Strengthening Protection of IDPs: The UN's Role, *Georgetown Journal of International Affairs* (2006) 104

⁸⁸ Simon Russell and Vicky Tennant, ‘Humanitarian Reform: From Coordination to Clusters’ *The Oxford Handbook of Refugee and Forced Migration Studies* (2014) 3

approach' was adopted based on the Special Representative's suggestion.⁸⁹ This Approach requires all relevant UN agencies to work together under the coordination of the UN Humanitarian and Resident Coordinator. It failed to protect IDPs on the field because of a lack of Coordination among the agencies. Later on, the Inter-Agency Standing Committee (IASC) reformed the collaborative approach and came up with the 'Cluster Approach' in 2005.⁹⁰ It assigns global sectoral responsibilities to UNHCR and other agencies. Accordingly, nine sectors were identified and organized under cluster lead on seven areas.⁹¹ Each agency's lead serves as the first port of call and provider of last resort. At the center of this approach were the predictability, accountability, and international partnership (with other stakeholders including NGOs, ICRC, and national institutions).⁹² The effectiveness of this approach was evaluated two times and there is improvement despite some challenges.⁹³

2.2. The Kampala Convention and IDPs Protection in Africa

2.2.1. Codification History

Nowhere in the world exists a significant number of IDPs than in Africa. In 2018, 36% of the total world new displacement was recorded in sub-Saharan Africa regions alone.⁹⁴ Sudan, South Sudan, Ethiopia, and Somalia recorded the highest number of displacements in the same year.⁹⁵ Further, in 2019 out of 34.4 million new displacements about 24.1% happened in Sub-Saharan Africa.⁹⁶ Various attempts have been taken at the AU level to curb the problem before the adoption of the Kampala Convention. Transformation of OAU to AU constitutes significant steps as the Constitutive Act along with its Protocol on Peace and Security, directly addresses human rights in general and IDPs' concerns in particular.⁹⁷ It also allows the AU intervention in case of humanitarian crisis including internal displacement.⁹⁸ The African Charter on the Rights and Welfare of the Child and the African Protocol on Women's Rights have provisions addressing the right of the displaced children and women,

⁸⁹ Francis M, 'The Global Challenge' (n57) 150

⁹⁰ Tim Morris, 'UNHCR, IDPs and Clusters' Forced Migration Review (FMR) (2005)25, 54

⁹¹ Simon R and Vicky Te, (n88) 3

⁹² Inter-Agency Standing Committee (IASC), 'Guidance Note On Using The Cluster Approach to Strengthen Humanitarian Response' (2006) 2

⁹³ Ibid

⁹⁴ Internal Displacement Monitoring Center(IDMC), 'Global Report on Internal Displacement' (2019)

⁹⁵ Ibid

⁹⁶ IDMC(n14)

⁹⁷ Allehone Mulugeta, 'Legal and Institutional Dimensions of Protecting and Assisting Internally Displaced Persons in Africa' (2009) 22 JRS155, 160

⁹⁸ Organization of African Unity (OAU), Constitutive Act of the African Union, (1 July 2000,) Art 4(h)

respectively. Furthermore, at the sub-regional level, the protocol on the Protection and Assistance to Internally Displaced Persons (Great Lake Protocol) was adopted in 2006 to address the plight of IDPs. The application of this Protocol is geographically limited; while other mentioned regional instruments are neither comprehensive nor address the specific need of the IDPs.

The Kampala Convention aims at filling the existing legal gap and by doing so, reducing the significant impact the internal displacement has on the environment, peace, security, and development of African States.⁹⁹ It was not only the existence of a large number of IDPs that leads to the adoption of the Convention but also the level of destitution the IDPs in Africa were in. The adoption of this Convention was preceded by various expert meetings and Ministerial Conferences.¹⁰⁰ The 1994 Addis Ababa symposium forwarded important recommendations on IDPs' concerns. It describes the problem of the IDPs in Africa as "one of the most tragic humanitarian and human rights crises."¹⁰¹ It highlighted the need for legal and institutional frameworks that put the role of States and non-state actors. The 1998 Khartoum Ministerial Conference was another important step towards the adoption of the Convention. In this conference, the member States suggested the OAU Commission on Refugees examine the problems and challenges of IDPs in Africa and forward its recommendations.¹⁰² It also underscored the need to focus on the prevention of displacement and protection of IDPs.¹⁰³ The Convention was also benefited much from the 2008 Great lakes Protocol.¹⁰⁴

In 2004, six African States (Botswana, Zambia, Uganda, Sierra Leone, Namibia, and Liberia¹⁰⁵) tabled the issue of the IDPs for African Union Sub-Committee for Refugee to revise the OAU Refugee Convention and incorporate the provisions related to IDPs.¹⁰⁶ The Sub-Committee accepted the proposal and issued a resolution. However, the proposal for

⁹⁹ MahariTaddeleMaru, 'The Kampala Convention: A Significant Achievement of AU in Setting Norms' (2009)

¹⁰⁰ Maru The Kampala Convention (n7) 95

¹⁰¹ (OAU), Addis Ababa Document on Refugees and Forced Population Displacements in Africa, (10 September 1994) Par 11

¹⁰² Khartoum Declaration of the OAU Ministerial meeting on refugees, returnees and internally displaced persons in Africa, Par, 33 34

¹⁰³ Ibid

¹⁰⁴ ChalokaBeyani, 'A view from inside the kitchen of the Kampala Convention: the modernization of the international legal regime for the protection of internally displaced persons' LSE Law, Society and Economy Working Papers (2020) 7

¹⁰⁵ Jo Mosses(n52) 353

¹⁰⁶ Ibid

revision of the OAU Refugee Convention was dropped and the adoption of the new IDPs Convention was accepted as proposed by Malawi in 2006 at AU ministerial conference at Ouagadougou, Burkina Faso.¹⁰⁷ In its resolution, the conference recommended AU Commission expedite the progress made towards the development of the “legal framework addressing the IDPs concerns”.¹⁰⁸ After several meetings and deliberation between legal experts, AU and AU partners, the Convention was finally adopted in 2009 in Kampala, Uganda after which it was named. The Convention entered force in 2012. According to Beyane Chekola, it is the result of “laborious and effective negotiation among the African States.”¹⁰⁹ By adopting the Convention, it is argued that Africans contributed much to the creation of norms in international jurisprudence. However, as 24 States left yet to ratify the Convention, there is much to be done to promote the relevance of the Convention for the protection and assistance of the IDPs in Africa.

2.2.2. The Introductory Section of the Convention

The Convention has 23 articles in addition to its preamble. The provisions in the preamble explicate the philosophical and legal foundations for the Convention. It recognizes that displacement may cause instability and tension.¹¹⁰ It also mentions the State Parties’ conviction to take into consideration the suffering of the IDPs and take measures to prevent the root causes of displacement and bring a durable solution. Taking the protection of the IDPs as the States’ primary duty, they also vowed to cooperate in the assistance and protection of IDPs. The preamble reiterates the need for respect for international human rights and humanitarian laws. It also endorses the observation of the UNGP in implementing the provisions of the Convention. It has tried to strike the balance between the notion of state sovereignty and the responsibility to protect by reaffirming that the protection of IDP is their primary duty and their willingness to seek assistance from other actors where needed.¹¹¹

The Convention adopted the definition by the UN Guiding Principles. It reaffirmed the two defining features of internal displacement included in the Guiding Principles; involuntariness of the displacement and lack of crossing the state border. Armed conflict, situations of generalized violence, human rights violations, and man-made or natural disasters are

¹⁰⁷ The AU Executive Council, ‘Resolution On The Situation Of Refugees, Returnees and Displaced Persons’ Doc. Ex.Cl/254 (Ix)

¹⁰⁸ Ibid Par 9

¹⁰⁹ Beyane C, (n104) 6

¹¹⁰ Kampala Convention (n51)Par.1

¹¹¹ Ibid, Par.1 15

recognized as the cause of internal displacement in Africa. The development as one of the causes of internal displacement is also recognized under article 10 of the Convention.

Article 2 describes the objectives of the Convention. Accordingly, it sets out five main objectives which are the pillar for the adoption of the Convention. Strengthening the national and regional measures to be taken at all phases of displacement is the first objective of the Convention.¹¹² It also aims at the establishment of the legal framework for the prevention of displacement and protection and assistance of the internally displaced persons in Africa. Provision of duty for both state and non-state actors is another objective of the Convention (Art.2 (d) (e)).

2.2.3. The Duties of State Parties

2.2.3.1. The Duty to Adopt Domestic Laws, Policies and Strategies

States must protect, respect, and fulfill the rights of their citizens or all peoples under their jurisdiction. Under international human rights law, one of the measures that States should take is legislative measures. Guide for the development of national instruments on the IDPs that is prepared by the joint work of three well-known institutions on forerunning the concern of IDPs (IDMC, NRC, and Brooking-LSE), describes four reasons that necessitate the adoption of a national instrument on internal displacement. First, the protection of IDPs is, primarily, the duty of the States. Therefore, it is State's responsibility to protect its citizens by adopting the necessary legal instruments which is also the manifestation of their sovereignty.¹¹³ Second, the specific need and the vulnerability of the IDPs which cannot be addressed by the general constitution and laws necessitate the adoption of national instruments which address their specific need.¹¹⁴ Thirdly, the formulation of national laws not only makes the government's endeavor credible and reliable but also facilitates cooperation among the national and international actors.¹¹⁵ Finally, it makes the government's response to the plight of IDPs more effective and efficient.¹¹⁶ The national legislations may by themselves can be an obstacle to the exercise of rights by IDPs or not adequate to address the

¹¹²Ibid Art 2(a)

¹¹³IDMC, NRC, and Brooking –LSE, National Instruments on Internal Displacement : A Guide to their Development (2013)9

¹¹⁴Ibid 9

¹¹⁵Ibid10

¹¹⁶Ibid 10

specific need of IDPs.¹¹⁷ Therefore, it is argued that “the effective responses towards the plight of IDPs, almost always, require the legislative action.”¹¹⁸

It is from this point of view that the Kampala Convention obligates the State Parties to incorporate its obligation under the Convention in domestic laws.¹¹⁹ This requires the enacting of new laws or revision of the existing laws in conformity with the provisions of the Convention. The Guide mentioned above, suggests the enactment of comprehensive legislation that is tailored to cover all phases of displacement along with its implementing regulation or directive. Supporting the same position, the AU adopted the Model Law for Implementation of the Kampala Convention in 2018.¹²⁰ The Model Law is intended to be used as a resource in the drafting process of national legislation.¹²¹ Content-wise, it covers all phases of displacement. It also contains articles on compensation, remedy and penal provisions that criminalize arbitrary displacement.¹²² As it is derived from many national and international laws including the UNGP and Kampala Convention, the Model Law is flexible enough to be used by countries of different legal traditions and backgrounds. In short, the adoption of the AU Model Law on the Kampala Convention shows that the State Parties intended the adoption of a comprehensive document.

The Handbook for the Parliamentary suggests that the adoption of such domestic legislation must be preceded by the formal and informal consultations and followed by the subsequent enabling directives, decree, or policies for its effective implementations.¹²³ Besides legislation, article 3(2) of the Convention requires the adoption of policies and strategies at a national and local level. Policies and strategies are separate but complementary to the adoption of legislation based on the need of local communities. So far, Angola, Burundi, Liberia, Sierra Leone, Kenya, Sudan, and Uganda have adopted either law or policy on IDPs.

¹¹⁷BrookingInsitution, ‘Protecting Internally Displaced Person: A Manual for Law and Policymakers’ University of Bern,(2008) 28

¹¹⁸Ibid

¹¹⁹Kampala Conventionn(51) 3(2).

¹²⁰African Union Model Law for the Implementation of the African UnionConvention for the Protection of and Assistance to Internally Displaced Persons in Africa (2018)

¹²¹ AU Report on Model Law

¹²² Manual For law(n117) 28

¹²³UNHCR and IPU, ‘Internal Displacement: Responsibility and Action’ Handbook for Parliamentary(2013) 42

2.2.3.2. The Duty to Designate National Institution

Article 3(2) (b) of the Convention dictates State Parties to designate a national organ that is responsible for activities related to protection and assistance of IDPs and confer it with the responsibility to cooperate with international organizations and civil society organizations. From national and international practice these national focal points can have the following three forms.¹²⁴ A State can assign the existing government organ with the responsibility to deal with the protection and assistance of IDPs, (2) establish a new agency specifically set up for coordinating the responses of government, or (3)it can have the form of a standing committee that coordinate the works and response of all relevant ministries towards the IDPs' cause.¹²⁵ States, therefore, can establish one of the institutional forms that suit them. In the case of the States with a federation form of state structure, such institutional arrangements must be established at both horizontal and vertical levels.¹²⁶ Allocation of necessary funds meant for the protection and assistance of IDP is one of the important obligations the State Parties undertook (Art.3(2)(d)). However, lack of the necessary budget is identified as one of the challenges for the implementation of the Convention because of the economic situation of African States.¹²⁷

2.2.3.3. Duty to Prevent Arbitrary Displacement of People

One of the objectives of the Convention is prohibition, mitigation, or elimination of the root causes of the internal displacements.¹²⁸ It drives its root from the right to movement and choices of residences as provided under international human rights law.¹²⁹ The Convention reaffirms the same by recalling State Parties to respect and ensure the respect for their obligations under international human rights and humanitarian laws. It also states that State Parties undertake, to respect and ensure the respect for the Convention's provisions which includes refrainment from, prohibition and prevention of the arbitrary displacement of the population(Art.3(1)(a). It stipulates that the State Parties are duty-bound to prevent internal displacement of any kind; be conflict triggered, natural and man-made induced, or development-induced. Activities that amount to arbitrary displacement are listed under article 4(4) of the Convention. Accordingly, displacement can be arbitrary displacement when, among other things, it is used as a method of warfare and collective punishment, caused by

¹²⁴Manual for Law(n117) 30

¹²⁵Ibid

¹²⁶Ibid

¹²⁷ ICRC, 'Translating The Kampala Convention Into Practice:A Stocktaking Exercise' (2016) 46

¹²⁸African Union Special Summit Of Heads Of State And Government On Refugees, Returnees And Internally Displaced Persons In Africa Kampala, Uganda, October (2009)4

¹²⁹Maru T, (n7)110

generalized human rights violence, as a result of harmful practices and when it is a result of systematic discrimination against groups. Forced evacuation which is not necessitated by the safety and health of the people amounts to arbitrary displacement in case of disaster-induced displacement.

The Convention further, requires States Parties to ensure individual responsibility and criminalization of arbitrary displacement of the population (Cum art 3(1) (g) & 4(6). Criminalization of such acts, however, is only when they amount to genocide, a war crime and a crime against humanity. Arbitrary displacement of lesser gravity is not criminalized mainly in case of disaster and development-induced displacements. This is problematic in ensuring the accountability of different actors including government officials and other private actors especially in case of displacement is the result of their reluctance to take measures.

2.2.3.4. Duty to Protect and Provide Assistances

The notion of humanitarian assistance provided under article five and nine of the Convention is derived from international laws, mainly, from International Humanitarian Law and by interpretation, from social, economic and cultural rights. In both cases, the protection for people in need primarily lies up on State. Article 5(1) of the Convention reiterates the same in adopting the complementarities principle. In this regard, the duty of the State Parties is the provision of food, water, shelter and another necessary service to the “fullest extent possible and with the least possible delay” (Art.9 (2) (b)). This must be read in conjunction with article 5(6) of the Convention which obliges State Parties to cooperate in seeking assistance from international agencies and humanitarian organizations when the available resource at their disposal is inadequate. Seeking international assistance is not optional for States, rather it is their duty. It is also their duty to allow “rapid and unimpeded passage” of relief (Art.5 (7)) while it is provided international aid organizations should also operate under national and international law.

2.2.4. The Rights and Entitlements of IDPs under the Convention

2.2.4.1. Equality and Non-Discrimination

Non-discrimination and equality can be taken as both human rights principles and substantive rights by their rights. As repeatedly explained, being IDPs does not grant any new status as it is in the case of refugees. They should be equally entitled to all rights and privileges that are given to their fellow citizens. The notion of non-discrimination dictates that all humans

should enjoy their rights equally regardless of political, gender, age, race, nationality, and other status. Article 9(1)(a) of the Convention impose the duty to protect the right of IDPs by refraining from and preventing discriminations against the latter on the enjoyment of rights and freedoms. The fact that they are internally displaced should not solely be a ground for the denial of their rights. And, the State Parties must ensure such non-discrimination. Furthermore, discrimination among the IDPs themselves is also prohibited under the Convention. A cumulative reading of articles 9 and 15(1) shows that the State Parties should ensure the protection of the right of IDPs regardless of the causes of their displacement; be it a development-induced, conflict-induced, or natural and man-made disaster. However, as displacement puts IDPs in vulnerable positions, ensuring non-discrimination alone cannot protect their rights. It requires taking some positive measures as well.

2.2.4.2. Right to Public Participation: Political Participation in Focus

Electoral participation by IDPs reduces marginalization and promotes their reintegration which is a very important means of reconciliation in a divided society.¹³⁰ However, such participation has never been an easy task; there are several practical and political obstacles to it. Among these challenges is lack of documentation, residence requirements, discriminatory practices, security concerns, and inadequate arrangements for “absentee voting”.¹³¹ The security issue may not allow them to participate. They may lack the necessary documents required for such participation as, in many countries, proof of residence is a requirement to vote or to be elected.¹³² Easing such restrictive measures, however, may result in fraud, impersonation and multiple registrations or voting which in turn compromise the “election integrity”.¹³³ Therefore, it is incumbent upon the States to devise the laws and institutional arrangements that ensure the participation of IDPs in the election by taking into account both stakes. Article 9(2)(i) of the Kampala Convention provides the same. It requires the State Parties to take necessary measures to ensure the displaced citizens enjoy their civic and political rights. These measures to be taken, provided under Article 9(2) (I) of the Convention should be seen in line with other duties imposed on the State Parties. The revision or the enactment of the laws and adoption of IDPs Policies should take into consideration the right

¹³⁰ AyshaShujaat and et al, ‘Internally Displaced Persons and Electoral Participation: A Brief Overview’ IFES White Paper (2016) 2

¹³¹ Erin Mooney and BalkeesJarrah, ‘Safeguarding IDP voting rights, Forced’ Migration Review (FMR) 23, 55

¹³² Aysha Shujaat and et al, (n130) 6

¹³³ AyshaShujaat and et al,(n130) 6

to political participation of the IDPs. The institution or the designation of a focal institution should be made in the way it ensures such rights.

2.2.4.3. Freedom of Movement and Choice of Residence

Freedom of movement is well recognized right under international human rights. It encompasses the right to move freely and to choose one's place of residence within the borders of a State and beyond.¹³⁴ It can be derogated during a state of emergency and limited for the sake of ensuring some competing interests including public order and the safety of the person concerned.¹³⁵ From the IDPs' context, the freedom of movement guarantees free movement in and outside of camps, freedom from arbitrary displacement, detention, or arrest, freedom to leave the country and seek asylum in other countries.¹³⁶ Therefore, coercing persons to flee their home, coercing IDPs to stay somewhere, or involuntarily returning them to the place where their life or safety is at risk is a violation of freedom of movement. The Kampala Convention requires States to prevent, prohibit and refrain from the arbitrary displacement of people. During and after displacement, it obliges the States to guarantee the freedom of movement and choices of residence (Art.9 (2) (f). Finally, in their pursuit of a durable solution for the IDPs, States should refrain from coercing them to return or resettle (Art.11). In short, the Convention guarantees the freedom of movement and choices of residence, and by doing so; it prohibits the arbitrary displacement of people from their home and habitual residence.

2.2.4.4. The Right to Register and Issued Personal Documentations

In most cases, IDPs leave their home in a hurry because of the urgency of the situation. As a result, they may lose their document or get them destroyed by disaster or war. These personal documents include passports, national identity cards, birth, marriage, and property ownership certificates. In many cases, the exercise of several rights is contingent on such documents. For instance, the right to vote as discussed above is contingent on the showing of a national identity card proofing the residence of the voter or the candidate. Moreover, registration of IDPs is very important as other measures to be taken are dependent on the number and information of the IDPs. Article 13 of the Kampala Convention obliges the State Parties to have the up-to-date data of IDPs and issue them the necessary documents.

¹³⁴ International Covenant on Civil and Political Rights (adopted 16 December 1966 entered in to force 23 March 1976) 999 UNTS 171(ICCPR)Art ticle 12

¹³⁵ Ibid, see also Kampala Conventionn(n51) art 9(2) f

¹³⁶ UN Guiding Principles n(1) art 14

2.2.4.5. Land, Property Rights and Compensation for Damages

Article 9(2) (i) of the Convention obliges State Parties to take necessary measures to protect the individual, collective or cultural property of IDPs regardless of the cause of displacement. Protection shall be for both properties left behind and hold by the displaced in the area where they live. Further, Article 11(4) requires the establishment of a simplified procedure for the resolution of disputes related to such properties when it is necessary. Here, one may ask whether the Convention is suggesting the formation of special division for IDP cases or whether it is simply giving the priority in handles such cases. Many countries establish special administrative tribunals or commissions to expedite such procedures.¹³⁷ Article 12 of the Convention imposes three obligations; the provision of effective remedies, accountability of perpetrators of displacement and provision of damages for the wrong done. Accordingly, as per article 12(2), State Parties have to establish a framework that provides a “just and fair and compensation” or “other forms of reparation” for those IDPs who incurred a loss when it is appropriate. The notion of just and fair compensation is not defined in the Convention. Nor what constitute “the other forms of reparation” is clearly stated. The Convention simply refers to international standards. The annotation to the Convention states various forms of reparation including public acknowledgment and apologies by perpetrators and restitution of the property and land.¹³⁸ In this connection, some international standards put that restitution should prioritize over compensation.¹³⁹ Compensation should be considered only if restitution of property and land is impossible and if the victim preferred to be compensated.¹⁴⁰ Therefore, the Conventions’ reference to the international standard must be understood in this context.

2.2.4.6. Rights of Vulnerable Groups under the Convention

Article 9(2) (c) lists sub-sets of IDP groups that require special protection and assistance based on their vulnerability. Separated and unaccompanied Children, female heads of households, expectant mothers, mothers with young children, the elderly, IDPs with disabilities, and IDPs with communicable diseases.¹⁴¹ The same sub-article obligates State

¹³⁷ Handbook for parliamentarians (n123) 71

¹³⁸ChalokaBeyani,(n21) 196

¹³⁹UN Sub-Commission on the Promotion and Protection of Human Rights, ‘Principles on Housing and Property Restitution for Refugees and Displaced Persons’(28 June 2005) E/CN.4/Sub.2/2005/17 (Pinheiro Principles) Principle 2, see also article 29 of the UN Guiding Principles.

¹⁴⁰ Ibid 21

¹⁴¹Mahari Tadale Maru, ‘The Kampala Conventionand Its Contributions to International LawLegal Analyses and Interpretations of the African Union Convention for the Protection and Assistance of Internally Displaced Persons’Eleven International Publishing (2014)214

Parties to provide protection and assistance for these groups of IDPs. Furthermore, State Parties must take special measures to protect and provide sexual health of women IDPs. The victims of sexual and other related abuses also have the right to obtain psycho-social support from State. The special measures to be taken include the reunification of families,¹⁴² continuation of education,¹⁴³ provision of assistance that takes their special needs into consideration and protection from sexual abuses, and children's recruitment into armed forces.¹⁴⁴

2.2.5. Durable Solution

The notion of a durable solution is derived from refugee law with the necessary changes made to it. In most cases, the problem of IDPs has been taken as temporary. However, unless IDPs regain their livelihood and the causes of their displacement ceases, continuous protection and assistance have to be provided to them. It goes without saying that if not addressed properly, protracted displacement may result in conflicts and be causes for further displacement.¹⁴⁵ Here, one may ask when we said a durable solution is given. It is when IDPs no longer have specific assistance and protection needs and thus, enabled to enjoy their rights equally and without discrimination with compatriots.¹⁴⁶ In this regard, Kampala Convention provides three solutions.¹⁴⁷ Return to their former home, integration-in to the place where they have already settled, and relocation (resettlement)-in other parts of the country.¹⁴⁸ Accordingly, State Parties are duty-bound to seek a lasting solution to the problem of displacement. They should create and promote satisfactory conditions for voluntary return, local integration and relocation of IDPs on a sustainable basis. The important point worth noting here is that decision to return, integrate or relocate should be done voluntarily and IDPs should be included in the planning and management of durable solutions. Coercing or encouraging the IDPs in this regard is unacceptable.¹⁴⁹ The State Parties have to enable the IDPs to make an informed and voluntary decision by availing the necessary information about their safety and security.

¹⁴² Ibid 216

¹⁴³SubaMahalingam, 'Education: Protecting the Rights of Displaced Children, FMR 15 (2002) 23

¹⁴⁴ Kampala Convnetion(n51) Art 9(2)(c)

¹⁴⁵Maru T, book (n141) 295

¹⁴⁶IASC Framework on Durable Solution for Internally Displaced Persons, The Brookings Institution – University of Bern Project on Internal Displacement, (2010) 5

¹⁴⁷ Kampala Convention (n51) Art11

¹⁴⁸ Ibid

¹⁴⁹ UN Guiding Principles

2.2.6. Monitoring Organs

Monitoring and compliance mechanisms are the oft-cited problems in international law. Kampala Convention provides three monitoring mechanisms. First, it designates the Conference of State Parties (CSPs) for compliance monitoring and follow-up.¹⁵⁰ It is mandated to facilitate and capacitate the cooperation among state parties. The first COSP was held in 2017 in Harare Zimbabwe. This conference adopted the first plan of action for the implementation of the Convention. It has also the temporary mandate of interpreting the Convention until the formation of the African Court of Human Rights and Justice adopted by the AU under the Malabo Convention. Second, State Parties are obliged to consider the measures taken in the State Parties' report that they submit for ACHPR. Finally, State Parties that are also parties to the African Peer Review Mechanism (APRM) must present IDPs measures when they present to the APRM. COSP is not strong since it is limited to periodic meetings of the Conference of States Parties and the State Parties are not required to submit reports.¹⁵¹ Nor the submission of reports by States to APRM is effective enough as many of the States that are Parties to the Convention are not parties to APRM.

Conclusion

Various international and regional attempts have been taken to prevent internal displacement and protect and assist the victims. The adoption of the UN Guiding Principles and that of the Kampala Convention constitute a very important development in filling the existing legal gap. Kampala Convention is the first regional legal document thoroughly addressing the IDPs issue. It guarantees various rights of IDPs with corresponding duty on State Parties. Among the duties, it imposes on State Parties is the adoption of domestic legislation, policies, strategies, designation of an institution, duty to prevent and criminalization of arbitrary displacement, and the duty to protect, assist and seek a durable solution for IDPs are the major ones. On the other hand, it guarantees the IDPs' right to non-discrimination, political participation, registration and gets their civil documents issued, freedom of movement, and choice of residence. Finally, it ensures the restitution of properties or payment of compensation for the damage sustained. It is also mentioned that only 31 African States so far are party to the Convention. Some 24 African states are not still ratified the Convention. This is something that needs attention. Even though it comes up with robust claimable rights, some challenges also remain for its full implementation. These challenges include the budgetary problem and inadequacy of COSP to ensure the implementation of the Convention.

¹⁵⁰Kampala Convention (n51)Art 14

¹⁵¹Allone (n29) 52

CHAPTER THREE

RATIFICATION OF KAMPALA CONVENTION: PROSPECTS AND CHALLENGES FOR ITS IMPLEMENTATION IN ETHIOPIA

Introduction

This section mainly deals with the identification of challenges and prospects related to the implementation of the Convention. It Discusses trends of internal displacement in Ethiopia, the existing legal and institutional arrangements, and analyzes them with Convention's Provisions.

3.1. The Level and Trend of the Problem of IDPs in Ethiopia

Ethiopia's history is marked by recurring waves of displacement.¹⁵² These displacements are mainly attributable to conflicts, development projects, and man-made and natural disasters.¹⁵³ From natural disasters, famine displaced millions during and after Haile Selassie's I regime. Large agricultural projects have been also the cause of displacement in Ethiopia for a long. For instance, in 1972, an irrigation project displaced 20,000 Afar pastoralists.¹⁵⁴ Armed conflict was and remains the cause for the displacement of millions. The war that underwent between Derg regime and EPLF, and TPLF displaced thousands from their home. It resulted in the displacement of 800,000 Tigriyans.¹⁵⁵ Furthermore, the armed conflict between Ethiopia and Eritrean displaced 420,000 people from Afar and Tigray regions.¹⁵⁶ Despite these all, until 2018, successive Ethiopian governments have been criticized for denying the existence of IDPs, let alone taking measures.¹⁵⁷ Responses to the IDPs' plight require official recognition of the problem itself. Collection of data about the number of displaced, their specific need and the causes of their displacement should be the next. It helps both government and international humanitarian organizations in their planning and forecasting of the problem. The absence of such systematically collected IDPs related data is the first challenge that researchers, humanitarian organizations, or planners face in Ethiopia.¹⁵⁸

¹⁵² Anne Koch, 'On the Run in Their Own Country Political and Institutional Challenges in the Context of Internal Displacement' SWP Research Paper (2020) 17

¹⁵³ Maru T, 'Causes, Dynamics (n18)14

¹⁵⁴ Sen, Amartya, Poverty and Famine: An Essay on Entitlement and Deprivation, Oxford University Press, New York, 1981

¹⁵⁵ Maru T, 'Causes, Dynamics(n18)15

¹⁵⁶ Ibid

¹⁵⁷ Ibid

¹⁵⁸ Ibid

In the past four years, Ethiopia witnessed a very huge number of displacements and it is increasing at an alarming rate. According to the 2018 report of (IDMC), in 2017 there were 1,159,000 newly displaced persons of which 725,000 are ethnic conflict triggered and 434,000 are drought triggered.¹⁵⁹ In 2018, the IDPs figure reached its peak. IDMC reported the existence of 3,191,000 IDPs in Ethiopia in 2018.¹⁶⁰ This was the highest number in the world. Ethnic conflict on natural resources and border between Somali and Oromia Regional States, the conflict between Guji Oromo and Gedio peoples and the conflict in the Benshangul Regional State caused the displacement of 2,895,000 people.¹⁶¹ In addition, in the same year, natural disasters displaced about 296,000 people.¹⁶²

In 2019 (IOM) assessment conducted on 1,163 sites revealed that there were 1,642,458 IDPs in Ethiopia.¹⁶³ As per the same report, the biggest causes of displacement were conflict which displaced 1,089,856, followed by drought which displaced 424,845 people, and seasonal floods which affected 35,995 people.¹⁶⁴ Further, in 2019, 1,052,000 new displacements took place.¹⁶⁵ Compared to that of 2018, the number of IDPs and the number of the new displacement is decreased. This is because of the measures that the government took in returning some of the IDPs to their home and resettling them in other parts of the country. This resettlement and return of IDPs have been criticized as premature and involuntary though.¹⁶⁶

The end of 2020 and the beginning of 2021 was a time where Ethiopia was hit by waves of displacement. According to a report by OCHA Bulletin published in August 2020, flooding displaced about 53,158 in various regions of the country including Afar, Oromia, Amhara, SNNP, and the Somali Regional States.¹⁶⁷ This number increased to 192,863 as of December 2020.¹⁶⁸ In the same year, drought displaced about 331,963 populations. According to IOM report, in general 1,959,797 people were displaced up until December 2020 due to floods,

¹⁵⁹IDMC (Internal Displacement Monitoring Center(IDMC), Global Report on Internal Displacement (2018) 17 19

¹⁶⁰ Ibid

¹⁶¹ Ibid

¹⁶² Ibid

¹⁶³(IOM), (n 12)

¹⁶⁴Ibid

¹⁶⁵IDMC (n14) 1

¹⁶⁶Ibid

¹⁶⁷ OCHA(n15) 2

¹⁶⁸ Ibid

drought, human rights violations, and armed conflict going on in different parts of the country.¹⁶⁹

The conflict in the Northern part of the country displaced some 2,105,387 in Tigray, Amhara, and the Afar Regional States.¹⁷⁰ According to the same report, there were no food items distributed for 76 sites out of 377.¹⁷¹ There are also health and security concerns all over the sites. It is only in few sites that students are admitted for school.¹⁷² IDPs in several sites have no access to the market and malnutrition is prevalent.¹⁷³ In many parts, where the conflict is going on, infrastructures are targeted and IDPs are also suffering from a lack of electricity, clean water, and telecom services.¹⁷⁴ Women, children, and other vulnerable groups are suffering from this conflict triggered displacement. They are targeted for sexual violence and recruitment for war. This is just to mention few horrors that IDPs are living through. The number of IDPs is rising, specifically this year, and is expected to rise unless the conflict is resolved in a peaceful way and dialogue.

Finally, it should be noted that the figure mentioned in the above reports are limited to those displaced as a result of conflicts and natural disasters. However, huge development projects such as dams, roads and railways, urban development plans and mining are also the main causes of displacement in Ethiopia. Because of the lack of documentation and other factors, the number of IDPs on the report can, by far, be greater than what is provided in these reports.

3.2. Causes of Displacement in Ethiopia

As discussed in the previous sections, armed conflicts, generalized violence, human rights violations, development projects, and man-made and natural disaster are identified as the major causes of displacement in both the UNGP and the Kampala Convention. Maru identified five major causes of internal displacement in Ethiopia.¹⁷⁵ Accordingly, Conflict Induced, Development Induced, Man-Made, and Natural Disasters and Pastoralist problems

¹⁶⁹ International Organization for Migration(IOM), ‘National Displacement Report for Ethiopia’ (2020)

¹⁷⁰ OCHA Emergency Site Assessment, Northern Ethiopia Crisis 7 - Data Collection 1 - 26 June 2021, Publication Date - 13 August (2021)

¹⁷¹ IOM(n 169)

¹⁷² IOM (169) 39

¹⁷³ Ibid

¹⁷⁴ Ibid

¹⁷⁵ Maru T, ‘Causes, Dynamics(n18) 10

are identified as major causes of displacement.¹⁷⁶ From the data analyzed above, all of them are prevalent in Ethiopia. Putting them in order, conflict displaced the highest number followed by natural disasters such as flooding and famine.

3.3. The IDPs Related Legal Regimes in Ethiopia

The prevention of displacement, protection, and assistance of IDPs and seeking a durable solution for their plight needs effective legal instruments. Protection itself is a legal concept¹⁷⁷ and hence, effective protection presumes an effective legal instrument. It is also discussed that the specific vulnerability of IDPs necessitates the adoption of a specific law that covers the protection gap that enforcement of general constitution and laws create. Ethiopia ratified the Kampala Convention with reservations to some of its provisions.¹⁷⁸ The Convention requires the State Parties to adopt laws and policies that regulate IDPs' concerns at all phases.¹⁷⁹ In this section, I will analyze the existing Ethiopian laws and policies that are crafted for the protection of IDPs.

3.3.1. FDRE Constitution

FDRE constitution allotted one-third of its article to fundamental freedoms and human rights (Art. 13-44).¹⁸⁰ As citizens, IDPs are entitled to all fundamental freedom and human rights provided therein. Article 25 of the same Constitution prohibits discrimination based on sex, age, race, nationality, and another status, which obviously, includes displacement status. This means the IDPs should not be discriminated against in the exercise of these fundamental freedoms and rights. Furthermore, it obliges all government organs to respect, protect and fulfill the rights guaranteed by it.¹⁸¹ Article 32 of the FDRE Constitution recognizes the freedom of movement. Accordingly, everyone in the country has the right to freely choose the place of his/her residence, the right to depart and come back to the country. This article is of paramount relevance to IDPs. And the government must respect, protect and fulfill/promote this right. Further, Article 44 of the Constitution reads;

¹⁷⁶ These reservations includes, provisions related to payment of compensation and with regards to the jurisdiction of the African Court of Human Rights.

¹⁷⁷ Walter Kälin, 'Addressing Internal Displacement: A Framework for National Responsibility' The Brookings Institution-University Of Bern Project On Internal Displacement,(2005) 16

¹⁷⁸ Ratification Proclamation (n10)

¹⁷⁹ Kampala Convention(n51) Art 3(2)

¹⁸⁰ Proclamation No. 1/1995 Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, 1st Year No1 Addis Ababa 21st August 1995

¹⁸¹ Ibid Art 13(1)

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

Those who are displaced or whose livelihoods are adversely affected have two rights; the right to claim compensation and/or relocation and the right to obtain adequate assistance from State. The problem with this article is that its scope is limited to development-induced displacement. It is further discussed under the land and expropriation Proclamation.

The other relevant provision of the Constitution is Article 89(3). It states;

“Government shall take measures to avert any natural and man-made disasters, and, in the event of disasters, to provide timely assistance to the victims”

The relevance of the provisions provided under Chapter 10 of the Constitution to the human rights issue is arguably minimal as they are policy directions. They do not impose human rights duties on the government. However, they are of vital importance as they give directions to the government while taking measures.

In short, except for article 25 and other general human rights provisions, the FDRE constitution does not address the specific need of IDPs. Article 44 and 89(3) which are very much relevant to IDPs issues are limited to the DID, NDID, and MDID. Conflict induced and displacement because of human right violations is not covered in the constitution. However, since generality is the inherent nature of a constitution, it is fine if we have specific legislation addressing these issues.

3.3.2. Land and Expropriation Proclamation

The Expropriation of Land holdings for Public Purposes, Payments of Compensation, and Resettlement Proclamation (No. 1161/2019) contained the provisions specifically related to DIDs.¹⁸² Article 2(16) defined displaced as “a person, households, firms, or public or private institutions who has been living in occupied land, including tenants, employed and self-employed persons on the land for public benefit.” The definition includes not only the landholders but also tenants and self-employed living on the land needed for public purposes. The proclamation also provides that the procedure of land expropriation should be participatory, transparent, fair and accountable.¹⁸³ The extent of this participation, however,

¹⁸²Expropriation of Land holdings for Public Purposes, Payments of Compensation and Resettlement of Displaced People Proclamation No 1161/2019, Federal Negarit Gazette, 25th Year No 90 Addis Ababa 23rd September (2019)

¹⁸³ Ibid Art 4(4)

is not stated. The proclamation provides five forms of compensation for the displaced. Compared to its predecessor, this proclamation provides better legal protections for development-induced IDPs.

3.3.3. Electoral Law

The Kampala Convention guarantees the IDPs' rights to political participation. The State Parties must ensure the participation of IDPs in an election and exercise their right to vote and to be elected.¹⁸⁴ This includes lifting the criteria for such participation such as presenting documents, proving residence, age and nationality. Coming to Ethiopian election laws, article 38 of the FDRE Constitution recognizes the citizens' equal right to political participation including participation in the election. In addition, the Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation (No. 1162/2019) tries to ensure the IDPs' participation in election.¹⁸⁵ Article 17(1) of the proclamation requires the Ethiopian National Election Board (NEBE) to establish Special Polling Stations to enfranchise those who live far from their constituency including IDPs. NEBE is also authorized to enact directives that govern the particulars. Accordingly, NEBE adopted Special Polling Station Directive Number 13/2013.¹⁸⁶ It is adopted to enable the establishment of special polling stations for those who live far from their principal residence so that they can fully exercise their constitutional right to vote and to ensure its accessibility.¹⁸⁷ This is an important development as it facilitates the participation of IDPs in the election (register and vote). In the normal course of things, identity, age and residence are proved by National ID Card, Passport and Employees' ID Card.¹⁸⁸ However, IDPs may lose such documents during displacement and as such it will be problematic to register for election or to cast vote. The directive tried to address this problem. Accordingly, all of them can be proved by presenting the documents issued by appropriate an organ which shows the status of IDPs.¹⁸⁹ Alternatively, s/he can present two wittiness who are also IDPs displaced from the same area and proved that they are residents of constituency area.¹⁹⁰ Lastly, if he/she failed to prove by

¹⁸⁴ Kampala Convention (n51) Art9 (2)(i)

¹⁸⁵ The Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation No 1162/2019 Federal Negarit Gazette, 25th Year No 97 Addis Ababa 16th October (2019)

¹⁸⁶ NEBE Directive on Special Polling Station Directive Number 13/2013

¹⁸⁷ Ibid Art 6

¹⁸⁸ Election proclamation (n185) Art 12

¹⁸⁹ Directive(n186) Art 13(3)

¹⁹⁰ Ibid Art 13(5)

all of the above and IDPs are registered during their admission to IDPs camp, she/he can show the copy of such documents containing the list of IDPs and get registered or voted.¹⁹¹

3.3.4. Other Legislations

Other legislations such as the Ethiopian Penal Code and Vital Registration laws have something to do with IDPs. Civil Status registration is to be done as per vital registration proclamation.¹⁹² Even though all death; birth and marriage should be registered as per the same law, no specific reference is made to IDPs. The Penal Code also criminalized various offenses that are directed to IDPs as civilian populations during armed conflicts. However, it failed to criminalize mentioning all forms of arbitrary displacement.

In short, there are laws that directly or indirectly regulate issues of internal displacements. However, given the level of problems in the country and comparing them with what is provided under the Convention, there are huge gaps in these laws and thus, they are inadequate.

3.4. The IDPs Related Policies in Ethiopia

3.4.1. National Policy and Strategy on Disaster Risk Management

In 2013, Ethiopia came up with the new National Policy and Strategy on Disaster and Risk Management revising the 1993 Policy.¹⁹³ The objective of this Plan and Strategy is to reduce disaster risks and potential damage caused by a disaster by establishing a comprehensive and coordinated disaster risk management system.¹⁹⁴ The definition of disaster provided in the policy, though not explicitly addresses IDPs, have relevance on the later. One of the important developments that this policy brought about is the “early warning system” that enables all stakeholders to prepare and act appropriately to reduce the possibility of harm,¹⁹⁵ or in case the harm can be prevented, prevent it beforehand. The policy document formulated the early warning system that comprises knowledge of risk, monitoring analysis and forecasting of hazard, dissemination of warning and local capacity building elements.¹⁹⁶ It is of paramount importance for the prevention of displacement and to reduce the adverse effect of the hazard in general, and displacement in particular. The document also emphasizes the

¹⁹¹ Ibid 13(6)

¹⁹²Registration of Vital Events and National Identity Card Proclamation No 760/2012 Federal Negarit Gazette, 18th Year No 58 Addis Ababa 2nd August (2012)

¹⁹³ Federal Democratic Republic of Ethiopia, National Policy And Strategy on Disaster Risk Management (2013)

¹⁹⁴ Ibid 4

¹⁹⁵ Ibid 19

¹⁹⁶ Ibid,

need to respond based on an early warning or disaster assessment information system.¹⁹⁷ It calls for a coordinated response at all levels and with all stakeholders to tackle the effect of disaster and hazards. Mechanisms for the provision of life-saving assistance and protection of properties are also included and the institutions are designated as a lead institutions based on the areas of their expertise. Vulnerable groups such as women, children, the elderly and persons with disabilities get special attention.¹⁹⁸ Internal displacement, however, is not the primary concern of this policy and strategy. Beyond defining the term “displaced” it does not direct a single IDPs specific measure or institution.

3.4.2. Ethiopia Durable Solutions Initiatives

Another very important policy document is the 2019 Ethiopian Durable Solutions Initiatives (DSI). The document was developed by Ethiopia with the joint work of the Ethiopian government, UN and NGOs. It provides a principled operational framework and platform to design and implement durable solutions for IDPs and host communities in Ethiopia.¹⁹⁹ It also aims to facilitate collective action and cooperation between government, people and international actors.²⁰⁰ This document incorporated various principles recognized in the Kampala Convention and UNGP. First, it endorses the definition of the durable solution provided in the Convention. The solutions considered as durable are sustainable return, local integration and resettlement.²⁰¹ Second, it set out that any durable solution to be pursued must be based on informed decision and voluntary choice of displaced.²⁰² It upholds the participation of IDPs in the planning and management of durable solutions. Third, it takes the position that enables the IDPs to be self-reliant as the ultimate goal of a durable solution. Finally, the need of the host communities is also included in the initiatives. What makes the adoption of DSI vital is that it is designed to apply to durable solutions regardless of the cause of the displacement. It works for all IDPs, be it those displaced by armed conflict, human rights violation, generalized violation, development-induced, or human or natural disaster. This initiative is designed to support the durable solution for IDPs at five levels; Policy, legislative, institutional, planning and operational level.²⁰³ However, DSI has only

¹⁹⁷ Enguday Meskele Ashine, ‘The Adequacy of Law and Policy Frameworks on Internal Displacement in Ethiopia: A Critical Appraisal, Romola Adeola (ed), National Protection of IDPs In Africa (2021)30

¹⁹⁸ DRMPS P(n 193)12

¹⁹⁹ Ethiopia Durable Solutions Initiatives (2019) <https://ethiopia.un.org/sites/default/files/2020-01/DSI%20Ethiopia%20low%20res.pdf>

²⁰⁰ Ashine E (n197) 31

²⁰¹ DSI(n 199)

²⁰² Ibid

²⁰³ Ibid

limited to one phase of displacement; the phase after displacement. The pre and during displacement phases are not included in the document. Despite the existence of this initiative, the Ethiopian government has been criticized for coercing IDPs to return.²⁰⁴ In some cases, the government demolished camps so that the IDPs return to their home.²⁰⁵

3.5. The IDPs Related Institutional Mechanisms in Ethiopia

3.5.1. Ministry of Peace (MoP)

This Ministry was established in 2018 along with other Ministries.²⁰⁶ It works cooperatively with all other stakeholders to ensure public peace and order. It also prepares and develops strategies to the same end. Furthermore, MoP is authorized to ensure the protection of all citizens living in the country which, needless to mention, includes IDPs. More directly, MoP has mandated to lead and follow up on the issue of returnees. Returnees are IDPs so long as they do not obtain durable solutions. Furthermore, the Ministry is also responsible for the implementation and follows up of the Kampala Convention.²⁰⁷ In this connection, MoP's mandates are not clearly provided, no direction to that effect given thus, it is doing nothing so far.²⁰⁸ The Ministry also leads the Task Force for IDPs which comprises of other Ministry level institutions such as Ministries of Health, Water, Energy & Irrigation, Education, Agriculture, Transport the Attorney General, and the Disaster Risk Management Commission.²⁰⁹ The task force is not a permanent institution.²¹⁰ They just come together to respond to the humanitarian and other needs of IDPs after their displacement. They work with regional authorities as well. Specifically, with the regional Disaster Risk Management

²⁰⁴ Ethiopia's Treatment of its Own IDPs Making Crisis Worse, <https://reliefweb.int/report/ethiopia/ethiopia-s-treatment-its-own-idps-making-crisis-worse>

²⁰⁵ Ibid

²⁰⁶ FDRE Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No 1097/2018, Negarit Gazette 25th Year No 8th Addis Ababa 29th November (2018)

²⁰⁷ Ratification Proclamation (n10) Art 4

²⁰⁸ Interview With Yetbaruk Tasfaye, MOP, Early Warning and Preparedness Acting Directorate, Conducted in 23rd September 2021, Addis Ababa Ethiopia.

²⁰⁹ Addis Standard Magazine, Feature: 'How Ethiopia Is Dealing With Unprecedented IDPs Crisis' 15th July 2019 available at: <https://addisstandard.com/feature-how-ethiopia-is-dealing-with-unprecedented-idp-crisis>. Accessed on 21 September 2021

²¹⁰ Interview with Mengistu A. Ministry of Peace, Legal Department Directorate, conducted on 17th December (2021), Addis Ababa Ethiopia

office. According to Mengistu, the Ministry designated Directorate which works on prevention of displacement and recovery and rehabilitation of IDPs.²¹¹

In short, MoP is a very important institution for the prevention of displacement and protection of IDPs in various ways. First, it works to ensure peace and security and avoid the sources of conflict given the fact that conflict-induced disablement is prevalent. Its coordination with other institutions also matters most.

3.5.2. Disaster and Risk Management Commission

DRMC is the federal autonomous office established by the Council of Ministers Regulation number 363/2015. The implementation and realization of DRMPS and the coordination and monitoring of the activities to be carried out by lead institutions are the purpose of its establishment.²¹² The Commission reports to MoP. It is responsible for the prevention of disaster by raising awareness and through its early warning systems. Further, it is mandated to the mitigation of the impacts disaster via recovery and rehabilitation mechanisms.²¹³ The Commission is not established for the specific purpose of handling displacement and IDPs. But it works on the prevention of disaster and the recovery and rehabilitation of victims of the disaster which includes IDPs. The Commission works on both natural and man-made disasters. For purpose of the Commission, manmade disaster includes conflicts induced but not development projects induced.²¹⁴

3.5.3. Ethiopian Human Rights Commission and Institute of Ombudsman

EHRC and EIO are established as autonomous federal institutions by proclamation No 211 and 210/2000, respectively. Although not established with the specific objectives of IDPs, both institutions as National Human Rights Institutions play pivotal roles in the protection and promotion of the rights of IDPs. EHRC has the promotion, protection, monitoring, and consultancy role of human rights in Ethiopia. It is responsible for ensuring respect for human rights by government organs and private actors.²¹⁵ It promotes human rights by preparing various symposiums on pressing human rights concerns. Furthermore, EHRC is responsible for the investigation of human right violation by its own initiative or upon complaint by

²¹¹ Ibid

²¹² National Disaster Risk Management Commission Establishment Council of Ministers Regulation No. 363/2015 Federal Negarit Gazette 22nd Year, No 15 Addis Ababa.

²¹³ Ibid Art 4

²¹⁴ Interview with Alegsaw Kassa, DRMC, Legal Department Directorate, Conducted on 7th September 2021, Addis Ababa Ethiopia.

²¹⁵ FDRE, Ethiopian Human Rights Commission Establishment Proclamation No 210/2000, Federal Negarit Gazette 6th Year No 40, Addis Ababa 4th July (2000) ART. 6(1)

victims.²¹⁶ Recently, the Commission designated the department responsible for the rights of Refugee and Internal Displacement.²¹⁷ This is an important development that contributes to the protection and promotion of IDPs. On the other hand, EIO is there to protect citizens from maladministration. It is relevant to IDPs especially when there are complaints related to administrative issues.

3.5.4. Other Institutions

The Courts, Police Commissions, Ethiopian National Election Board, House of Peoples Representative, the Reconciliation Commission are some of the major national institutions that have paramount importance in the protection and assistance of IDPs. In short, the assessment of these institutions shows that there is no single designated institution for the prevention of displacement and protection of IDPs. Though the MoP is assigned to implement and follow-up the Convention, its power and functions in this regard are not clear. There is also a lack of coordination among institution and absence of means of accounting for their (i) responsibility.

3.6. Analysis of Legal and Institutional Arrangements vis-a-vis the AU Convention and the Major Challenges and Prospects

Now we have seen what the Kampala Convention requires State Parties to do and the current Ethiopian legal, policy and institutional arrangements relating to IDPs. This section portrays what has been done so far and what measures need to be taken by the Ethiopian government by identifying the gaps. As discussed in the preceding chapter, the Kampala Convention provides the duties of States at all phases of displacement. In pre-displacement phase, it requires the State Parties to ensure the prevention of arbitrary displacement. Under the Convention, arbitrary displacement is prohibited and criminalized. However, the assessment of Ethiopian laws reveals that all forms of the offense of arbitrary displacement are not prohibited and criminalized.

The Convention also requires State Parties to enact IDP-specific laws, policies, strategies, and plans (Art 3(2)). The analysis of the existing laws reveals that there is no comprehensive legal instrument devised for the prevention of displacement and protection and assistance of IDPs in Ethiopia. However, there are laws that regulate some phases of displacement or some aspects of the right of the IDPs. For instance, the Constitution has provisions requiring

²¹⁶Ibid Art 6(4)

²¹⁷ Interview with Enguday Meskele Ashene, Sinor Advisor, EHRC, Refugees, IDPs and Migrants Department, conducted on 8th September 2021

payment of compensation to the victims of development-induced displacements (Art (44). The electoral law tried to recognize and ensure the political participation of IDPs (Art 38 of the proclamation). Although its implementation on the ground is beyond the ambit of the study, this is the new and important measure that Ethiopia took in line with the Kampala Convention. Only few IDPs in camps have participated in the allegedly controversial 6th national election.²¹⁸ This is due to security issues and other factors. Furthermore, Land and Expropriation law covers issues related to Development Induced Displacements. It provides compensations of various forms and recognizes the free and informed consultation of IDPs. However, there is no law directly addressing conflict-induced displacements. The Convention, on the other hand, obliges the State Parties to respond to all causes of displacement without any discrimination. In this regard, there is a clear violation of these provisions by Ethiopia. The Constitution contained robust fundamental freedoms and human rights. Only a few provisions have direct relevance to IDPs. As it stands now, the existing Ethiopian laws are not comprehensive to ensure the protection and assistance of IDPs. Therefore, for Ethiopia to fill the legal gap and effectively curb the IDPs related problems, it should adopt IDP-specific laws in line with AU Model Law.

In a similar vein, Ethiopia's policies, plans and strategies are not comprehensive enough. The Disaster Risk Management Plan and Strategy focuses more on man-made and natural disaster-induced displacement. It is also not IDPs-specific policy. It lacks room for conflict-induced, development-induced displacements, and displacements caused by generalized violence. Moreover, the DSI came up with important initiatives to bring a durable solution to IDPs' plight. As discussed above, it creates a platform for players of different levels (international, national, regional, and local). It reaffirms the voluntary nature of the solution and must be in consultation with IDPs and host communities. The problem with this policy is that it is limited to the last phase of displacement. Therefore, in Ethiopia, there is a need to have a clear and comprehensive policy that addresses all causes of displacement and at all phases.

The Convention further, obliges the State Parties to designate an institution that deals with IDPs (Art.3(2)(b). The role and functions of above mention institutions are relevant but not in

²¹⁸Enguday Meskele Ashine&Omotunde Enigbokan, 'Making the right to vote of IDPs a reality: Lessons from Ethiopia' AfricLaw Blog,8 July, 2021. Available at:<https://africlaw.com/2021/07/08/making-the-right-to-vote-of-idps-a-reality-lessons-from-ethiopia/>accessed on 21st September 2021

a way they can effectively handle the internal displacement. The MoP and DRMC have joint and several responsibilities towards internal displacement. Even though assigned with duty to follow up the implementation of the Convention, MoP is doing nothing in this regard. Nor it has clear mandate.

During the displacement phase, the Convention obliges the State Parties to protect the right of IDPs and assists. This protection includes ensuring that IDPs are not discriminated against and their human rights protected and respected. Regarding the assistance, the Convention puts that State has the primary duty to assist IDPs. Article 89(3) of the FDRE Constitution provides the same. In case, States cannot assist because of a lack of resources, the Convention provides that they should request international cooperation. They should allow unimpeded access to humanitarian support. At the same time, the humanitarian organizations should operate following the national law of the State. The problem here is the sensitivity of the sovereignty on one hand and the need to address humanitarian needs on the other. In this connection, the Ethiopian government has been accused of imposing restrictions on how international aid organizations operate and its failure to protect the security of aid workers.²¹⁹ The government on its part accuses the aid organizations of siding with what it calls “terrorist groups”.²²⁰ There is also a view that the assignment of displacement to MoP is inappropriate as it cannot be politically neutral.²²¹ The fact that the Ministerial Task Force is *ad hoc* as opposed to permanent is also a problem to address the displacement from its sources. Their work with regional DRMCs needs an improvement as; hitherto there is only one region that has established its commission at all levels.²²² In short, the absence of a single designated institution for the prevention of displacement and protection of IDPs is problematic.

Seeking a durable solution is the last phase of displacement whereby the IDPs return to their home, seek reintegration to where they temporarily settled, or resettle in other parts of the country. DSI embraced the definition of durable solution as given under the Convention. Several IDPs are believed to be returned or resettled in other parts of the country. However,

²¹⁹Aid Neutrality under Fire in Ethiopia’s Widening Conflict The new Humanitarian 22 July 2021, available at: <https://www.thenewhumanitarian.org/news/2021/7/22/Ethiopian-government-accuses-aid-Tigray-rebels-disinformation>. Accessed on 21st September 2021.

²²⁰Ethiopia Accuses Aid Groups of arming Tigray Fighters, AP News, 15th July 2021, available at: <https://apnews.com/article/africa-ethiopia-cc5d22460b7990a48796b23cf8525285> Accessed on 21st September 2021

²²¹Interview with Alegsaw Kassa (n 214)

²²² Ibid, Only Oromia Regional State has such arrangements

there is an allegation that some of them are coerced.²²³ Regarding the payment of compensation, the Ethiopian government reserved itself from the duty provided under the Convention.²²⁴ I do not think this reservation is appropriate. Government has to protect citizens and when it fails to do so; should compensate victims.

3.6.1. The Prospects for the Implementation of the Convention

A few years back, Ethiopian governments did not recognize the very existence of IDPs. Nor, the issues of IDPs were sensitive *per se*. From both assessments of the existing legal regimes and interviews with the key institutions, it can be argued that there are some positive and promising measures taken which can be counted as a base for implementation of the Convention. For instance, the establishment of Refugee, IDPs and Migration Directorate in EHRC with mandates ranging from investigating; reporting of the plight of IDPs and provision of training for stakeholders on the IDPs-related matter is a good development. It shows the change of attitude towards IDPs and an attempt to mainstream IDPs' concerns. The engagement of the EDRMC with IDPs despite the absence of a clear mandate on the matter and adoption of DSI also reflects the same. Establishment of Ministerial Taskforces that MoP leads also shows that there is development. Existences of law related to development induced displacement and regarding the IDPs' right to participate in the election, some policies measures taken so far constitutes that the existence of promising environment for the implementation of the Convention. Second, the adoption of the AU Model Law is another positive measure taken. Enacting domestic legislation needs not only the commitment to do so but also necessary skills and expertise which have budgetary implications. Now, States can refer to the Model law. However, these measures are not enough for the effective implementation of the Convention and there are challenges as well.

²²³ Refugee International, 'Ethiopia's Treatment of its Own IDPs Making Crisis Worse', 20 May 2019 available at: <https://www.refugeesinternational.org/reports/2019/5/17/ethiopias-treatment-of-its-own-idps-making-crisis-worse> Accessed on 21st September 2021

²²⁴ FDRE African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa Ratification Proclamation No 1187/2020 Federal Negarit Gazette 26th Year No 24 Addis Ababa March (2020) Article 3

3.6.2. Potential Challenges for Implementation of the Convention in Ethiopia

3.6.2.1. The Recurring Conflicts and Human Rights Violations

The cause of conflict in Ethiopia is multifold. Conflict on natural resources such as grazing land and water is common in Ethiopia. Ethnic conflicts in border areas are also common. On the other hand, displacement caused by conflict and violation of rights constitutes a significant portion of displacement compared to other causes of displacement. In Ethiopia, the conflict has been a cause for the displacement of the population for a long. Ethio-Eritrea war, the conflict between Somali and Oromia Regional States, Conflict between Guji Oromo and Gedio peoples, conflicts in Metekel area of Benishangul Regional State, the conflict between OLA and Ethiopian government in many parts of Oromia; most recently the war going on in Tigray, Afar and the Amhara Regional States. This is to say, recurring conflict and human right violation in Ethiopia can be taken as one of the challenges for the implementation of the Kampala Convention. The Convention has addressed the root causes of displacement as one of its objectives. Implementing the Convention and meeting the objective of the Convention is a difficult task where there are recurring conflicts. There is conflict means there is displacement and there is displacement means there is a challenge for the implementation of the Convention. Therefore, all sources of conflict, including the political conflicts in the country, should be handled carefully.

3.6.2.2. Lack of Coordination among Institutions and Means of Accounting Them

The mandate of following up the implementation of the Convention is given to the MoP.²²⁵ It is also responsible for leading the Task Force on IDPs. This is ad hoc institutional arrangements. There is very weak coordination among the ministries on one hand and between the members of Task Force and the Regional Disaster Risk Management office on the other. Only one regional state has a well-structured disaster risk management office at all levels. The mandates of the Ministries relating to the implementation of the Convention are also not clearly provided. The Ministries raise the security concerns to reach to IDPs.²²⁶ The interview with key informants reveals that none of these institutions provide training for those officials who work the job on the ground.²²⁷ Even no formal orientation given for those operate on the field. Nor the convention is duplicated in local vernaculars. Therefore, lack of

²²⁵ Id, article 4

²²⁶ Interview With Yetbaruk Tasfaye (n208)

²²⁷ See to Interview with Alegsaw Kassa and EngudayMeskele.

coordination and accountability is one of the challenges for the implementation of the Convention and the prevention of displacement and Protection and assistance of IDPs in Ethiopia.

3.6.2.3. Absence of Centralized Data Center which Register and Identify the Need of IDPs

As discussed above, Kampala Convention requires the establishment of a system that registers IDPs and issues the necessary documents. Registration and profiling of IDPs have various importance; it helps to decide about budget allocation, identify the need of IDPs to provide life-saving and/or other forms of assistance. Ethiopia lacks such a system.²²⁸ To respond to the need of IDPs on the field, DRMC for instance, first obtain the number from the Regional States where the IDPs live and then send some group to recheck the number. Both ways of assessment are not in a systematic way and only targets camps. But some IDPs are living with relatives, not in camps.²²⁹ Further, Regional States, in most cases, report aggravated numbers to obtain additional budgeting and assistance.²³⁰ This affects the already inadequate budget. As the implementation of provisions related to the protection and assistance, and seeking of a durable solution is dependent on the number of registered IDPs, absence of centralized data center which register, profile and identify IDPs' need is one of the challenges for the implementation of the Convention in Ethiopia. Even for researchers and policymakers.

3.6.2.4. Reservations

Ethiopia ratified the Kampala Convention with reservations to some provisions specifically, regarding payment of compensation and jurisdiction of the African Court of Human Rights.²³¹ The ratification proclamation provides that Ethiopia is not bound to pay compensation for the victims of disaster-induced displacement even if the displacement is due to the fault of the government officials or entities. The only responsibility is ensuring the accountability of the perpetrators and continuance of the humanitarian assistance.²³² Ethiopia's reservation on this provision violates its duty under international laws. Government has to protect and respect citizen's right to movement and choice of residence as

²²⁸ Interview with Alegnsaw Kassa (n214)

²²⁹ Ibid

²³⁰ Ibid

²³¹ Article 3(1)(c) and 3(1)a&b

²³² Ibid

provided under international human rights law. The duty to protect implies the duty to compensate when it fails to protect. Therefore, this reservation is inappropriate and it is one of the challenges for the implementation of the Convention and then, to the reduction of the plight of IDPs.

3.6.2.5. The ever Conflicting Concepts of Humanitarian Intervention and State Sovereignty.

The Convention calls for unfettered access of humanitarian aid on one and requires the humanitarian organizations to operate following laws of States where they operate on the other. This is to strike the balance between the concerns for humanitarian access and state sovereignty which has been a problem from the very beginning. Keeping such balance can be taken as one of the challenges for the implementation of the Convention and the protection and assistance for IDPs in Ethiopia. For instance, in the current armed conflict underway in Tigray, the humanitarian organization has blamed the federal government for not allowing access. The federal government, on its part, accuses them of aligning with the armed groups and by doing so interfering in its internal affairs. Further, the designation of MoP for implementation of the Convention exacerbates the same.

3.6.2.6. Financial Problems

The Convention obliges the State parties to allocate a budget for the problems relating to internal displacement (Art 3(2)). The financial limitation is, however, raised as one of the challenges for the implementation of the Convention in African which Ethiopia is not an exception. The interview with key informants and the reports from some humanitarian organizations reveal that there are budget limitations even to fulfill the basic needs.²³³ Further, the implementation of the Convention has huge financial implications. Therefore, given the economic and financial situation of Ethiopia, budget and financial issues can be challenges for the implementation of the Convention.

²³³ Interview With Yetbaruk Tasfaye(n208), Interview with Alegnsaw Kassa (n214)

CHAPTER FOUR

CONCLUSION AND RECOMMENDATIONS

4.1. CONCLUSION

The Kampala Convention is the first regional legal document comprehensively addressing the issues of IDPs. It guarantees various rights of IDPs and imposes duties on both state parties and non-state actors. Among the duties it imposes on State Parties are the adoption of domestic legislation, policies, strategies, the designation of institutions, the duty to prevent and criminalize arbitrary displacement and the duty to protect, assist and seek durable solutions for IDPs. On the other hand, it guarantees the IDPs' right to non-discrimination, political participation, registration and getting their civil documents issued, freedom of movement, and choice of residence. Finally, it ensures the restitution of properties or payment of compensation for the damage sustained. However, only 31 African countries have ratified the Convention so far. Some 24 African states have not yet ratified it. This is something that needs attention. Even though it comes up with robust claimable rights, some challenges remain for its full implementation. These challenges include the budgetary problem and the inadequacy of the monitoring arrangements to ensure the implementation of the Convention.

Ethiopia ratified the Convention in 2020 with some reservations. This is commendable and constitutes a significant measure given the number and situation of IDPs in Ethiopia. Since 2017, Ethiopia has been home to up to three million displaced people. Because of various factors, they live in dire economic and social situations. Furthermore, the causes of displacement in Ethiopia include conflict, human rights violations, natural and man-made disasters, and development projects. Conflict-induced displacement, covering both armed conflict and generalized violence, contributes to the highest number of IDPs, followed by natural and manmade induced displacements. Displacement caused by development played a significant role as well.

Assessment of the IDPs' related current legal and institutional arrangements in Ethiopia is one of the concerns of the study. Accordingly, even though there is no single consolidated law aimed at the protection of IDPs, there are laws that directly or indirectly touch the issue. The FDRE Constitution has provisions addressing the issues of IDPs. The election proclamation along with its directives has provisions dealing with the participation of IDPs in elections.

Furthermore, the Land and Expropriation Proclamation cover various parts of Development Induced Displacement, including the payment of compensation. Compared to the previous proclamation, this new proclamation is pro-victims of Development Induced Displacements. The Constitution is too general to address the specific concerns of IDPs. The Penal Code criminalizes violations of human rights but not arbitrary displacement during peacetime. Hence, the close assessment of the existing laws reveals that these laws are inadequate to address the IDPs problem completely.

So far, Ethiopia has adopted some IDP-related policies. Even though not specific to IDPs, the Disaster Risk Management Strategy and Policies cover a range of IDP-related problems. The Durable Solution Initiatives (DSI) adopted by the Federal Government is also very important documents. However, it is limited to one phase of displacement, the last phase. Therefore, the existing policies, plans and strategies are not enough to effectively curb the IDP-related problem in Ethiopia.

Coming to institutional arrangements, recently, the Ethiopian government tried to assign the internal displacement problem to different institutions at different levels. The Disaster Risk Management Commission has the mandate to support the victims of natural and man-made disasters. It supports those displaced by climate-related problems, including floods and famine. An interview with the Commissions' Legal Directorate reveals that the conflict-induced problem falls within their mandate as it is one of the manmade disasters. However, it is only to assist victims. Regarding the natural disaster, the Commissions' mandate covers the provision of early warnings and rehabilitation/recovery of IDPs in addition to provisions of assistance. The Ministry of Peace is assigned to follow up on the implementation of the Kampala Convention. It is also serving as the lead institution for the *ad hoc* IDP Task Force established in 2018. The Ethiopian Human Rights Commission, the Ethiopian Institute of Ombudsman, the National Election Board, the Courts, and the Police Commission play an important role in the prevention of displacement and protection of IDPs. However, the assessment of laws and interview results shows lack of coordination and gaps related to mandates of these institutions is one of the challenges for the implementation of the Convention.

Many praised Ethiopia's ratification of the Convention hoping that it will bring about change with regards to internal displacement and the situation of the displaced in Ethiopia. On the one hand, it imposes several duties on the government and, on the other; it recognizes many

rights of IDPs. It creates a platform whereby state parties cooperate. It calls for cooperation among international actors as well. This is very important to reduce the apparent budgetary problem related to assistance and support for the displaced. If put to work, the Convention could significantly address the problem of IDPs in Ethiopia.

This, however, is dependent on the identification of the challenges to curb them and the prospects utilizing them well. The centerpiece of this study is the identification of such challenges and prospects from a legal and institutional context. Accordingly, there are some positive measures taken so far which can be a base for the implementation of the Convention. First, the fact that various governmental institutions are recognizing IDPs as a national challenge and are taking measures, including assigning the department for it. As discussed above, the EHRC established a Refugee and IDPs Department; there is the same arrangement in MoP and NEBE. Furthermore, more than anytime else, IDPs are becoming the common parlance among the policymakers and media in Ethiopia. Adoption of the laws and policies mentioned above manifests the same. In other words, there is a promising and fertile ground for advancement of IDPs' rights and ensuring their protection and assistance, which is important for the implementation of the Convention. This in no way means that they are adequate. Second, the inclusion of IDPs in elections is an important development that can be a lesson for others. Finally, the adoption of the AU Model Law is the other important opportunity for the implementation of the Convention. As mentioned in the preceding chapters, the Convention obliged state parties to adopt national laws that specifically address IDPs' problems. However, the adoption of such a law is not an easy task. It requires research, skills and expertise, which are difficult to afford, if not impossible, for developing countries like Ethiopia. Therefore, it makes it easier for States to adopt domestic legislation and helps with the implementation of the Convention. Compared to the level of the IDP problem in Ethiopia, these are not adequate. The study identified the following issues as major obstacles or challenges to the implementation of the Convention in Ethiopia.

- ✚ Inadequate coordination among institutions, as well as a lack of accountability for failures;
- ✚ The reservations made to the Convention's provisions;
- ✚ Absence of a system and institutions that centrally record and register information relating to IDPs;
- ✚ The recurring conflict and human rights violations in the country;
- ✚ Budget related problems

- ✚ The ever diverging nature of the international humanitarian intervention and State Sovereignty

4.2. Recommendation

1. Effective implementation of the Convention needs adoption of IDPs Specific domestic legislation. Therefore, Ethiopia government needs to adopt specific domestic legislation that comprehensively addresses internal displacement following AU Model Law.
2. Effective implementation of the Convention, prevention of displacement and, protection and assistance of IDPs requires existence of specific institution responsible for coordination and mobilization of resources and efforts. So do seeking the durable solutions for IDPs. Hence, Ethiopian Government needs to establish or designates such institution. Or else, give a clear mandate to the Ministry of Peace.
3. It is mentioned that conflict is the main cause of displacement in Ethiopia. This implies that Ethiopia government should effectively work to prevent conflict and improve the conflict resolution mechanism. The MoP and the Reconciliation Commission play a vital role in this regard.
4. As the absence of a centralized data collection and management system is one of the challenges. Ethiopian government should systematize IDPs related data collection and management system.
5. Dissemination of the Convention by translating it into local languages and awareness rising through training and other mechanism expedite the implementation of the Convention. Therefore, it is commendable for governmental institutions such MoP, DRMC and EHRC and civil society organizations to take a concerted efforts in this regard.
6. It is apparent that the implementation of the Convention and the protection and assistance of IDPs require a huge budget. This can be beyond the capacity of the country. As it is also provided in the Convention itself, it can be reduced by working with local and international actors. Such cooperation requires having smooth relations with humanitarian organizations and State Parties. In this connection, Ethiopian government needs to facilitate a conducive environment for international humanitarian organizations and other states for their cooperation.

References

Books

- Anne Koch, “On the Run in Their Own Country Political and Institutional Challenges in the Context of Internal Displacement”, SWP Research Paper (2020)
- Ayalew Getnet, “The Protection of Internally Displaced Persons: An Assessment of The Legal and Institutional Framework in Ethiopia” Bahir Dar University (2019)
- Brooking Institution, “Handbook for Applying the Guiding Principles on Internal Displacement” Bern University, (1990)
- BrookingInsitution, ‘Protecting Internally Displaced Person: A Manual for Law and Policymakers’ University of Bern,(2008)
- Cathrine Brun, “Research Guide on Internal Displacement “Norwegian University of Science and Technology (2005)
- Cohen Roberta and Deng, Francis, ‘Masses in Flight: The Global Crisis of Internal Displacement, Brookings Institution Press, (1998)
- Cohen Roberat, Francis Mading Deng, the Forsaken People: Case Studies of the Internally Displaced Brookings Institution Press (1998)
- Enguday Meskele Ashine, ‘The Adequacy of Law and Policy Frameworks on Internal Displacement in Ethiopia: A Critical Appraisal, Romola Adeola (ed),National Protection of IDPs In Africa(2021)
- IASC Framework on Durable Solution for Internally Displaced Persons, The Brookings Institution – University of Bern Project on Internal Displacement, (2010)
- Internal Displacement Monitoring Centre (IDMC), Internal Displacement: Global Overview of Trends and Developments in 2009, Geneva, IDMC, (2010)
- Mehari Taddle Maru, “Causes, Dynamics, and Consequences of Internal Displacement in Ethiopia” Working paper FG8 (2017)
- MahariTadaleMaru, ‘The Kampala Convention and Its Contributions to International LawLegal Analyses and Interpretations of the African Union Convention for the Protection and Assistance of Internally Displaced Persons’Eleven International Publishing (2014)
- Michael Salter and Julie Mason, ‘Writing Law Dissertation’ Pearson Education Limited Essex, England (2007)

- Mike McConville and Wing Hong Chui (eds), 'Research Method for Law' Edinburgh University Press, (2007)
- Tesfaye Tola, 'State Obligation for the Protections of the rights of IDPs: In Case of Oromo People displaced from Ethiopian Somali region', Addis Ababa University School of Law (2019)
- Sen Amartya, Poverty and Famine: An Essay on Entitlement and Deprivation, Oxford University Press, New York, (1981)
- Walter Kälin, Addressing Internal Displacement: A Framework for National Responsibility, The Brookings Institution-University of Bern Project On Internal Displacement, (2005)
- UNHCR and IPU, 'Internal Displacement: Responsibility and Action' Handbook for Parliamentary(2013)
-

Journals

- AllehoneMulugeta, 'Legal and Institutional Dimensions of Protecting and Assisting Internally Displaced Persons in Africa' (2009) 22 JRS155,
- AllohoneMulugeta, 'The African Union Convention on Internally Displaced Persons: Its Codification Background, Scope, And Enforcement Challenges', Refugee Survey Quarterly Vol. 29, No. 3 (2010)
- ChalokaBeyani, 'Recent Developments: The Elaboration of a Legal Framework for the Protection of Internally Displaced Persons in Africa', Journal of African Law / Volume 50 Issue 02 (2006)
- ChalokaBeyani, 'A view from inside the kitchen of the Kampala Convention: the modernisation of the international legal regime for the protection of internally displaced persons' LSE Law, Society and Economy Working Papers (2020)
- Erin Mooney, 'The Concept of Internal Displacement and the Case for Internally Displaced Persons as a category of Concern' Refugee_Survey Quarterly, Vol. 24, Issue 3 (2005)
- Francis M Deng, 'From 'Sovereignty as Responsibility' to the 'Responsibility to Protect', Koninklijke Brill NV, Leiden (2010)
- JakobKellenberger, 'The ICRC's Response to Internal Displacement: Strengths, Challenges and Constraints' International Review of the Red Cross, Volume 91 Number 875 (2009)

- JO Moses Okello, 'In Lieu of a *TravauxPréparatoires*: A Commentary on the Kampala Convention for IDPs' (2019) 31 IJRL349,
- MahariTadale Maru, 'The Kampala Convention and Its Contribution in Filling the Protection Gap in International Law', *Journal of Internal Displacement* Volume 1 Number1 (2011)
- Michael Barutciski, 'Tensions Between the Refugee Concept and the IDP Debate', *Forced Migration Review* 3 (1998)
- R Cohen, 'Strengthening Protection of IDPs: The UN's Role', *Georgetown Journal of International Affairs* (2006)
- Roberta Cohen, 'The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting' (2004)
- Thomas G Weiss, 'Internal Exiles: What Next for Internally Displaced Persons?', *Third World Quarterly*, Vol 24, No 3, (2003)
- Walter Kalin, 'Guiding Principles On Internal Displacement Annotations' *SIL Studies in Transnational Legal Policy* No. 32,
- Walter Kälin, 'How Hard is Soft Law? The Guiding Principles on Internal Displacement and the Need for a Normative Framework'(2001)
- Yigzaw and et.al, 'Causes and Impacts Of Internal Displacement in Ethiopia' *African Journal of Social Work*, 9(2), (2019)

Laws

- African Union Model Law for the Implementation of the African UnionConvention for the Protection of and Assistance to Internally Displaced Persons in Africa (2018)
- African Union, 'African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ("Kampala Convention")' 23 October (2009)
- The UN Guiding Principles on Internal Displacement U.N. Doc. E/CN.4/1998/53/Add 2 (1998)
- African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa Ratification Proclamation No 1187/2020, FDRE Negarit, Gezette, 26th year No 24 Addis Ababa, 13rd March, 2020
- FDRE Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No 1097/2018, Negarit Gazette 25th Year No 8th Addis Ababa 29th November (2018)

- The Federal Democratic Republic of Ethiopia, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa Ratification Proclamation No1187/2020, *Federal Negarit Gazette, 26th year No 24*, Addis Ababa, 13 March (2020)
- Federal Democratic Republic of Ethiopia, National Policy and Strategy on Disaster Risk Management (2013)
- FDRE, Ethiopian Human Rights Commission Establishment Proclamation No 210/2000, Federal Negarit Gazette 6th Year No 40, Addis Ababa 4th July (2000) ART. 6(1)
- Proclamation No. 1/1995 Proclamation of the Constitution of the Federal Democratic Republic of Ethiopia, 1st Year No1 Addis Ababa 21st August 1995
- Expropriation of Land holdings for Public Purposes, Payments of Compensation and Resettlement of Displaced People Proclamation No 1161/2019, Federal Negarit Gazette, 25th Year No 90 Addis Ababa 23rd September (2019)
- The Ethiopian Electoral, Political Parties Registration and Election's Code of Conduct Proclamation No 1162/2019 Federal Negarit Gazette, 25th Year No 97 Addis Ababa 16th October (2019)
- International Covenant on Civil and Political Rights (adopted 16 December 1966 entered in to force 23 March 1976)999 UNTS 171(ICCPR)
- Organization of African Unity (OAU), Constitutive Act of the African Union, (1 July 2000,)
- Registration of Vital Events and National Identity Card Proclamation No 760/2012 Federal Negarit Gazette, 18th Year No 58 Addis Ababa 2nd August (2012)
- National Disaster Risk Management Commission Establishment Council of Ministers Regulation No. 363/2015 Federal Negarit Gazette 22nd Year, No 15 Addis Ababa
- NEBE Directive on Special Polling Station Directive Number 13/2013

Reports

- IDMC, 'African Report on Internal Displacement' (2017)
- IDMC, Global Report on Internal Displacement (2018)
- (IDMC), 'Global Report on Internal Displacement Report' (2019)
- IDMC, 'Global Report on Internal Displacement' (2020)
- International Organization for Migration (IOM), 'National Displacement Report for Ethiopia' (2019).

- International Organization for Migration (IOM), National Displacement Report for Ethiopia (2020)
- OCHA Emergency Site Assessment, Northern Ethiopia Crisis 7 - Data Collection 1 - 26 June 2021, Publication Date - 13 August (2021)

Online sources

- Addis Standard Magazine, Feature: How Ethiopia Is Dealing With Unprecedented IDPs Crisis 15th July 2019 available at: <https://addisstandard.com/feature-how-ethiopia-is-dealing-with-unprecedented-idp-crisis>, accessed on 21 September 2021
- Aid Neutrality under Fire in Ethiopia's Widening Conflict The new Humanitarian 22 July 2021, available at: <https://www.thenewhumanitarian.org/news/2021/7/22/Ethiopian-government-accuses-aid-Tigray-rebels-disinformation>. Accessed on 21st September 2021.
- Ethiopia Durable Solutions Initiatives (2019) <https://ethiopia.un.org/sites/default/files/2020-01/DSI%20Ethiopia%20low%20res.pdf> Ethiopia's Treatment of its Own IDPs Making Crisis Worse, <https://reliefweb.int/report/ethiopia/ethiopia-s-treatment-its-own-idps-making-crisis-worse>
- Ethiopia Accuses Aid Groups of arming Tigray Fighters, AP News, 15th July 2021, available at: <https://apnews.com/article/africa-ethiopia-cc5d22460b7990a48796b23cf8525285> Accessed on 21st September 2021
- Refugee International, Ethiopia's Treatment of its Own IDPs Making Crisis Worse 20 May 2019 available at: <https://www.refugeesinternational.org/reports/2019/5/17/ethiopias-treatment-of-its-own-idps-making-crisis-worse> Accessed on 21st September 2021