



## **State Obligation for the Protections of the rights of IDPs: In Case of Oromo People displaced from Ethiopian Somali region**

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Research submitted to College of Law and Governance Studies, in partial fulfillment for the requirement of the Degree of Master of Law (LL.M), in **public International law**

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**LL.M in Public International Laws** at Addis Ababa University School of Law

**Addis Ababa University  
School of Graduate Studies  
School of law  
June 2019**

**Approved Sheet by Board of Examiners**

State obligation for the protections of the rights of IDPs: In the case of Oromo people displaced from Ethiopian Somali region

Hereby, I Tesfaye Tola Wakayo declared as the thesis, titled as “**State obligation for the protections of the rights of IDPs: In the case of Oromo people displaced from Ethiopian Somali region**”, is my original work prepared by my own effort under the close advice and guidance of my advisor. The sources and materials used in this work had cited according to Oxford standard for Citation of Legal Authorities (OSCOLA).

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Here with, I state Tesfaye Tola Wakayo has carried out this research works on the title “**State obligation for the protections of the rights of IDPs, in case of Oromo people displaced from Ethiopian Somali region**”, under my supervision and it is sufficient for submission for the partial fulfillment of the award of LL.M degree **In Public International Law**.

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2. \_\_\_\_\_ /2019



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## Acronyms

AU	-----	African Union
FDRE	-----	Federal Democratic Republic of Ethiopia
GP	-----	Guiding principle on internal displacement
IDMC	-----	Internal displacement monitoring Center
IDP	-----	Internal Displaced person/people
KC	-----	Kampala convention
NDRMC	-----	National Disaster Risks Management Control
NRC	-----	Norway Refugee Council
SNNPRS	-----	Southern Nations Nationalities and people's regional State
OCHA	-----	United Nations Office for the Coordination of Humanitarian Affairs
ONLF	-----	Ogaden National Liberation Front
OSCOLA	-----	Oxford University Standard for Citation of Legal Authorities
UNHCR	-----	United Nations High Commissioner for Refugees
ICC	-----	International Criminal Court
ICISS	-----	International Commission on Intervention and State Sovereignty
SNNPR	-----	Southern Nation's Nationalities and peoples Region

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## ***Abstract***

*Internally displaced person (IDPs) are a person or a group of people who displaced from their home or permanent residence and flee to another part of their country without crossing international border because of natural or manmade disasters. Since IDPs are a person or group of people who displaced from their property and home, they are vulnerable groups who need special protection and assistance. Because of this the relevant international law like GP and KC, imposes primary obligation on state to provide protection and assistance to their IDPs within their territory.*

*The protection and assistances provided to IDPs have enforced through pillars of state obligation; obligations to respect, protect, and fulfill/provide based on the rights of IDPs, identified under Guiding Principle as worldwide legal standards. GP provide universal legal standard by imposing obligation on state or concerned authority, which includes obligation to respect and protect the rights of IDPs such as the right to be protected from arbitrary displacement, the right to life, dignity, morality, physical integrity, and liberty of IDPs by preventing any acts that violates the rights of IDPs.*

*State has also obligation to fulfill/provide the rights of IDPs, which includes the right to provide immediate humanitarian assistance, durable solution, basic needs, and social service, as well as obligation to provide effective legal frameworks, and legal remedy both in case of civil and criminal matters.*

*In case of Oromo IDPs displaced from Ethiopian Somali region, Ethiopia government did not fulfill its obligation to protect the right of IDPs to be protected from arbitrary displacement, the right to life, dignity, morality, physical and mental integrity of IDPs.*

*Concerning obligation to fulfill/provide, Ethiopia fulfills its obligation to provide humanitarian assistance to Oromo IDPs displaced from Somali regions in 2017. But until now Ethiopia didn't fully fulfill its obligation to provide durable solution, obligation to provide basic needs and social service and obligation to provide effective legal frameworks and legal remedy both in case of civil and criminal matters for the protection of the rights of its IDPs particularly in case of Oromo IDPs displaced from Ethiopian Somali region.*

# CHAPTER ONE

## Introduction

### 1.1. Background of the study

Internally displaced persons (IDPs) are individual persons or group of persons who have been forced to flee from their home and their permanent residence because of human made or natural disaster but remain within the border of their own country<sup>1</sup>. At the failure of international law, the issues of internal displacement has been recognized as a legitimate matter of Global concern in the early of 1990s in which normative frameworks addressing the problem of IDPs have been developed at national and international levels<sup>2</sup>.

Then in 1998, the UN developed 'Guiding principles on internal displacement (GP)', which is a soft law that set the foundation for global, regional, and national approaches and initiatives to protect the rights of IDPs<sup>3</sup>. Following GP, African Union (AU) also recognized the problems of internal displacement in Africa by adopting Kampala convention of 2009 for the protection and assistance of IDPs in Africa that imposes obligation on state party to deal with whole problem arise with IDPs<sup>4</sup>.

Concerning Ethiopian domestic law there is no specific legislation that specifically addresses the issues of IDPs except general human right provision scattered in different national legislation like in national constitution, national criminal laws, and other rules like proclamation No.359/2003 system for the Federal intervention.

Currently in Ethiopia, we have seen thousands and million people that internally displaced from their home region and fled back to their respective ethnic regional states because of ethnic based conflict and violence or forced displacement. For Example in the year of 2012, at least 20,000 Amahara ethnic groups had displaced from Bench majji zone of SNNP Regional state and returned to Amahara region<sup>5</sup>. In 2017 above 12,000 Tigray people displaced from Amahara regional states while 400 IDPs had displaced from Oromia region and

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<sup>1</sup>Chaloka Beyani, 'Mapping the Response to Internal Displacement: The Evolution of Normative developments', (Brooking Institution, Washington, D.C 2003/2014). Project paper on Internal Displacement, pp 1.

<sup>2</sup> Erin Mooney, 'The Concept Of Internal Displacement And The Case For Internally Displaced Persons (UNHCR 2005,)' Journal Article Refugee Survey Quarterly, Vol. 24, Issue 3 pp. 10.

<sup>3</sup>Beyani (n.1)

<sup>4</sup>African Union Convention for the Protection and Assistance of IDPs in Africa 2009 at Kampala Art.4

<sup>5</sup>Argaw Ashine, 'Massive Expulsion of Ethnic Amhara Settlers from Southern Ethiopia' (*Tesfa News*, April 9, 2012: <https://www.tesfanews.net/massive-expulsion-of-ethnic-amhara-settlers-from-southern-ethiopia> last seen on June 19, 2019.

return to Tigray region<sup>6</sup>. In May 2018, about 900,000 ethnic Gedeo IDPs displaced from West Guji zone of Oromia region and settled to Gedeo zone of SNNP region<sup>7</sup>. In September to October 2018, about 70,000 ethnic Oromo and Amahara IDPs displaced from Benishangul Gumuz due to conflict and violence and settled in Wellega zone of Oromia region<sup>8</sup>.

At the end of 2017 nearly an estimated 600,000 ethnic Oromo IDPs displaced from Somali region and fled to Oromia region, while 242, 600 ethnic Somali IDPs displaced from Oromia regional state and fled back to Somali region due to conflict and violence<sup>9</sup>. In September 2018 internal displacement monitoring center reported as Ethiopia recorded the world's highest number of newly IDPs in 2018 with more than 1.4 million IDPs which was greater than the world's worst conflict zones Syria, 1.2 million IDPs and D. Republic of Congo 946,000 IDPs<sup>10</sup>.

Among the above IDPs, the **ethnic Oromo IDPs displaced from Somali region** in 2017 did not return to their permanent residence and they are also huge in number compared to other IDPs displaced from different parts of Ethiopia. According to the data of National Disaster Risk Management Commission (NDRMC) cited in OCHA, an estimated 857,000 IDPs displaced by conflict and violence in Ethiopian Somali and Oromia regional state<sup>11</sup> and about 637,000 IDPs or 60 % of the total IDPs are sheltered in camps across Oromia, Ethiopian Somali region, Harar regions as well as Addis Ababa and Dire Dawa site<sup>12</sup>.

## 1.2. Preliminary Literature review

Since IDPs displaced from their home and their property, they are a vulnerable society that needs special treatments and assistance which supported by legal and institutional frameworks both at international and national levels. However as (Magdalena Sepulveda and Others, 2004, p. 351) stated, even if IDPs need special protection and assistance like refuge, but IDPs are not protected under the refugee convention of 1951 or under UNHCR's Statute. They also stated that even as there is not yet a single international agency or international treaty that focuses on

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<sup>6</sup>Displacement Tracking Matrix (DTM) Tigray Region, 'Round 8: November to December 2017 Summary of key findings' (5 February, 2017) 1-2

<sup>7</sup>OCHA Ethiopia, 'Ethiopia: West Guji Gedeo Conflict Displacement', (Flash Update 22 May 2018) 1

<sup>8</sup>OCHA Ethiopia, 'Humanitarian Bulletin Ethiopia', (Issue 64' 17-30, September 2018) 1

<sup>9</sup>OCHA, 'Ethiopia: Oromia Somali Conflict-Induced Displacement Situation Report No. 4'. (New York: OCHA Ethiopia, 20 June 2018) .pp 1-3

<sup>10</sup>Internal displacement Monitoring center (IDMC) and NRC 'New displacements between January and June 2018'. (Geneva Switzerland, September 2018) pp.1-2

<sup>11</sup> OCHA, 'Ethiopia Conflict Displacement Situation Report', (23 January 2018) 1-2

<sup>12</sup> ibid

IDPs and as a large numbers of IDPs receive no humanitarian assistance or protection currently<sup>13</sup>.

A Global Protection Cluster Working Group (December 2007) founded that as the legal provision that may address the problem of IDPs has been scatered in different binding international laws and as the UN Guiding principle on Internal Displacement bring together those scattered legislations for the protections of the rights of IDPs under one document then, reflects the existing international legal standards for the protections of the rights of IDPs under international laws<sup>14</sup>.

Chaloka Beyant (2014), stated that, since IDPs are dispalced from their permanenet residence to other parts of the country, and remain within the national borders of their home state, as the legal obligation to provide protection for their rights are imposed on the national governements<sup>15</sup>.

Concerning Ethiopian legislation, which can be, govern the issues of IDPs at national level, Mehari Taddele (2017), found that, as Ethiopia has no inclusive policy document for the protection, recognition and institutionalization of the existence of internal displacement, which has supported by specific legislation in order to protect the rights of IDPs under the rule of law<sup>16</sup>.

Concerning thesis paper (Admasu Alemayeu, January, 2010, pg 128) after he overweiwed the AU response to internal dispalcement in Afraca by Kampla Convetions, he found that as Kampala convention does not expressly provide rules on the liability of state party for cousing damage to the property of IDPs<sup>17</sup>.

(Muhidin Aman 2016, pp 91 ) also found in his thesis work, in case of Addis Abeba urban city development project dispalcement as the compensation paid for IDPs were in anadequite

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<sup>13</sup>Magdalena Sepulveda and others, *Human rights reference hand books* (3<sup>rd</sup> revised edition: Casta Rick: Published and distribute by Univesity of Peace July 2004,)351

<sup>14</sup>Global Protection Cluster Working Group. *Hand book for the protection of internally displaced persons.* ( Geneva, December 2007) 16

<sup>15</sup>Beyant (n.1)

<sup>16</sup>Mehari Taddele Maru, *Causes, Dynamics, and Consequences of Internal Displacement in Ethiopia* , Working (Working Paper FG 8 May 2017 SWP Berlin ) pp 28-31

<sup>17</sup>Admasu Alemayehu, 'The African international displacement problem and the response of AU: An examination of essential features of the AU IDPs Conventions' (LL.M Thesis, Addis Ababa University 2010) 128.

and only to the property situated on expropriated lands where livelihoods lost, social cost of access to social services, moral and other material as well as non material losses<sup>18</sup>.

**However**, all the above literatures do not identify the specific rights of IDPs and obligation of state in protection of such rights of IDPs both under the existing international and national rules as well as whether or not the existing Ethiopian national legal frameworks are sufficient to provide protection for the rights of IDPs in Ethiopia. Moreover there is no literature that identifies whether or not Ethiopian government fulfills its state obligation by providing protection for the rights of Oromo IDPs displaced from Somali regions both under relevant international and national legal rules.

### **1.3 Statement of the problem**

As discussed under the background part, Ethiopia is the top state affected by internal displacements caused by conflict and violence in which about 1.4 million IDPs recorded in the mid of 2018. Among these IDPs displaced due to conflict and violence, those ethnic Oromo IDPs displaced from Somali region and settled in Oromia region did not return to their home region. Because of this they may be exposed to further violation of their rights and they need special protection both from national government and international community.

But even if IDPs are exposed to further violations of their rights just like refugees, but since IDPs have not crossed international borders, they are not protected under the 1951 Refugee Conventions, and no single international agency or international treaty that focuses on internal displacement at international level<sup>19</sup>. Its implications are since IDPs flee from their home but remain within their national boundary their issues are considered as internal concern and the **primary obligations** to protect their rights has imposed on the national authority<sup>20</sup>. Traditionally state have the primary obligation to provide protection and assistance for its IDPs without discrimination by incorporating international rules, or by developing national legislation or policy on internal displacement as a reflection of national responsibility and vehicle for its fulfillment of state obligations<sup>21</sup>.

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<sup>18</sup>Muhidin Aman, 'Development induced displacements in the Context of UN Guiding Principles and AU convention, experience from Addis Ababa city urban renewal Projects' (LLM Thesis, Addis Ababa University, 2016) 91.

<sup>19</sup>Sepulveda and Others (n.15) 351

<sup>20</sup>Beyani (n.1) 1

<sup>21</sup>Global protection cluster, 'Law and policy on internal displacement' (2018)

<http://www.globalprotectioncluster.org/themes/law-and-policy-on-internal-displacement> accessed On October, 29, 2018

Even if there is no binding worldwide convention and no binding international convention ratified by Ethiopia, but the UN Guiding principle on internal displacement of 1998, provide international legal standards for the protections of the rights of IDPs as a soft law. Additionally, AU Kampala Convention of 2009 and Rome statute of ICC 2002 are binding international legal document, applicable for the protections of IDPs. At the domestic level, Ethiopia has national **constitution** and national **criminal laws** that considered as the existing national legal frameworks, which may be applicable for the protections of the rights of IDPs in the absence of specific legislation on IDPs at national level.

Currently those Oromo IDPs displaced from Somali regions needs urgent support. For instance according to assessment of January 2018 at least about 110,000 house-holds were need urgent supports and about 93,000 IDPs childrens of both Oromia and Somalia's were interrupted their education while 1500 children both ethnic IDPs were reportedly separated from their family during the time of displacement<sup>22</sup>. The most critical needs were lack of food, shelter, sanitation, health and nutrition that need immediate intervention<sup>23</sup>. However, concerning these issues the existing literature does not address,

- The specific rights of IDPs and obligation of state in providing protection for the rights of IDPs under the existing international and national legal frameworks.
- About displacement situations of Oromo IDPs displaced from Ethiopian Somali regions and State response to protect their rights and to fulfill its state obligation to provide protection.
- As Ethiopia fulfills its state obligation to provide protection for the rights of these IDPs both under the existing **international and national legal frameworks**.
- As the existing Ethiopian legal provisions are conform with international rules and as what kind of legal gaps seen in the domestic legislations when it examined based on international legal frameworks and sufficient to provide protections for the rights of IDPs.
- Finally to identify what kind of measures Ethiopia should take in order to provide effective protections for the rights of IDPs in Ethiopia in general, and for the current case of Oromo IDPs displaced from Somali region.

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<sup>22</sup>DawitEndeshaw, 'UN says million displaced in Oromia-Somali Conflict Reporter News (3 February, 2018) <https://www.thereporterethiopia.com/article/un-says-million-displaced-romia-s-conflict> seen on October 28, 2018.

<sup>23</sup> OCHA, (n.9) pp 1

## **1.4 Objective of the study**

### **1.4.1 General objective:**

The general objective of this study was to identify whether or not Ethiopia fulfill its State obligation by providing protections for the rights of Oromo IDPs displaced from Somali region.

### **1.4.2 Specific objective:**

The study had also the following specific objectives.

1. To identify specific rights of IDPs and obligation of state provided both under the relevant international and national legal frameworks
2. To overview the situation of Oromo IDPs displaced from Somali region and state response to provide protection for IDPs in order to fulfill its state obligation.
3. To examine whether or not Ethiopia fulfills its state obligation to provide protection for the rights of Oromo IDPs displaced from Somali region displaced during 2017.
4. Based on the international legal standards asserted by GP to examine whether or not the existing national legal frameworks are conform with international rules and sufficient to provide protections for the rights of IDPs.
5. Finally, to identify as what kind of measures Ethiopia should take to provide effective protections for the rights of IDPs particularly in case IDPs displaced from Somali region.

## **1.5. Research questions**

### **1.5.1. General questions**

Did Ethiopia fulfill its state obligation asserted under international and national legal frameworks by providing protections for the rights of Oromo IDPs displaced from Somali region?

### **1.5.2. Specific questions**

The study has also its own specific questions, which includes,

1. What are specific rights of IDPs and obligation of state in providing protection for the rights of IDPs both under the relevant international and national legal frameworks?
2. What was the situation of Oromo IDPs displaced from Somali region and state response to provide protection and to fulfill its state obligation?



3. Did Ethiopia fulfill its state obligation by providing protection for Oromo IDPs dispalced from Somali regions under the relevant **international and national legal provisions**?
4. Does the existing national legal frameworks are conform with international rules and sufficent to provide effective protections for the rights of IDPs in Ethiopia?
5. What are the the mesures Ethiopia should take in order to provide effective protections for the rights of IDPs particulary in case of Oromo IDPs dispalced from Somali region?

## **1.6. Scope of the study**

The scope of this study is limited to state obligation in providing protections for the rights of IDPs in Ethiopian particulary in the case of Oromo IDPs dispalced from Somali region during the year of 2017-2018 which will eximined under the international legal frameworks such as Guiding principle on internal dispalcement of 1998 and under relevant Ethiopian national legal provisions stipulated under FDRE costitutions and national criminal law mostly.

## **1.7 Significance of the Study**

The study has significance contribution for the organs of governments, policy or law makers, for legal proffessinals, students, for the victims of IDPs as well as for other indivituals. For instance Since the study identified spesfic rights of IDPs and obligation of state asserted under relevant international and national rules, it helps concerned IDPs and state authoritiesto understand their rights and obligation in protection of the rights of IDPs in Ethiopia.

**Secondly**, the study has also identified whether or not Ethiopia fulfill it's state obligation in protection of the rights of ethnic Oromo IDPs dispalced from Somali regions in September 2017. This helps the governement as what kind of additional mesures should be taken for the protection IDPs in Ethiopia.

**Thirdly**, since the study also identified the particular legal gaps seen in Ethiopian legislation it helps the governments to fill such gaps by enacting additional legal rules and formulating a national policy for the effective protection of the rights of IDPs in Ethiopia.

## **1.8 Research Methodology**

In this study, the researcher used 'qualitative research' method by collecting qualitative data since the study is a **case study or analysis of practice** which is qualitative in nature. The researcher collected both **Primary** and **Secondary** data to conduct the study. To gather

primary data, the researcher has employed observation, focus group discussion and interview as well as by using primary sources like relevant international and national legislations.

With regard to **observation**, the researcher observed the social service provided to those Oromo IDPs settled at Sululta, Burayyu and Sebata by government. At these site the researcher mostly observed sanitation problem existed at these place.

Concerning **focus group discussion**, the researcher conducted focus group discussion with those IDPs displaced from Somali region and currently re-located at Sululta, Burayyu and Sebata city by selecting nine, nine respondents from each place in order to identify the overall protection and asstances provided to them since their displacement.

Concerning **interview**, the researcher made interview with the member of ethnic oromo IDPs displaced from Ethiopian Somali region and relocated in Suluta, Burayu and Sebata. **Secondly** the resercher has also interviewed the director of Oromia regional state disaster risk reduction and early warning commission Ato Benga Durassa at his office in Addis Ababa.

Finally the resercher has also conducted interview with Ato Addisu Milkessa, the Federal attorney, who investigate about the crimes of transnational boundary with regard to providing legal remedy in case of criminal matters.

With regard to legal document, **other primary and secondary sources**, such as international and national **legislations** including Guiding principle, Kampala convention, and national constitution, other national proclamation and policy documents which are binding and non-bindings legal rules were used to write this paper. Additionally, the researcher has also used other **secondary sources** such as reports, Articles, published and unpublished literatures.

## **1.9 Limitation of the study**

This study was facing certain limitations. During the time of data collection, it was difficult to travel to Somali region and to collect important data about Oromo IDPs displaced from Somali regions because of security and time constrain. In order to avoid such limitation the researcher collected data carefully from IDPs settled in Oromia region and from other relevant literatures.

## **1.10 The thesis Organization**

This study is organized into four chapters. Chapter one deals with the introduction part, chapter two illustrate about the conceptual and legal frameworks on IDPs while chapter three examines the State response to protect the rights of IDPs in case of the people dispalced from Somali region under the relevant international and national legal frameworks. The Final chapter, chapter four finalized by conclusion and recomondation of the study.

## CHAPTER TWO

### Conceptual and Legal framework on state obligation in protection of the rights of IDPs

#### 2.1 Introduction

Internal displacement is the situation in which people or individual persons flee from their home and permanent residence because of natural or human made disaster within their Sovereign state without crossing international boundary in order to avoid the risks derived from the disaster. Human made disasters are including “**developmental displacement**” and “**conflict and violence**, as well as **systematic violation of human rights** that lead to displacement.

In current Ethiopia, mostly internal displacement caused by conflict and violence are the main national concern compared to other factors that resulted into internal displacement. However, the FDRE constitution, which established a federal system, on the basis of settlement pattern, language, identity, and consent of the people provides for every Ethiopian citizen to choose his/her permanent residence, to engage in economic activities, and to pursue a livelihood of his/her choice anywhere within the national territory of the country<sup>24</sup>. Despite this constitutional right, currently we have seen internal displacement crisis in Ethiopia due to ethnic conflict and violence in which the victims of displacements are mostly those minority nations who live out of their respective ethnic regional states. Therefore, among the internal displacement crisis which crop up in Ethiopia, this study mainly focuses on the “**case studies of Oromo IDPs displaced from Somali region and flee** to Oromia regional states in 2017 due to **conflict and violence**.”

So that under this chapter, it is essential defining the concepts of “**IDPs**”, **State obligation** and **protection** and elaborating relevant international and national legal frameworks that can be enforced for the protections of the rights of IDPs.

Therefore, under this chapter after the researcher define the concept of IDPs, protection, and state obligation, then, the researcher identified the rights of IDPs and obligation of state stipulated under relevant international and national legal frameworks.

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<sup>24</sup> Federal Democratic Republic of Ethiopian constitution of 1995, Article 32(1), 41, 46 and 47

## 2.2. Conceptual Frameworks

### 2.2.1. Concept of Internally displaced persons (IDPs)

Internally displaced persons or IDPs are those people who have displaced from one area of the country to another area without crossing national boundary of their own sovereign state. The UN “Guiding principle on internal displacement of 1998 defines the concept of IDPs. It defines as IDPs are,

*“a person or a group of persons who have been forced or obligated to flee or to leave their homes or places of habitual residence in particular because 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”<sup>25</sup>*

The AU Kampala Convention for the protection and assistance of IDPs in Africa adopted in 2009 also incorporated the definition of IDPs given under ‘GP on internal displacement of 1998.

### 2.2.2 Concept of State obligation

The concept of **State obligation** refers to state duty and responsibility to enforce human right provisions asserted under international and national laws to enable the right holders to exercise his/her rights protected under the law. International human right law has recognized the three pillars of state obligation, obligation to protect, obligation to respect, and obligation to fulfill<sup>26</sup>.

i) **State obligation to respect**, it refers to state duty and responsibility to refrain from interfering to the exercises of human rights that stipulated under the laws<sup>27</sup>. In this case, state is required to avoid any measures that hinder or prevent the exercises the rights of a person<sup>28</sup>.

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<sup>25</sup> United Nation Guiding Principles on Internal Displacements of 1998, introduction part paragraph, 2

<sup>26</sup> Ana Marfa Suarez Franco and Roman Holman, ‘*The obligation of States’ on the United Nations Declaration on the rights of peasants and other people working in rural areas*, Briefing note (Fian International, May 2017) 3-4

<sup>27</sup> *ibid*

<sup>28</sup> Global Protection Cluster Working Group (n.14), 25

- ii) **State obligation to protect**; it refers to state duty to protect against abuse by non-state actors through legal frameworks, policies, and practice in which states are required to adopt all the necessary measures to avoid human right violations<sup>29</sup>.
- iii) **State obligation to fulfill**, state obligation to fulfill refers to state duty and responsibilities to take any possible measures to ensure and enable every individual person to exercise their human rights by fulfilling any **legislative** and **administrative frameworks** that respects human rights and builds national capacity for the implementation of their rights<sup>30</sup>. Additionally, state obligation to fulfill has also three sub pillars. These are,
- a) **Obligation to Provide**: It is state duty in which state is obligated to provide goods and service in order to enable the right holders to enjoy their rights when people are not able to access on their own means<sup>31</sup>. For example, state has a duty to provide food, water, and housing in time of disasters and situations in which the affected, individually or in association with others in their communities, to enable the people to recover and regain their autonomy and for an adequate standard of living<sup>32</sup>.
  - b) **Obligation to Promote**: In this case, state must adopt measures to inform right holders as they have the right to claim their rights granted under the law<sup>33</sup>.
  - c) **Obligation to facilitate**: in this case, states must adopt all legislative, administrative, and other types of measures that enable right holders to exercise their rights<sup>34</sup>. For instance, for the effective protections of the rights of IDPs states shall incorporate international legislations to domestic legislation or adopt domestic legislations with effective institution, which enforces such legislations<sup>35</sup>.

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<sup>29</sup>David Rutherford, *States 'Obligations under International Human rights conventions'*, Report for the Implication for the Government Sport policy, (Commonwealth Secretariat, 2018) 1-4

<sup>30</sup>.ibid

<sup>31</sup> Franco and Holmann, (n.26) 4

<sup>32</sup> Guiding principle On Internal displacement (n.25), principle No. 18

<sup>33</sup> CESCR, Concluding observations on the fourth periodic Report of Belgium, Report of SR on the rights to adequate foods, para 40,79(h) quoted in (Franco and Roman Holman no.26)

<sup>34</sup> Franco and Roman Holmann (n.26) 4

<sup>35</sup> ibid

### 2.2.3 Concept of protection

According to the definition endorsed by inter-Agency standing Committee, the concept of **protection** encompasses all the activities aimed at obtaining full respect for the rights of the individual according to relevant bodies of international laws, such as human rights law, international humanitarian law, and refugee laws<sup>36</sup>.

So that this study defined, the concept of '**protection**' as it is all over activities which encompasses any measures of **respecting, protecting, and fulfilling** human rights particularly the rights of IDPs stipulated under international and national law with the aim to prevent further violations of rights during natural or manmade disasters as well as during the time of peace.

Based on this point, let us see how such concept of state **obligation for the protections** of the rights of IDPs have incorporated under relevant international and national legal frameworks.

### 2.3. International Legal frameworks on State obligation for the protections of the rights of IDPs

Unlike refuge convention of 1957, there are no single binding legal documents, which specifically govern the issues of internal displacement at worldwide level<sup>37</sup>. However, the issues of IDPs become an international agenda after the cold war especially when major displacement crises occur in Balkans states due to breakup of Yugoslavia that resulted to major displacement crises<sup>38</sup>. For instance, in 1982 , about 1.2 million people were internally displaced in 11 countries while in 1995 there were an estimated 20 to 25 million IDPs internally displaced in more than 40 countries which was almost twice the number of refugees<sup>39</sup>. Following such displacement crises, the importance of international legal framework for the protections of the rights of IDPs becomes international concern during 1990s when a number of people displaced within their own countries due to human right abuse, armed and ethnic conflicts<sup>40</sup>.

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<sup>36</sup> Simon Bagashaw, *OCHA on Message: on protection*, OCHA policy instruction (OCHA,2012) 1

<sup>37</sup> Sepulveda and Others (n.13 ) 351

<sup>38</sup> Beyani, (n.1) 3

<sup>39</sup> Internal Displacement monitoring center, '*Guiding principle on internal displacement*', Articles (Norwegian Refugee council 1202 Geneva, Switzerland, 2013-18), Available at [www.internal-displacement.org/internal-displacement/guiding-principlesoninternal-displacement](http://www.internal-displacement.org/internal-displacement/guiding-principlesoninternal-displacement) seen on May 1/2019 at 9:45 pm

<sup>40</sup> ibid

Then in 1992, UN secretary General Boutros –Ghali made an important political and practical decision when he submitted the first investigative report on IDPs to UN Commission on Human rights in Geneva<sup>41</sup>. Following such incidence, international community was able to formulate UN Guiding Principle on internal displacement of 1998, which is a non-binding universal legal rule<sup>42</sup>. The Guiding principle international community reflects, state obligation to respect and ensure to respect for the rights of IDPs by imposing primary obligation on state in preventing displacement in maintaining its effects, in protecting and assisting IDPs before displacement, during displacement and at the time of re-settlement or return<sup>43</sup>.

Next to this GP African states the great lake region adopted the first binding international **protocol** on the protection and assistance to IDPs at international conference on the Great lakes region in 30 November 2006 with the aim to establish legal frameworks for the enforcement of GP on internal displacement<sup>44</sup>.

In 2009, AU adopted the Kampala conventions of 2009, which is the first binding international convention on IDPs specifically to govern the issues of IDPs in African content<sup>45</sup>. Other body of international laws such as international human right law, International humanitarian law, and International Criminal law also provides additional legal frameworks for the protections of the rights of IDPs<sup>46</sup>. Therefore, let us see the rights of IDPs and obligation of state under the **Guiding principle on internal displacement of 1998**, the AU Kampala conventions of 2009 and Rome statute of ICC, which are relevant international legal frameworks for the protections of the rights of IDPs.

### **2.3.1 The Guiding principle on internal displacement of 1998 (GP) and its legal status**

#### **I. The legal status of Guiding Principle on internal displacement**

GP is the first non-binding international legal document formulated from the relevant and binding international legal rules and provides universal **legal standard for the protection of**

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<sup>41</sup> Thomas G.Weiss, *Background paper International efforts for IDPs after a decade: What Next?*(Brooking institutions, 20112/04) <<https://www.brookings.edu2012/04>>

<sup>42</sup>Global Protection Cluster Working Group(n.14) 20

<sup>43</sup> Internal Displacement Monitoring Centre, *Making the Kampala Convention work for IDPs*,( The economic social

and cultural council of African Union, Addis Ababa Ethiopia, July 2010) 6-7

<sup>44</sup>Protocol on the protection and Assistance to internally displaced persons, 30 November 2006.

<sup>45</sup>Internal Displacement Monitoring Centre (n.43) 7

<sup>46</sup>Global Protection Cluster Working Group(n.14) 20



the rights of IDPs by identifying specific rights of IDPs, on one hand and specific obligations of state, on the other hand<sup>47</sup>. The GP developed by representative of UN secretary-General on internally displaced persons with the actual drafting done by a team of international legal experts in consultation with certain international and governmental organizations<sup>48</sup>. In 1998 after its draft had completed, it submitted to UN Commission on the human rights, and recognized by the UN general Assembly as an important international legal framework for the protection of the rights of IDPs to encourage all concerned authorities to use its rule during the situation of internal displacements<sup>49</sup>.

With regard to **the legal status of GP**, it is not binding document like a treaty, but its principles formulated based on the binding laws, like human right law, humanitarian law and refugee laws by analogy and their provisions are consistent with such laws<sup>50</sup>. Moreover, since, it formulated from the relevant law of human right provisions applicable to the issues of IDPs, it considered as **universal legal norms** and **legal standard** that can guide concerned authorities when they are working for the protection of the right of IDPs during the situation of internal displacements.

For instance GP formulated from the general principle and rule of human right treaty like the rule of ICCPR, International Covenant on Economic, Social and Cultural rights (ICESCR) and other treaty like the convention on the rights of the children's which ratified by Ethiopian governments. General principles like the right to life, the right to education, the right to get basic needs and social service, the right to movement, the right to family ties, the right to protected from internationally concerned crimes, like crime of Genocide, crime against humanity and liberty have asserted under the above human right treaty while it also provided under GP.

These indicated that, since GP has the position of universal legal norms and standard as well as most of its provisions made from the rule of binding international human right treaty ratified by Ethiopia, then Ethiopia has moral and legal obligation by **analogy** to provide protection for its IDPs at a minimum condition as per the rule of GP.

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<sup>47</sup> *ibid*, pp.21

<sup>48</sup> Introduction to the Guiding Principles on Internal Displacement, **Sunday, September 23, 2001**, <https://www.brookings.edu/on-the-record/introduction-to-the-guiding-principles-on-internal-displacement-2/> seen on June 3, 2019.

<sup>49</sup> Roberta Cohen, International displacement Monitoring center, "*Guiding principles on internal displacement*", <http://www.internal-displacement.org/internal-displacement/guiding-principles-on-internal-displacement> seen on June 23, 2001

<sup>50</sup> *ibid*

Additionally, as long as GP provides worldwide legal standard which concerned authorities should fulfill or follows to protect the rights of IDPs, then it service to identify whether or not certain state has provide effective protection for its IDPs as per this legal standard especially during the naming or shaming of state for the purpose of human right protections.

Therefore, even if Ethiopia has **no direct** legal obligation under GP, but, we can measure whether or not Ethiopia provides protection for its IDPs by using the rules of GP as international legal standard since it made from binding rule of international human right treaty ratified by Ethiopia and Ethiopia has also obligation by analogy to follow such norms.

In the following topic, before analyzing whether or not Ethiopia protecting the rights of these Oromo IDPs, the study had identified the specific rights of IDPs and obligation of state stipulated under GP as follows.

## **II. Basic rights of IDPs under Guiding Principle on Internal Displacement**

Among the basic rights of IDPs, attributed to them because of their displacement under GP, the following rights are the most important one, which states and other concerned authorities' shall be respect for the protection of the rights of IDPs. These rights are,

1. The right to protected against being arbitrary displaced from their home or permanent residence, which stipulated under GP from principle 5 up to principle 9.
2. The right to get protection from crime against their right to life, which include crime of Genocide, Murder and summary or arbitrary executions threatening resulting **in death**, attacks against their camps or settlements.
3. The right to get protections from crime against their right to dignity, physical, mental, and moral integrity of IDPs from crime of rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment and other outrages upon personal dignity and acts of gender-specific violence, and other form of slavery such sale in to marriage, sexual exploitation, or forced labor of children<sup>51</sup>.
4. The right to get protection and immediate humanitarian assistances that includes foods, water, clothes and medical treatment, and other life saving materials<sup>52</sup>.
5. The right to get basic needs and social service for adequate standard of living, such as essential food and potable water, basic shelter and housing, appropriate clothing, essential

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<sup>51</sup> UN Guiding Principle, on internal displacement(25) principle, 10 and 11

<sup>52</sup> ibid Principle, 3(1) and 4(2) and principle 24-27

medical services, sanitations and the right to equal access to public funded social service with other host community including educational service<sup>53</sup>.

6. The right to get durable solution; the right to get durable solution is the other basic rights of IDPs identified under GP that operated to end the status of IDPs. It encompasses all other basic rights such as the right to voluntary returns to their homes or place of their habitual residence, the right to re-integrate of returned with other community, the right to re-settled voluntarily in another part of the country<sup>54</sup>.
7. The rights to get effective legal remedies for the **recovery of their property** left behind or dispossessed because of their displacement and the right to get legal remedy **or appropriate compensation** or another form of reparation for the damage caused to them<sup>55</sup>.

All these above rights and other rights listed under GP are the basic rights of IDPs, which state or other concerned authority should enforce at minimum condition in order to meet its obligation to respect, protect and fulfill / provide.

### III. **Obligations of State under Guiding Principle on internal displacement**

In international legal system, all human beings are right holders, intrinsic to their human nature while states reciprocally bound by obligations to enforce such rights through political, administrative, judicial, or quasi-judicial channels<sup>56</sup>. GP identified the basic rights of IDPs as universal legal standard. Correspondently it also identified state obligation, and obligations other concerned authorities to enforce such rights through the concept of state obligation **to respect, protect and to fulfill** as elaborated as follows.

#### A. **Obligation to respect and protect the rights of IDPs under Guiding Principle**

It has been discussed that as **‘obligation to respect’** refers to obligation of state or state organ to refrain from interfering and undermine the enjoyment of human rights<sup>57</sup>, which requires the establishment of the rule of law at the national level<sup>58</sup>. And also it has discussed as **‘obligation to Protect’** refers to state duty to protect individual citizens or certain groups of people from abuses of their human right by third party such as non-State actors, foreign state

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<sup>53</sup> ibid principle, 18, and 23

<sup>54</sup> ibid, principle, 28(1)

<sup>55</sup> ibid principle, 29

<sup>56</sup> Franco and Holman (n.26) 1

<sup>57</sup> Global Protection Cluster Working Group (n.14) 24

<sup>58</sup> Franco and Holman,(n.26)1

agents, or State agents acting outside of their official capacity<sup>59</sup>. This means, state has obligation to respecting and preventing or stopping the violation of the rights of IDP through legal and institutional frame works that established through the adoption of new legislation **or** by incorporating international legal rules and principles to domestic legal frameworks and by enforcing such rules through institutional machinery.

Based on this point when we overview obligations of state to respect and protect the rights of IDPs under GP, the GP imposes **primary obligation on national authority to provide protection** and humanitarian assistance to IDPs that consists all pillars of obligation of state, to respect, protect and fulfills within the jurisdiction state under GP, No.3 and 25(1)<sup>60</sup>. Therefore, in order to enforce certain rights of IDPs identified under GP state has obligation **to respect and protect** under the GP, which includes,

1. Obligation to respect and protect ‘the right to be protected from arbitrary displacements’,<sup>61</sup>
2. Obligation to respect and protect ‘the rights of IDPs to be protected from crimes’<sup>62</sup>

Let us see each of state obligations to respect and protect under GP as follows.

1. **Obligation to respect and protect the right to be protected from arbitrary displacement:** The GP, principle 6(1) provides as ‘*every human being shall have the right to be protected against being arbitrarily displaced*’ from his or her home or place of habitual residence based on any grounds which cannot be justified under international and national laws. To meet this obligation, state has a duty to respect such rights by refraining from **causing arbitrary displacement** against the right of every person not to displace from his or her home and permanent residence as stipulated under the GP on ID<sup>63</sup>. State has also obligation **to protect** any third party acts that causes arbitrary displacement of indigenous people minorities, peasants, pastoralists, and other groups with a special dependency on and attachment to their lands as provided under GP, No. 9.

It also stipulated as ‘all authorities and international actors shall respect and ensure to respect for their obligations under international law including human rights and humanitarian law in

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<sup>59</sup> Guiding principle on internal displacement (n.25) principle, 32

<sup>60</sup> ibid Principle 3, 25(1),28

<sup>61</sup> ibid principle 5,6,7,8 and 9

<sup>62</sup> ibid principle 10,11, 12 and 14

<sup>63</sup> ibid Principle 5 and 6

all circumstance to prevent and to avoid any conditions that might leads to displacement by providing any alternative measures that can **prevent arbitrary displacement** altogether<sup>64</sup>.

## 2. **Obligation to respect and protect ‘the rights of IDPs to be protected from crimes’:**

First, as stipulated under GP, principle 10, every human being has inherent right to life that shall be protected by law’. In order to enforce the right life state has obligation to respect by refraining from committing any acts that violates the right to life particularly from committing acts of Genocide, murder, summary or arbitrary executions and enforced disappearance abduction and any acts that resulted to death against IDPs. State has also obligation to protect the right to life of IDPs by preventing the act of **third party** that violates the right to life such as from acts of Genocide, Murder, Summary or arbitrary executions and enforced disappearance and abductions.

**Second**, as stipulated under GP, principle 11, “*every human being have the right to dignity and physical, mental, and moral integrity*”. Concerning these rights state has both obligations to respect and protect in order to enforce the enjoyment of these rights. In this case state organ has also **obligation to respect** these rights by refraining to committee any act that violated such rights from acts like act of rape, mutilation, torture, cruel, inhuman, or degrading treatment or punishment, forced prostitution, contemporary form of slavery, such as sale into marriage, sexual exploitation and forced labor of children by the official capacity<sup>65</sup>.

Concerning obligation to protect, state has obligation to protect the rights to dignity, physical, mental, and moral integrity of IDPs by preventing acts of rape, mutilation, torture, cruel, inhuman, or degrading treatment or punishment, forced prostitution, contemporary form of slavery, such as sale into marriage, sexual exploitation and forced labor of children against IDPs<sup>66</sup>. In addition to the above basic rights of IDPs identified under GP, state has similar obligation to **respect** and **protect** other rights stipulated under GPs that did not listed under this paper.

### **B. Obligation of state to fulfill the rights of IDPs under Guiding Principle**

Concerning protection of the rights of IDPs under GP, state has the following major obligation to **fulfill/ provide** for IDPs which includes, obligation to,

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<sup>64</sup> ibid principle 6-9

<sup>65</sup> ibid principle, 11

<sup>66</sup> ibid principle 11

1. Obligation to provide protection and immediate humanitarian assistance
  2. Obligation to provide durable Solution and ending the status of the IDPs
  3. Obligation to provide basic needs and social service for both settled and unsettled IDPs
  4. Obligation to provide legal framework & legal remedy in case of civil & criminal matters
1. **Obligation to provide humanitarian assistance**, According to GP, principle, 3(1) and 25(1) state has a primary obligation to provide humanitarian assistance to IDP which includes basic needs and necessity such as foods, medical treatment shelter and clothes' mostly material which can save the life's of IDPs and alleviate them from suffering. State has also **obligation to facilitate** the free passage of humanitarian assistance, which has provided by other international and national organization or any other authority<sup>67</sup>.
  2. **Obligation to provide durable solutions**: Durable solutions a mechanism in which states are providing a lasting solution for IDPs to end their problem arise because of internal displacements. According to GP, principle 28, States has obligation to provide a durable solution for its IDPs by facilitating the **voluntary return**, and **local integration** and by **re-locating** them to another new places based on their voluntary choice<sup>68</sup>.
  3. **Obligation to provide basic needs and Social service**: According to GP, principle 18, "*all IDPs have the right to an adequate standard of living*". In order to enforce such right during the time of displacement, GP imposes obligation on the national authority or state to provide, essential foods and potable water, basic shelter and housing, appropriate clothing and essential medical service and sanitation and free educational serve for children's of IDPs as provided under principle 18 (2) and 23.
  4. **Obligation to provide legal frameworks and legal remedy in case of civil matters**: In order to protect the property rights of IDPs GP, principle 29(2) stipulated as competent authorities have the duty and responsibility to assist returned and resettled IDPs to recover, to the amount possible, their property that they left behind or dispossessed of upon their displacement.

However if the recovery of such property is not possible competent authorities or state has **obligation to provide** or assist these persons in obtaining appropriate compensation or another form of just reparation<sup>69</sup> by providing effective legal and institutions

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<sup>67</sup> ibid, Principle 25 (3)

<sup>68</sup> ibid Principle 28

<sup>69</sup> ibid principle 29(2)

frameworks which can facilitate and provide legal remedy for property rights of IDPs of violated.

#### 5. **Obligation to provide legal frameworks and legal remedy in case of criminal matters**

Traditionally, state has obligation to protect the basic rights of IDPs from violation by non- state actors through laws policies and practice<sup>70</sup> such as the right to life, the right to liberty, dignity, physical, mental, and moral integrity, of IDPs that asserted under GP and other legislations.

However, if state unable to protect these rights from violation, from acts constitutes crime people whose rights have harmed needs access to effective remedy or criminal justice<sup>71</sup>. In this case, state has obligation to provide remedy in criminal matters by prosecuting and punishing those individuals who participated in violation of basic human rights by committing the acts that constitute crimes.

Nerveless, with regard to protections of the rights of IDPs GP does not explicitly imposes obligation on state to provide legal frameworks and legal remedy interims of criminal matters for those IDPs whose rights have violated by acts of third party that constitute criminal matters.

### **2.3.2 AU Kampala Convention for the protection and Assistance of IDPs of 2009**

AU Kampala Convention (KC) is the first binding regional convention adopted in 2009 by AU member states with the aim to prevent displacement, providing protection and assistance for IDPs as well as in order to provide and support durable solutions for IDPs in Africa<sup>72</sup>.

It was adopted to protect the rights of IDP displaced both by natural and manmade disasters, armed conflict, and generalized violence, human rights violations and development projects by reinforce and bringing together the norms of the existing international law, such as GP , AU law, human right law and international humanitarian law in one instrument<sup>73</sup>. The Kampala convention identified the obligations on states parties with respect to preventing

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<sup>70</sup> Rutherford, (n.29) 4

<sup>71</sup> ibid

<sup>72</sup>International Review of the Red Cross, '*Translating the Kampala Convention into practice:Migration and Displacement stoking exercises* (2017), 1

<sup>73</sup>African Union Economic, Social and Cultural Council and others '*Making the Kampala Convention Work for IDPs*' (published by IDMC July 2010) 13

displacement, providing protection and assistance, and providing durable solution for IDPs, which implemented through the pillars of state obligation to respect, protect, and fulfill<sup>74</sup>.

Ethiopia signed this Kampala convention on 23/10/2009. However since Ethiopia did not ratified this convention then Ethiopian governments has no legal obligation to enforce the rules of KC for the protection of the rights of IDPs in Ethiopia. Because of this Ethiopia has no legal obligation to enforce the rule of Kampala convention.

Therefore, since Ethiopia is not bound by the rule of KC, it' is not relevant legal rules for this study and we cannot examine to identify whether or not Ethiopia provides protection for its IDPs under the provision of these KC convention.

### **2.3.3 Protection of the right of IDPs under International Criminal Law**

The Rome statute of ICC of 2002 is another international legal framework, which can be applicable for the protections of the rights of IDPs by criminalizing the acts that constitutes crime and violated certain protected rights of IDPs. For instance, Article 5 of the Rome statute (2002) recognized, as internationally concerned crimes like crime of **Genocide**, **Crime against humanity**, **war crimes**, and **crime of aggressions** are punishable under jurisdiction of ICC.

The Rome statutes of ICC, define as **Genocide** means any acts committed with intent to **destroy in whole** or in part of **certain ethnic** groups, by killing member of the group, by causing serious bodily or mental harm to members of the groups, by forcible transferring the children of the group to another groups against certain member of groups.

Concerning **crime against humanity**, the Rome statute of ICC defines as Crime against humanity consists crimes such as murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty, torture, rape, sexualslavery, forced prostitution and other sexual violence and act of causing serious body or mental injury of health of persons<sup>75</sup>.

On the other, both GP and KC expressly stipulated as IDPs have protected from “arbitrary displacement, crime of Genocide, Murderer, summary or arbitrary executions, enforced disappearances, crime of rape, Mutilation, torture, cruel, in human or degrading treatments or punishment and acts of violence intended to spread terror among IDPs<sup>76</sup>”.

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<sup>74</sup>African Union Kampala Convention (n.4) Article, 5(1)

<sup>75</sup> ibid Article 5-7

<sup>76</sup> Guiding principle on internal displacement (n.25) principle 6,(1), 10 &11



This means both GP and KC incorporated as state has obligation to protect IDPs from acts that recognized as crime of Genocide and crime against humanity under Rome statutes of ICC which violate the right to life, the right to dignity, physical, mental and moral integrity of IDPs and that against the right to be protected from arbitrary displacement.

In order to fulfill its obligation to respect and protect states should protect IDPs from any act that violates these rights such as from the acts of Genocide and acts of crime against humanity, which includes murderer, torture, rape, deportation (displacement) and other elements of Genocide which identified under Rome statutes of ICC as acts of international crimes. As we understand from this point those individual who committed Crime of Genocide and crime against humanity against the protected rights of IDPs are punishable under the Rome statutes of international criminal court if their countries had signed and ratified the Rome statutes of ICC.

However, since Ethiopia did not ratify this Rome statute of ICC, Ethiopia has no legal obligation to enforce the rules of the statute and it is not applicable for this study.

#### **2.4. National legal frameworks on State obligation for the protection of the rights of IDPs in Ethiopia**

It has discussed that, as Ethiopia has no specific legal frameworks on IDPs, which can address the internal displacement problem at domestic level. However, the FDRE constitutions of 1995, which establishes Federal structure, have some provisions, which can be applicable to the issues of IDPs at domestic level. Other laws such as, Proclamation No.359/2003, and National criminal codes are also the relevant and existing domestic legal frameworks that provides the legal provision for the protections of the rights of IDPs in the absence of specific domestic legislation.

Therefore, based on the universal legal standards provided by GP, the researcher overview the rights of IDPs and obligation of states that guaranteed under relevant Ethiopia's legal frameworks such as under national constitutions and national criminal laws as follows.

##### **2.4.1 Protection of IDPs and obligation of state under FDRE constitution**

In the absence of specific legal framework on internal displacement, the provision of the FDRE constitution, which provides a rule for the protections of basic human rights, can be applicable for the protections of the rights of IDPs in Ethiopia not on the ground of their displacement but on the ground of, they are human being and citizen of Ethiopia.

The human rights provisions, provided under the FDRE constitution, are applicable in order to respect, protect, and fulfill the rights of IDPs in the absence of specific national legislation on internal displacement since some of provisions are nearly similar with the rules of GP that laid the universal legal standard for the protection of the rights of IDPs. These rights are,

1. The **right to equality**: The FDRE constitution stipulated under Article 25 as all persons are equal before the law and are entitled any without any discrimination on the grounds of race, nation, and nationality, social origin, color, sex, language, religion, political or other opinion, property, birth or any other status<sup>77</sup>. This provision conform GP, No.1 that prohibited discrimination of IDP on the ground of their displacement.
2. **The right to property**: FDRE constitution Article 40(4) declares as Ethiopia peasants have the right get protection against eviction from their possession from their lands.
3. The **right to movement and to choose his residence**; The FDRE constitution Article 32 guaranteed as every Ethiopian citizen has the right to liberty of movement and freedom to choose his residence within the national territory of Ethiopia. Similarly, Article 41 of the constitution also stipulated as every Ethiopian citizen has the right to engage freely in economic activity to pursue a livelihood of his choice anywhere within the national territory of Ethiopia<sup>78</sup>. This constitutional provision also conform to GP, principle 14 which states as every IDPs has the right to liberty of movement and freedom to choose his or her residence within the territory his country.
4. **The right to life and the right to security and liberty of person**: These rights protected under Article 14, and 15 of FDRE constitution. Similarly these constitutional provisions are conformed with GP, principle 10, 11 and 12 that recognized these rights as the basic rights of IDPs that shall protected from the acts that against and violate these rights such as acts of Genocide, Murderer, Rape, torture, Slavery, bodily injury.
5. The right to be protected from act of **cruel inhuman and degrading treatment and punishment**, the right to be protected from act of slavery or servitude-forced labor also provided under the FDRE constitutions Article 18 as the constitutional rights. On the other hands, the constitutional provision also conformsto the GP, No.11 that recognized these rights as basic rights of IDPs.
6. The economic, social, and Cultural right are also provided under FDRE constitutions that stipulated as every Ethiopian citizens have the right to equal access to publicly funded

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<sup>77</sup>Federal Democratic Republic of Ethiopian constitution(n.24) Article 25

<sup>78</sup> ibid Article 32(1) and Article 41(1)

social services which is provided under Article 41(3) of FDRE constitution. These rights also conform to the basic rights of IDPs that identified under GP, principle 18, which stipulated as all IDP has the right to an **adequate standard of living** by getting food, water, basic shelter and housing, clothing and health service.

These all provisions of human rights listed from number 1-5 indicated as the national constitution encompasses legal provision that applicable for the protections of the rights of IDPs not on the ground of their displacement but on the ground of they are human being or citizens of Ethiopia protected under the constitution.

However, unlike the above rules, there are no constitutional provisions under FDRE constitution or under any other national legislation that, stipulated as every human being or Ethiopian citizens shall have the right to be **protected against being arbitrarily displaced from** his/her home or his residence that is similar provision with GP, 5 and 6.

#### **A. Obligation of state under FDRE Constitution**

Once human rights had identified and recognized by law, then correspondently state are obligated to enforce such rights through the pillars state obligation to protect, respect and fulfills. For instance, Ethiopian national constitution Article 13(1)stipulated as both the federal and state legislative, executive, and judicial organ of all levels have obligation to respect, and enforce the basic human rights provision guaranteed under Chapter three of the constitution.

##### **i) Obligation to respect and protect**

According to Article 13(1) of the national constitution, both regional and Federal state organs have obligation to refrain from committing any acts that violate human rights, which listed under chapter three of the constitutions including those rights that discussed above in order to meet their national state **obligation to respect**. Both concerned federal and regional state organ have also **obligation to enforce the rule of the constitution** by preventing any third party acts that violates the exercises of these constitutional rights such as the right to life, the right to dignity and morality, the right to movement, the right to property and any other rights listed under the constitution. Therefore, since these obligations are general obligation provided under the constitution, it is applicable for the protections of the rights of IDPs.

##### **ii) Obligation to fulfill**

*Obligation to provide Social service under Ethiopian constitutions;* Every Ethiopian national has the right to equal access to publicly funded social service as provided under

article 41(3). In order to enforce such rights state has obligation to fulfill an increasing resources to provide public health, education and other social services as provided under Article 41(4) of the constitutions. Article 90(1) also stipulated, as state has also obligation to provide clean water, housing, foods, and social security for Ethiopians to the extent to existing resources.

***Obligation to provide national policy for job opportunity:*** The FDRE constitution Article 41(6) stated that as the national governments has obligation to pursue policies which aim to expand job opportunities for the unemployed and poor and shall accordingly undertake programmes and public works projects. This provision also helps and protects those IDPs who lose their jobs and becomes unemployed because of displacements to gain jobs.

#### **2.4.2 Protections of the rights of IDPs under National Criminal Laws**

The rules of national criminal laws are another domestic legislation, which are applicable to provide protection for the rights of IDPs by declaring acts that violate protected rights of IDPs as act of crime against their rights. GP, principle 5 stipulated as every person has the right to be protected from arbitrary displacement while GP, principle 10 and Article 9 of as IDPs shall be protected from acts of Genocide, Murder, Summary execution, enforced disappearance, rape, mutilation, torture, cruel inhuman or degrading treatment or punishment.

**Firstly**, among acts of arbitrary displacement (deportation or forcible transfer of population), killing, torture, inhuman treatment, starvation, intimidation, or terror, collective punishment, bodily harm, or injury to mental and physical health committed during time of war, armed conflict, or occupation is punishable under Ethiopian national criminal law as **war crimes** under Article 270. Additionally, acts of murder or homicide, physical injuries and rape, are also punishable under national criminal code Article 539, 540, 553-556 and under Article 60 as ordinary crimes. **Secondly**, acts of Genocide committed during the peace or wartime is also punishable under Article 269 of Ethiopian national criminal laws. This all shows as Ethiopian national criminal laws has a provision that criminalize acts that violated the rights of IDPs such as the right to be protected from arbitrary displacement, the right life, dignity, and physical, mental, and moral integrity of IDPs.

Therefore, in the next chapter the study examine whether or not these national legal frameworks are providing effective protection for the rights of IDPs and to identify as Ethiopia fulfills its legal obligation by enforcing such existing legal provisions for the protection of the rights of Oromo people displaced from Somali regions during 2017.

## CHAPTER THREE

### **The case of Oromo ethnic IDPs displaced from Ethiopian Somali region and State response for the protection of their rights**

#### **3.1 Introduction**

The existing international frameworks, the GP stipulated as state has obligation to prevent arbitrary displacement of people from their home and Permanent residence. However, if state failed or unable to prevent displacement, states has an obligation to respond to the situation of displacement in order to protect further violations of IDPs rights to fulfill its international and national legal obligations.

Therefore, under this chapter, the researcher overviews the background of the situation of displacement and the state response to displacement in provide protection and assistance to identify whether or not Ethiopia fulfill its state obligation both under relevant international and national rules as follows.

#### **3.2. The case of Oromo ethnic IDPs displaced from Ethiopia's Somali region**

##### **3.2.1 Back Ground of the Situation of displacement**

After the fall of Derge regime, the FDRE constitution of 1995 established federal form of state, which consist nine regional states that are delimited based on the settlement pattern, language identity, and consent of the people concerned<sup>79</sup>. Among the nine member of the federation, Oromia and Ethiopia Somali regions are the two largest regional states that established largely based on the language identity and consent of the people. Oromia and Somali regional states share a border of more than 1400 Km and the inhabitants along the border; the Oromo and Somali share common religion which is muslim while Somalis are mostly pastoralist living with their animals, but Oromo peoples are both farmer as well as pastoralist<sup>80</sup>.

Historically, the relation ship of the Oromo and the Somali inhabitant that live along the border of the two region characterized by territorial competition which most of the time lead

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<sup>79</sup> Federal democratic Republic of Ethiopian Constitution of 1995 (n.24) , Article 46(2)

<sup>80</sup> What is behind Clashes in Ethiopia's Oromia and Somali regions?, *BBC News* (18 September 2017) <https://www.bbc.com/newa/world-africa-412786118> last seen on June 19, 2019

them to conflict over the resource like water and grazing lands<sup>81</sup>. Mostly the scarcity of resource such as water, grazing land have increased hostilities and violence between pastoralist and agro pastoralist in Somali region and neighbouring regions that leads to Somali people to have several boundary conflict with Oromia region especially in the district of Moyale, Meiso, Babile, Mayu-muluk and Tullu-Guled which were the most active conflict between Somali and Oromia regional state inhabitants<sup>82</sup>.

To end this conflict and to netly separate the border between Oromia and Somali regional states the Federal Government prepared referendum in 2004 on more than 420 kebeles and about 80% the people vote to be under the administration of Oromia region. But the decision of the referendum has still not been implemented that leads to current conflict instability around the border of Oromia and Somali regions<sup>83</sup>. In 2007 the Ogaden National Liberation Front (ONLF) attacked Chinese oil field that killed 74 members of the federal army and nine Chinese engineers. Then in 2008 the Ethiopia's Somali regional state special police the so called "**Liyuu Police**" has been established by the assistance of Ethiopian federal government in order to defend and eliminate ONLF in Somali region<sup>84</sup>. After the establishment of Somali Liyyu police in 2008 the border conflict between Oromia and Somali region intensified especially when in March 2017 attacks against civilian and looting of property had been committed as a cause of border conflicts<sup>85</sup>. To end the border conflict the former Oromia regional state president Obbo Lemmaa Megersa and Somali regional State President Abdi Mohammed Umar (*Abdi illey*) signed an agreement in that put 68 contested towns and villages between the two regions, 48 towns were returned to be under the administration of Oromia regional states in which the border issues was resolved<sup>86</sup>.

However, in March 2017 the border dispute between Oromo and Somali intensified again when the Somali Liyyu police take part from the side of Somali conflict arise between Garrii Somali clan and Borona Oromo clan in the city of Moyale<sup>87</sup>. With this tension of this new conflict between Oromo and Ethiopian Somali region another incident was happened which

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<sup>81</sup> ibid

<sup>82</sup> Abdul Selam Abdulahi Mohammed, *Assessment of conflict Dynamics in Somali National Regional State of Ethiopia*, Journal of Public Policy and Administration vol. 2, No 4, (Review Article), (2018) 41

<sup>83</sup> ibid

<sup>84</sup> Liyat Fekade, 'Analysis: Rising Death Toll Displacement and Protest in East, South, and South East Ethiopia. *Addis Standard News*, (September 14, 2017), Available at <http://addisstandard.com/analysis-rising-death-toll-displacement-protests-east-south-south-east-ethiopia-lies-beneath> accessed on January 10-2019 at 5: AM.

<sup>85</sup> ibid

<sup>86</sup> Ibid

<sup>87</sup> ibid

become an immediate cause for displacement. On Monday September 11, 2017, Gursum Wereda administrator and Mohammed Abdurahman, former Security affairs deputy head of Deder town in east Hararge of Oromia region and Tajudin Jamal, a member of the Oromia Police force in Harar, were taken from their car by the member of Somali liyu police force while they travel from Jijiga to Harar, the capital of Somali regional state. Then Selam Mohammed and Tajudin Jamal were found dead in Bombas between Harar and Jijiga while Mohammed Abdurahman got escaped but hurted<sup>88</sup>.

On September 12 and 13, 2017 mass protest erupted by those resident of eastern Hararge cites angry with the allegation of killing of Selam Mohammed and Tajudin Jamal by Somali Liyyu police. This mass protest changed to conflict and violence that resulted to the death of people, which is exactly unknown. However, BBC news reported on 18 September 2017 as Oromia regional State government's spokes person Addisu Arega announce as 18 people were killed in which 12 people were from Somali ethnic group, while 6 people were killed from Oromo ethnic inhabitants of Awaday city<sup>89</sup>. Nevertheless, Somali regional state government reported as above 30 ethnic Somali have killed in the Oromia town of Awady<sup>90</sup>.

The conflict made in Awaday and other eastern Hararge towns intensified hostility between the two regions and the Ethiopian Somali regional state officials instigated to displace Oromo residence from Somali region<sup>91</sup>. The Somali regional state officials justify as displacing Oromo people from Somali region were to protect the ethnic Oromo inhabitants living in Somali regions from reprisal attacks<sup>92</sup>.

### **3.2.2. The Situation of ethnic Oromo displacement from Somali region**

After the death of ethnic Somali traders in Awady city of Oromia region, the Somali regional government officials lead by President Mohammed Ahimad Umar (*Abdiille*) instigated to displace Oromo ethnic community from Somali region on the ground that, displacement is in order to save them from reprisal attacks<sup>93</sup>. Following this, on February 12, 2017, Somali liyu police and Organized Somali youth started to attack ethnic Oromo community living in

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<sup>88</sup> *ibid*

<sup>89</sup> 'What is behind clashes in Ethiopia's Oromia and Somali regions? *BBC News* (September 2017), <<https://www.bbc.com/news/world-africa-41278618>> accessed on 11/01/2019 at 5: AM.

<sup>90</sup> *ibid*

<sup>91</sup> James Jeffrey, 'Hundreds of thousands of Displaced Ethiopians are caught between ethnic violence and shadowy politics' (Global Post, December 15, 2017) <<https://www.pri.org/stories/2017-12-15/hundreds-thousands-displaced-ethiopians-are-caught-between-ethnic-violence> last seen of May 13, 2017

<sup>92</sup> *ibid*

<sup>93</sup> *ibid*.

Somali regions through violence and conflict in order to displace them from the region without giving notice even to take their personal property<sup>94</sup>. Somali special police force, and Somali ethnic youth forced ethnic Oromo resident in Somali region to leave their home and property and concentrated them to Somali police compounds. After ethnic Oromo stay in police compound from 1-3 days finally Somali, regional state police force loads them on heavy trucks and displaces all of them from Somali region starting from September 11, 2017<sup>95</sup>.

During the time of displacement, alleged crime such as crime against the right to life, which includes crime of **homicide, summary execution, forced disappearance** were committed against these IDPs in which above 50 dead bodies had been discovered by Federal police from Somali region<sup>96</sup>.

Moreover, crime against morality, physical and mental integrity of persons such as crime of **rape, torture, degrading inhuman treatment**, and crime of grave physical injury were also committed on these IDPs during the time of displacement in Somali regions<sup>97</sup>. For instance, as data collected from IDPs indicated after one IDP women raped by 10 people the suspect also cut her breast and the hands of her son immediately after they raped her<sup>98</sup>.

After the Oromo community displaced from Somali region and arrived in Chinakson in East Hararge zone of Oromia region, the inhabitants of region and Oromia regional government welcomed them by providing humanitarian assistance such as food, water, and clothes while “Hewote fana Hospital” and Ethiopian Red Cross society provided immediate medical assistance to them<sup>99</sup>. After the majority of IDPs stay in Chinaksan for three days, they relocated to different temporary camps, like camp of Hammarressaa in Harara City, Harar stadium, Dire-dawa while others has taken to the Wereda of their Origin like Ciro, Gelemso, Dobbaa, Awady etc<sup>100</sup>.

However, after these IDPs transferred from Chinaksan to Hammaressa camp, the federal defense force fired on IDPs settled at Hammarressa camps on September 16/2017 in which 4

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<sup>94</sup> Interview with Mohammed Amine and Abraham Idiris ‘ the representative of IDPs and the representative of IDPs displaced from Somali regions and currently settled at Gara-furi of Sebeta city, (Sebeta , January 12,2019)

<sup>95</sup> ibid

<sup>96</sup> Interview with Addisu Milkesa, the Federal public prosecutor of transitional crimes at the Federal Attorney General, (Addis Ababa Lideta 17 January 2019).

<sup>97</sup> ibid

<sup>98</sup> Interview with Mohammed Amiin and Abraham Idiris (n.101)

<sup>99</sup> ibid

<sup>100</sup> ibid



IDP killed and 5 IDPs have injured. Among them Abraham Idiris who settled currently in Sabbeta city is one of the victims that injured by the bullet fired from Federal defense force in Hammarressa<sup>101</sup>.

Again, after this IDPs stayed in Hammaressa for three months, the Oromia regional government, and Federal officials visited them and the Oromia regional government continues to assist IDPs by cooperating with host community and other wealthy men of the country<sup>102</sup>.

However, in the Month of February 12, 2018, the federal defenseforces again opened fire on Oromo IDPs settled at temporary camp of Hammaressaa located in east Hararage for the 2<sup>nd</sup> time in which 12 IDPs and one Oromia regional police forces killed and 42 IDPs injured. For instance, among the IDPs injured by such attack, Siraj Abdallaa, Bayyaan Adam, and Iliyas Mistafa settled at Sebbata city in Oromia region<sup>103</sup>. These IDPs stated that the Federal state army fired at them on the ground that IDPs in Hammeressa camp blocked food trucks travelling to Jijiga while IDPs occupied in Hammarressa camp denied such allegation<sup>104</sup>.

As the data collected from Oromia regional state disaster risks reduction and early warning commission displacement statics indicated, totally about **247,175 IDPs** displaced from Somali region, and these all IDPs displaced from inside Somali regions never return to Ethiopian Somali region because of fear of security problem<sup>105</sup>. Most of these IDPs flee with nothing than personal possessions at hand and they are vulnerable groups that need special protections<sup>106</sup>.

Therefore, the following section examines state response for the protections of the rights of IDPs protected under international rules like GP, and national constitution and criminal laws.

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<sup>101</sup> ibid

<sup>102</sup> ibid

<sup>103</sup> ibid

<sup>104</sup> ibid

<sup>105</sup>Oromia regional state disaster risks redaction and early warning commission directorate, *Updated data of IDPs on February 12, 2019*, (Addis Ababa February12, 2019) and Interview with Benya Duressa, Oromia regional State disaster risks redaction and early warning commission director, (Addis Ababa Ethiopia, February 28,2019)

<sup>106</sup>Focus group discussion with Misbaha Ishma'el and other 8 IDPs displaced from Somali region and re-located at Sululta city of Oromia regions (Suluta, January 07,02, 2019)

### **3.2. Assessing state response to displacement to fulfill its state obligation under international legal frameworks (GP)**

In this section, the response of Ethiopian government to the problem of displacement has examined under international legal frameworks particularly under GP. As discussed in chapter two the GP imposes international obligation on state or concerned authorities to provide protections for the rights of IDPs particularly in,

1. Protecting people from ‘arbitrary displacement’
2. Protection IDPs from crime against their rights
3. Providing humanitarian assistance to IDP
4. Providing durable Solution, ending the status of IDPs
5. Providing basic needs and Social service, for both settled and unsettled IDPs
6. Providing legal framework and legal remedy in case of civil and criminal matters<sup>107</sup>

#### **3.2.1 State response in protecting people from arbitrary displacement**

GP, principle 5-6, stipulated as “*all persons have the right to be protected against arbitrary displacement from his or her home or place of habitual residence*”. To enforce this right the GP imposes **obligation on state to respect and protect** such rights by protecting people from arbitrary displacement as well as by preventing and avoiding any condition that might lead to displacements and minimizing its adverse effects<sup>108</sup>.

In case of Oromo IDPs displaced from Somali region, the collected data indicates that, all Oromo IDPs displaced from Somali region under the instigation of Somali regional state officials lead by ex-Somali regional president Abdi Mohammed Umar (*Abdiille*).<sup>109</sup> Moreover, the regional special police force “*liyu police*” and Somali youth selectively displaced all Oromo community resides in Somali region on the ground of their ethnicity without committing any wrong full act and without giving notice to collect their movable property. For **instance** when Oromo ethnic community displaced, attacked, killed, and raped, selectively, Somali liyu police and Somali youth told to other nations and nationalities whose lives in Jijiga as their target is only displacing Oromo ethnic inhabitants from Somali region and as other ethnic groups could safely and peacefully live in the region<sup>110</sup>. Additionally, Ethiopian Somali regional officials justified displacing Oromo ethnic inhabitants from Somali

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<sup>107</sup> Guiding principle on internal displacement(n.25)

<sup>108</sup> *ibid* principle 5, 6 &7

<sup>109</sup> Interview with Mahammed Amin and AbrahamIdiris (n.94) and Interview with AddisuMilkessa (n.96)

<sup>110</sup> *ibid*.

region is necessary to save them from reprisal attacks that resulted displacement of Somali ethnic groups from Oromia region as the report of Global post<sup>111</sup>.

Therefore, this indicated Somali regional government officials were supporting the forced displacement and **failed to fulfill** its state obligation to respect and protect the right of Oromo people lived in Somali regions to be protected from arbitrary displacement from their home and permanent residence as stipulated under GP, 5 – 9.

**Concerning federal government:** At the time of Somali youth and liyu police displacing Oromo residence in Somali region, the federal defense force which were residing in Somali region were looking at the situation of displacement and they kept silent. During the time of displacement, IDPs requested such national army to protect them from displacement and attack. Nevertheless, the defense force refused to provide protection for these IDPs by responding to them that they cannot prevent and protect them both from displacement and crime committed on IDPs without getting order from federal governments. This clearly shows that, Federal government officially did not give order for the defense force in order to stop the situation and protect these Oromo people from displacements.

On the other hand, the federal government has an obligation to protect people from displacement when regional states failed to protect human right violation according to FDRE constitution Article 13(1), 51(16), 62(9) and according to Proclamation number 359/2003 Article 7-11 through the system of federal intervention. However, the Federal government did not interfere and protect the Oromo community from forced displacement when about 247,175 IDPs forcibly displaced from their home and their permanent residence by Somali regional state police and Somali ethnic residents<sup>112</sup>.

Therefore, this clearly shows that, Ethiopia federal government **failed to fulfill** its state obligation to protect the right of Oromo people displaced from Somali regions, the right to be protected from arbitrary displacement that asserted under GP, principle 5-9.

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<sup>111</sup>James Jeffrey, Hundreds of thousands of displaced Ethiopians are caught between ethnic violence and shadowy politics, *Global Post*, December 15, 2017 · 5:00 PM EST accessible at <https://www.pri.org/stories/2017-12-15/hundreds-thousands-displaced-ethiopians-are-caught-between-ethnic-violence-and> last seen on May 23-2017

<sup>112</sup> ibid and Interview with Addisu Milkesa,( n.103)

### 3.2.2. State response for the protection of IDPs from crime against their rights

The GP, stipulated that, IDPs have right to get protection from crime during the time of displacement while correspondently state has also obligation to respect and protect for the enforcement of such rights. For instance, GP, principle 10 stipulated, as “*every human being has the inherent right to life and as IDPs shall be protected from crime against the right to life such as Genocide, Murder, Summary or arbitrary execution and enforced disappearance which shall be protected by law*”<sup>113</sup>.

Additionally GP 11 (1) stated that as ‘*every person has the right to dignity and physical, mental, and moral integrity*’. To protect such rights GP, 11(2) stated as IDPs has the right to be protected from any acts that against these rights such as from crime of rape, mutilation, torture, cruel in human or degrading treatment and from other similar acts.

Based on these rule when we see the case of Oromo IDPs displaced from Somali region, **First**, Somali liyu police, and Somali ethnic inhabitant’s committee crime against the **right to life**, by committing crime of **homicide** against the rights of these IDPs<sup>114</sup>. For instance, the federal police discovered above 50 dead bodies from one hole that evidence for the commission of the crime of homicide or probably summary execution against these IDPs during the time of displacement<sup>115</sup>.

**Second**, Crime **against humanity** such as forced disappearance. In this case, as data collected form IDPs indicated, during the time of displacement on September 13, 2017 at the night time the Somali regional police force took about 200 (two hundred) Oromo in habitants in jijjiga to the place of “*Sheek Alii Gure*” in Somali region in which these peoples disappeared and their destinations are unknown until now<sup>116</sup>.

**Thirdly**, Crime against the right to dignity, morality and physical integrity of person, like crime of rape, torture and causing physical injury. Concerning these crime, the data collected from IDP and Federal public prosecutor indicated as a many Oromo IDPs girls and women raped by member of Somali regional state police force and Somali ethnic youth. The data also indicated that especially those Oromo girls and women who worked as a house servant in the ethnic Somali houses were mostly the victims of crime of rape<sup>117</sup>. However, the majority of

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<sup>113</sup>Guiding principle on internal displacement (n.25),principle 10.

<sup>114</sup>Interview with Mahammed Amin and AbrahamIdiris (n.94) and Interview with AddisuMilkessa (n.96)

<sup>115</sup> Interview with AddisuMilkesa, (n.96)

<sup>116</sup>Interview with Mohammed Amin and AbrahamIdiris(n.94)

<sup>117</sup> ibid

the victims of crimes of rape hide evidence from police investigation in order to protect their social relations and to keep it as their personal secret. Among the crime of rape the notable crime were the acts of rape, which had committed by 10 people against one ethnic Oromo women. During the time of displacement, 10 Somali ethnic youth raped one woman IDPs and they cut her breast after they rape her and they cut the hands of her son<sup>118</sup>. The collected data also indicated that the above crime such as crime of murder, rape, torture and permanent and willful physical injuries were committed on the Oromo IDPs both by member of Somali regional state police force and Somali ethnic youth during the time of displacement before these IDPs leaved Ethiopian Somali region<sup>119</sup>.

On the other hand, when Somali ethnic youth member of Somali regional police force committed crime of homicide, torture, rape, forced disappearance and cruel inhuman treatment, Somali regional state government did not protect these IDPs from such crimes while Oromia regional state unable to assist IDPs to prevent them from displacement because of jurisdiction. Therefore, this all shows, as Somali regional state government failed to fulfill both obligation to protect the rights to life and the right to dignity and physical, mental and moral integrity of IDPs stipulated under international laws; GP principle 10 &11.

Concerning **Federal Government**, the Federal government refrains from protecting these IDPs from the above crimes committed against the rights of these IDPs during the time of displacement. For instance, when the above crimes against these IDPs, the victims, the Oromo community in Somali region were request the Federal defense force reside in Somali region to protect them from such crimes. However, Federal defense force refused to protect them by responding, to IDPs as the federal government officials did not order them to protect IDPs from crimes as well as from other reprisal attacks<sup>120</sup>.

This clearly shows as Federal government failed to fulfill obligation to protect the rights of these ethnic Oromo IDPs the right to life, morality, dignity, physical and mental integrity of IDPs protected under GP,10 and 11, Article 9(b) by preventing from crime of homicide, crime against humanity, rape, torture ,physical injury and forced disappearance.

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<sup>118</sup>Interview with Addisu Milkesa, (n.96)

<sup>119</sup>Interview with Mohammed Amine and Abrahim Idiris, (n.94)

<sup>120</sup>ibid

### 3.2.3. State response in providing humanitarian assistance to IDPs

Humanitarian assistance is an actions and effort to save lives, alleviate suffering and maintaining human dignity for the benefit of people who are at risks and affected by natural, manmade, or other disaster by providing material aids and **life saving** measures<sup>121</sup>.

In order to save the lives of IDPs during displacement crises the GP, principle 3(2) stipulated as “*IDPs have the right to request and to receive humanitarian assistance from their national authority*. Therefore, to enforce this right the GP principle 3(1), 25, stipulated as ‘*the primary obligation to provide protection and humanitarian assistance to IDP imposed on the **national authority** within their jurisdiction*’<sup>122</sup>. States shall also required to meet its “**state obligation to fulfill**” by providing immediate humanitarian assistances to IDPs such as essential foods and potable water, basic shelter and housing, appropriate clothing and essential medical and psychological treatment<sup>123</sup>. If the national resource is limited to provide sufficient humanitarian assistance to IDPs, the GP Article 25(2)(3) 26 asserted as state shall cooperate with other state or other national and international organization and to facilitate the free passage of humanitarian assistance to IDPs.

In case of Oromo IDPs displaced from Somali region, the IDPs did not get sufficient assistance including food and water during the time of displacement after they forcibly displaced from their home and concentrated in the police station compounds in Somali regions where they stayed from 1-3 days<sup>124</sup>.

However, after these IDPs displaced from Somali region and arrived in Chinaksan wereda of Oromia region they got humanitarian assistance such as foods, water, clothes, temporary shelter, etc from the host community while nearby health center especially ‘*Hewote Fan Hospital*’ provides medical assistance for those IDPs who has injured by police and violent groups during the time of displacement<sup>125</sup>.

Additionally, after IDPs settled to different cities of Oromia region, Oromo community and other nation lived in different parts of the country contributed financial and material

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<sup>121</sup>Annik Billing, *Humanitarian Assistance: An introduction to humanitarian assistance and the policy for Sweden’s Humanitarian aid*’, perspective No.17, (University of Gothenburg, December 2010) 5.

<sup>122</sup>Guiding Principle on internal displacement (n.25), principle, 24-27

<sup>123</sup>Ibid, principle, 18

<sup>124</sup> Interview with Mohammed Amine and AbrahamIdiris,(n.94)

<sup>125</sup> Interview with SaladiinSufiyan, the representative and member of IDPs displaced from Somali regions and relocated Sululta city at Tulifaxi site (07, January, 2019)

assistance to save the lives of these IDPs<sup>126</sup>. The Oromia regional state disaster risks reduction and early warning commission also address immediate humanitarian assistance to these IDPs in cooperation with host community and wealth men in the country<sup>127</sup>. However, the members of IDPs stated that as Federal government late in providing immediate humanitarian assistance while the Oromia regional governments provided to them in cooperating with host community and wealth men in the region<sup>128</sup>.

Therefore, even if the federal government late in addressing humanitarian assistance to these IDPs but, Oromia regional state **fulfills its obligation to provide immediate humanitarian assistance** by providing food, clothes, shelters, water, and medical service in cooperation with host community and other civil society organizations as data collected indicated<sup>129</sup>.

### 3.2.4 State response in providing durable solutions

Providing durable solution is also the other category of state obligation to fulfill or provide for the protections of the rights of IDPs. **Durable solution is** a solution that enables IDPs to secure the political, legal and Social Conditions to maintain life, livelihood, and dignity<sup>130</sup>.

After IDPs settled in temporary camps and stay in such camp for limited period, they need lasting solution to sustain their livelihoods. Because of that GP, imposes obligation on state **to provide** durable solutions for IDPs by establishing a conditions, which enable IDPs, to return voluntary in to their homes or places of habitual residence, or to resettle in another part of the country or local integration based on their choice and sustainable basis with safety and dignity<sup>131</sup>.

Based on this rule when we see the case of Oromo ethnic IDP displaced from Somali region, First Oromia regional government in cooperation with Haramaya University conducted intention surveys in early December 2017 on these IDPs in order to facilitate condition for durable solution. According to the survey, totally about 247,175 IDPs with 56,038 households displaced from Somali regions in which all of them express their wish, as they

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<sup>126</sup> Focus group discussion with Abdi Mohammed and other 8 members of IDPs, displaced from Somali regional state and relocated at Burayyu city Gefersa site (Burayu, 8 January, 2019)

<sup>127</sup> Interview with Begna Duresa, Oromia regional State disaster risks reduction and early warning commission Directorate, (Addis Ababa Ethiopia, February 28, 2019)

<sup>128</sup> Interview with Mohammed Amine and Abraham Idiris, (n.94)

<sup>129</sup> Ibid

<sup>130</sup> Danish refugee Council, <<https://drc.ngo/relief-work/diaspora-programme/what-we-do/durable-solutions>> last seen on may 21, 2019

<sup>131</sup> ibid

never want to return to Somali region **and as they preferred** to resettle within new place in Oromia region including Addis Ababa city<sup>132</sup>.

Then, among 247,175 total IDPs, with 56,038 houses hold IDPs only about 7,949 house holds with 41,053 IDPs families settled across 11 towns and cities in Oromia regions until now. However, about 206,122 IDPs with **48,089** households remain within their wereda of origin across Oromia region without **getting durable solutions** or new re-settlement<sup>133</sup>. This means, among the 247,175 IDPs displaced from Somali regions, **only 16.6%** of them re-settled in new place and the other **remaining 83.4%** of the IDPs remain without getting new settlement or durable solutions in temporary camps until this year as the following chart indicated.

The chart 1, explain those, IDPs who got durable solutions or settled at 11 sites in Oromia region, while chart -2 explains those IDPs who did not settled until now.

**Chart 1: IDPs re-settled in 11 Oromia Town**<sup>134</sup>

No	City/Twon IDPs settled	Site of IDPs re-settled	Hose-hold of IDPs	Family of IDPs	Youth	Grand Total IDPs
1	Adama	Adama city	1346	4950	4650	6761
2	Batu		468	1760	611	2839
3	BishanGuracha		831	3965	1500	6296
4	Burayu	MelkaGefersa	107	398	6	505
		Gefersanono	168	586	61	754
		GefersaBurayu	64	242	71	306
		Burayu Kata	31	111	25	142
		Laku Kata	51	140	33	191
		GefrsaGuje	9	18	57	27
		Total	430	1495	253	2178
5	Bushoftu		466	1735	616	2,817
6	Dukam		712	2534	303	3549

<sup>132</sup>Interview with Benya Duresa, (n.127)

<sup>133</sup>Oromia regional state disaster risks redaction and early warning Directorate, '*updated data of IDPs on February*

*12, 2019*', (12 February 2019) Addis AbabaEthiopia

<sup>134</sup> Ibid



7	Gelan		783	2785	129	3697
8	LegaTafo	Fardo&Sendafa	932	1569	235	2736
9	Mojo	Mojo,Lume, Bora	389	1651	225	2265
10	Sabata		1075	4017	305	5397
11	Suluta		517	1885	116	2518
	<b>Total IDPs Settled at 11 city</b>		<b>7949 house hold</b>	<b>28346 Family</b>	<b>4758 youth</b>	<b>41,053 Total IDP settled</b>

*Source: This data collected carefully on February 28, 2019 by the researcher from the updated data of IDPs that declared on February 12, 2019 by Oromia regional state disaster risks reduction and early warning directorate.*

As we understand from table 1 about 7949 households or total family of 41,053 IDPs, got durable solutions among 247,175 IDPs displaced from Somali regions.

**Table 2 unsettled IDPs that distributed to 23 Zones of Oromia region<sup>135</sup>**

Ethnic Oromo IDPs displaced from Somali regions and located in different Oromia zones and did not settled or get durable solutions until now.				
1	Zone in Oromia IDP temporary settled	Total house hold IDPs	Family of IDPs	Grand total HH and family IDPs (Total)
2	Arsi	889	1582	2471
3	Baalee	8316	40,212	48,528
4	Borana	4197	18602	22799
5	Buno-Badale	110	93	203
6	East Hararge	27,973	39,846	106021
7	East Shewa	32	71	103
8	East Wellega	84	37	121

<sup>135</sup> ibid

10	Finfinne(Nifas silk)	1816	3904	5720
11	Oromia special zone of surrounding Finfine	71	83	154
12	Guji	1637	8140	9777
13	Horo-GudruWellega	35	54	89
14	Illu Aba Bora	11	4	15
15	Jimmaa	461	518	979
16	KelemaWelega	56	33	89
17	North Shewa	126	147	273
18	South-weastshewa	131	189	320
19	WeastArsi	340	553	893
20	WeastGuji	3	4	7
21	WeastHararge	1402	5359	6761
22	Weastshewa	282	367	649
23	WeastWellega	117	33	150
	<b>Grand Total</b>	<b>48,089</b>	<b>158,033</b>	<b>206,122</b>
		Total household of IDPs	Total Family	Total of household and family

*Source:* This data collected carefully on February 28, 2019 by the researcher from the updated data of IDPs that declared on February 12, 2019 by **Oromia regional state disaster risks reduction and early warning directorate**.

The Oromia regional state disaster risks reduction and early warning authority directorate Begna Duressa stated that, the government is unable to re-settle all of these IDPs because of financial constrains and also as international aid donors did not provide sufficient financial support that enable governments to provide durable solutions for all IDPs<sup>136</sup>.

<sup>136</sup>Interview with Begna Duressa, (n.127)

Therefore, since the governments re-settled only 16.4% IDPs and other 86.6% remain in temporary camp with IDPs status both Ethiopian Federal governments and Oromia regional State government did not sufficiently fulfill **its state obligation to provide** durable solutions for Oromo IDPs displaced from Somali regions during September 2017 to meet their obligation provided under GP, 28.

### **3.2.5 State response in Providing basic needs and Social service to IDPs**

The GP, principle,8(1) asserts as “*all IDPs have the right to live an adequate standard of living*. To enforce this rights the GP imposed obligations on state on competent authorities to provide an essential food and potable water, basic shelter and housing, appropriate clothing and essential medical services and sanitation to IDPs, which implemented at minimum, regardless of the circumstances, and without discrimination<sup>137</sup>. So that when we examine whether or not Ethiopian governments fulfills its obligation to provide basic needs and Social service to Oromo IDPs displaced from Somali region it looks like as follows.

**a) Essential foods and potable water:** GP, 18(2a) stated as ‘*state authorities has obligation to provide essential foods and potable water for IDPs*’, concerning the case of IDPs displaced from Somali regions, the governments provide foods for both settled and unsettled IDPs in the same manner. The government provides 15 kg of cereal food and 0.45 liter of oil for one IDP per a month and sometimes the government provides supplementary food for IDPs children<sup>138</sup>. However, IDPs complain that as other supplementary foods such as Salt, onion, and other vegetables as well as foods, which useful for the health and growth of children like milk, and other necessary supplementary foods have not provided to IDPs.

Because of that, IDPs stated as all of them especially as their children’s are suffering lack of proportional foods<sup>139</sup>. This indicated that as Governments do not providing essential or sufficient food to IDPs mostly, which is useful for the health of children of IDPs as stipulated under GP, principle 18(a).

**Therefore**, since the foods provided to IDPs are not sufficient, Ethiopian Federal and regional governments did not fully fulfill its obligation to provide **essential foods** for IDPs, mostly for the children of IDPs as provided under GP, principle 18(2a).

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<sup>137</sup> Guiding principle on internal displacement(n.25) principle 18

<sup>138</sup> Interview with Begna Duresa,(n.127)

<sup>139</sup> Observation and focus group discussion with Misbaha Ismail and other 8 member of IDPs displaced from Somali regional state and re-located at Sululta city ( Sululta Oromia 07,January, , 2019)

**b) Basic shelter and housing:** The GP, principle 18(2b) stipulated that, as state has *also obligation to provide basic shelter and housing*. Among the total IDPs displaced from Somali regions which is amounted to 247,175 IDPs, only about 41,053 or (16.4%) of IDPs relocated and got houses while 83.4% of IDPs did not get permanent house and remain in camps for the past 20 months.

Therefore, even if the houses are not comfortable for life, but at minimum condition Ethiopian governments **fulfills its obligation to provide permanent shelter** for 16.4 % of IDPs displaced from Somali regions, while it did not fully fulfilled its obligation to provide permanent house for the remaining 83.6% of IDPs or for 206,122 IDPs until now.

**c) Sanitation:** Sanitation refers to the provision of facilities and services for the safe management of human excreta from the toilet to containment and storage and treatment on site or conveyance, treatment and eventual safe end use or disposal<sup>140</sup>. It also refers to the safe management of solid waste and animal waste in which its inadequacy causes to infectious of diseases such as cholera, typhoid, and dysentery worldwide as WHO noticed<sup>141</sup>.

When we examine the sanitation service provided to Oromo IDPs displaced from Somali region and settled at Sululta, Burayyu and Sebbata, problem has seen with regard to waste disposal and providing private toilet for each individual family. Additionally, the hole, which prepared to build toilet, is unfinished and dirty plastic material and liquid wastes are concentrated in such hole, which may resulted to health problems. IDPs also complain, as the government does not provide material, which help them to protect their sanitation such as soaps and other similar materials since they have no income to buy<sup>142</sup>.

Therefore, the government has some limitation in fulfilling obligation of state to provide adequate sanitation for IDPs to enable them to live an adequate standard of living according to GP, principle 18(d).

**d) Appropriate clothing:** Concerning clothes, GP, 18(2c) stipulated as state *has a duty to provide appropriate clothing for its IDPs*. However, as the data collected indicated, Ethiopian governments are providing for IDPs displaced from Somali regions, one blanket, and one mattress for one household. For example, one household who has eight

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<sup>140</sup>World health Organization, 'Sanitation Health Topic on Privacy legal notice' (2019), <https://www.who.int/topics/sanitation/en/> accessed on May 06, 2019

<sup>141</sup> ibid

<sup>142</sup> Focus group discussion with Misbaha Ismail and other 8 member of IDPs (n.106)

families and whom has two families got equal clothes, which are one blanket and one mattress. Because of this, those IDPs especially settled at Cold place like Suluta, Burayu and Sebbeta complain, as the government did not provide sufficient clothes in consideration of the climatic condition where IDPs settled<sup>143</sup>. Additionally IDPs also stated as their children's are suffering lack of appropriate clothes, which they should wear at school as well at home<sup>144</sup>. From this the researcher understand as the governments are no providing appropriate clothing to these IDPs which enable them to live an adequate standard of living as stipulated under GP, principle 18(1), (2c).

Therefore, this shows that as Ethiopian government didn't **fully fulfill its obligation to provide appropriate clothes** for all IDPs displaced from Somali region based on the climatic conditions of the area where IDPs settled as per GP, principle 18(1, 2c).

- e) **Medical Service**, the other obligation is obligation to provide an essential medical service that stipulated under GP, principle 18(2d). Concerning the fulfillment of medical service, the data collected from IDPs indicated as the governments provide **free medical service** for those IDPs displaced from Somali region. To get free medical service the government provides medical identification card to each of IDPs. By using this identification card, all IDPs get medical treatment without payment. However, the main problems, which IDPs are phasing with regard to medical treatments, are there are no sufficient drugs in the government pharmacy. After the IDPs health problem identified in the health center sometimes the physician order them to buy drug out of government pharmacy, which is very expensive<sup>145</sup>. To buy it IDPs have no many since they are jobless and dependent on the government and community assistance<sup>146</sup>.

**Secondly**, IDPs also complain that, as there is no sufficient laboratory in the government health center and as they requester to examine their health problem at private laboratory. Since they have no income and government does not provide financial assistance for them, IDPs cannot paid for laboratory service at private laboratory and they cannot buy drugs from private pharmacy. The lack of sufficient drug and laboratory service in the government health center and hospital, are the main challenge for IDPs in getting proper medical treatments.

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<sup>143</sup> ibid

<sup>144</sup> ibid and Focus group discussion with Abdi Mohammed and other 8 members of IDPs(n.126)

<sup>145</sup> ibid

<sup>146</sup> ibid

**Therefore,** the government has limitation in fulfilling sufficient medical service to IDPs, which has supported by strong finance that will be paid for the laboratory and drugs when there is lack of such service in public health center or Hospital to meet its obligation to provide essential medical service which stipulated under GP, principle 18(2d).

- f) **Educational service:** GP, principle 23(1) states that as *every human being has the right to education “and state authorities has an obligation to provide education for displaced children, which shall be free and compulsory at the primary level and that should respect their cultural identity, language, and religion’.*

In the case of Oromo IDPs displaced from Somali regions, those IDPs children whose had settled at 11 sites in Oromia region are getting educational service equally with the children of host community since most of them settled at the central part of the country where schools are relatively accessible to the host community. However, there is some limitation of clothes and material and transport especially in case of Sululta site<sup>147</sup>.

Furthermore, other unsettled IDPs children who have lived in different Oromia zones in temporary camps are not all of them on education because of lack of permanent settlement, lack of educational material including appropriate clothes<sup>148</sup>. This shows that even if the governments are providing free educational service for those children, who have settled at 11 places in Oromia region, but there is limitation in providing educational opportunity for those IDPs children who did not get durable solution and remain in temporary comps in different zones of Oromia regional state.

Therefore, Ethiopian government does not fully fulfill its obligation to provide educational opportunity for all IDP children displaced from Somali regions according to GP, principle 23 since most of unsettled IDPs children are out of education.

- g) **In providing job opportunity,** After the government settled, IDPs in new place it expected to facilitate for IDPs to generate their income by enacting a policy, which create a job opportunity for IDPs<sup>149</sup>. However, these Oromo IDPs displaced from Somali regions during September 2017 but until now, there is no evidence or a report, which indicates as

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<sup>147</sup> Focus group discussion with Misbaha Ismail and other 8 member of IDPs (n.106)

<sup>148</sup> Interview with Begna Duresa, ( n.127)

<sup>149</sup> Ibid

even single IDPs, got permanent jobs, and all of them dependent on the government aid and other host community assistance<sup>150</sup>.

### 3.2.6 State response in providing legal frameworks, legal remedy both in case of Civil and Criminal matters

Those people whose human rights have been violated need effective remedy, which operated through judicial or non-judicial and other state or other organizations<sup>151</sup>. However if the issues are criminal matter legal remedies are provided to the victims of crime by the tribunal established by international and national laws. Therefore, under this topic let us see how legal remedies have provided to IDPs who need justice under international legal frameworks both in case of civil and criminal matters.

#### i) Providing legal frameworks and legal remedy in case of civil matters

As the GP, principle 29(2) stipulated, state have an obligation *‘to provide or assist IDPs in obtaining appropriate compensation or another form of just reparation when IDPs unable to recovery the property left behind, or dispossessed during displacements.*

The GP does not impose obligation on states to be liable and make reparation for IDPs when state failed to protect people from **manmade disasters**. Additionally, the GP also does not impose obligation to be liable and to make reparation on state when displacement has caused because of state fault or when state organ is taking part in displacing the people arbitrary or failed to protect people from arbitrary displacement just as the *case of Oromo IDPs displaced from Somali region.*

Nevertheless, Ethiopia has no specific legislation which imposes obligation on state to make reparation or compensation for IDPs when states failed to protect such IDPs both manmade and natural disasters to benefit those IDPs who displaced by arbitrary displacement which is similar with the case of Oromo IDPs displaced from Somali regions. In fact, Ethiopia has tort laws, which enable people to claim compensation for the material and moral damage caused to them because of state faults, which has claimed by presenting the case before regular courts. Nevertheless, since thousands of people displaced from their home, it is difficult to manage the case only by courts and special rules needs to solve such kind of problem.

Therefore, this clearly shows that as Ethiopia failed to fulfill providing effective legal frameworks for IDPs by enacting or incorporating international rules to domestic legislation, which

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<sup>150</sup> Ibid and Interview with Mohammed Amine and Abraham Idiris,(94)

<sup>151</sup> Rutherford (n.29) 4

enable IDPs to get just, and **fair compensation** or other form **reparation** for the damage incurred to them because of arbitrary displacement, when state manifestly failed to protect them from such displacement.

Practically in case of Oromo IDPs displaced from Somali regions, all IDPs who's left their property at their original place did not recover their property and did not get compensation for the damage caused to them because of arbitrary displacement. Moreover, Ethiopian government also did not assist these IDPs in order to get appropriate compensation or another form of reparations<sup>152</sup>. This shows that as Ethiopian government did not fully fulfill its state obligation to assist these IDPs to recover their property or in obtaining appropriate form of compensation or just reparation asper under GP, 23(2).

#### ii) **Providing legal frameworks and legal remedy in case of Criminal matters**

If state failed to protect people from the violation of their rights, those individual persons whose rights have been violated needs access to justice and states has also obligation to provide effective remedy for them in case of criminal matters<sup>153</sup>.

Regarding **with arbitrary displacement** international law has developed an instruments and juries prudence to criminally prosecute forced displacement as a war crime or crime against humanity, whether the displacement in question is internal or across international borders<sup>154</sup>. Failure to prosecute arbitrary displacement that constitute serious crime invites **impunity**, which in contexts of mass displacement undermines the goals of transitional justice, and recognition of victims promotion civic trust and strengthening the rule of law<sup>155</sup>.

Moreover, the Rome statute of ICC also recognized forced displacement, forced disappearance, and crime of Murder, rapes and physical injuries as crime against humanity, which is punishable under international criminal laws as provided under Rome statutes of ICC Article 7.

In case of Oromo IDPs displaced from Somali region, the GP stipulated as every person has the right to '*be protected from arbitrary displacement*' and any other crimes against the right to life, the right to dignity and physical integrity of IDPs. However, about 247,175 Oromo IDPs arbitrary displaced from Somali region, while about 200 IDPs disappeared, female IDPs

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<sup>152</sup>Interview with BegnaDuresa,(n.127)

<sup>153</sup> Rutherford (n.29)

<sup>154</sup> Federico Andreu Guzman, *Criminal Justice and Forced displacement: International and National Perspectives*,

Research Brief (ICTJ, Brookings-LSE Project on Internal Displacement (20013) 1

<sup>155</sup> *ibid*



raped, others tortured, and murdered in which finally the Federal police discovered about 50 dead bodies from one hole in Somali regions which shows as most probably crime of Genocide or mass murderer has been committed on these victim of IDPs<sup>156</sup>. Since these victims of arbitrary displacement as well as other crime needs legal remedy for the acts violate their rights, state has obligation to provide Justice in case of criminal matters to fulfill its obligation to provide legal remedy and to reject impunity according to AU Constitutive act Article 4

Nevertheless, since Ethiopia is not a party to Rome statute of ICC Ethiopia has no legal obligation to prosecute those suspects who committed acts of arbitrary displacement and crimes against these ethnic Oromo IDPs displaced from Somali region under the rule of Rome statute.

Therefore, for the purpose of this study the researcher examines whether or not Ethiopia provide criminal remedy for the victims of arbitrary displacement, crime of Homicide, Summary execution, rape torture and forced dis-appearance under national criminal laws in the next topic.

### **3.3 Assessing state response to displacement under National legislations**

#### **Introduction**

In the above section, we have seen, as Ethiopia has no specific legislations, which specifically address the problem IDPs by identifying the rights of IDPs on one hand and obligation of state on the other hand. However, even if Ethiopia neither incorporated international rules nor enacted national legislation, which specifically address the issues of IDPs, but Ethiopia has general human right provisions which scattered in **national Constitution**, proclamation of federal **intervention No. 359/2003** and **national criminal laws** which canapplicable to issues of IDPs in the absence of specific proclamation or regulation. Nevertheless, based on the international rules mainly based on GP which provide **worldwide legal standard** for the protection of the rights of IDPs these scattered Ethiopian national legal provisions, which may be applicable to the issues of IDPs doesn't identified selectively from the existing national legislations such as from constitution and national criminal laws.

Then, under this section based on the international legal standard provided by Guiding principle, the researcher examines whether or not Ethiopia fulfills its state obligation to

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<sup>156</sup>Interview with Addisu Milkesa,(n.96)

respect, protect and fulfill, the rights of IDPs under existing domestic legislations. The researcher also identified the area where legal gaps has seen when existing national legislation has examined based on the above international legal frameworks on IDPs. Therefore, let us examine the state obligation under national legislation in,

1. In protecting people from ‘arbitrary displacement’
2. In providing protection from crime against legal rights of IDPs
3. In providing humanitarian assistance to IDP
4. In providing durable Solution, ending the status of IDPs
5. In providing basic needs and Social service, for both settled and unsettled IDPs
6. In providing legal framework and legal remedy interims of civil and criminal matters

### **3.3.1 State response in protecting people from “arbitrary displacement” under National legal provision**

The GP explicitly stipulated, as “Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence”. For the enforcement, this right state has obligation to respect this right by refraining from displacing people from their home by itself and by **protecting** people from arbitrary displacement caused by any third party<sup>157</sup>

In case of Ethiopian domestic legislation, we could not get such kind of rules that explicitly prohibits displacement by stipulating the right of every citizen to protect from “arbitrary displacement”. However, there is certain provision that can fill the gaps through constitutional interpretations. For instance, Article 89(3) stipulates, as *the government shall take measures to avert any natural and manmade disasters*. From this constitutional provision, we can understand as state has an obligation to prevent or avert any natural or made disasters that caused people to displace from their home and permanent residence during pre-displacement situation as the state economic objective.

Additionally, FDRE constitution Article 40(4 & 5) provides similar provision, to GP, which states as “*Ethiopian peasants and pastoralist has the right not to displace from their own lands*”. This provision imposes obligation on the government to protect and respect the rights of peasants as well as pastoralist not to displace from their lands. However, since this provision stipulated specifically for farmers and pastoralist it does not encompass all community in the country who engaged in different failed of work other than farming and

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<sup>157</sup> Guiding principle (n.25) principle 5-9

pastoralist. This shows the absence of explicit provision on FDRE constitution that prohibits arbitrary displacement of **every person** from their home and their permanent residence just as stipulated under GP, principle 5, 6 and 7.

Additionally, Article 32 and 41(1) FDRE Constitution also states as every Ethiopian citizen have *freedom to choose his residence, to engage in economic activities and to pursue a livelihood of his choice anywhere within the national territory* while Article 13(1) of the constitution imposes obligation on both State and Federal government organs to respect and protect this rights. This constitution can be considered and interpreted as the provisions that lied down in order to prevent arbitrary displacement of people by providing for all Ethiopian citizens this live any region even out of their respective ethnic regions within the boundary of Ethiopia.

Based on these legal provisions when we see the case of Oromo ethnic IDPs displaced from Somali region, Somali regional government police force selectively displaced Oromo community lived in Somali region. This displacement committed by the regional government police force and ethnic Somali inhabitants against the constitutional rights of Oromo community lived in Somali region provided under Article 32 and 41(1) of FDRE constitution.

Therefore, first Somali regional government failed to fulfill its **obligation to respect** the rights of every Ethiopian citizen to choose his residence, to engage in economic activities and to pursue a livelihood of his choice anywhere within the national territory of Ethiopia since the regional police force committed acts of arbitrary displacement against these Oromo IDPs.

**Second**, Since Somali regional government refrain from stopping the act of Somali ethnic youth that forcefully displaced Oromo people from their home, the Somali regional government **also failed to fulfill its obligation to protect** the rights these Oromo IDPs to choice their residence and economic activities everywhere in the country as per Article 32&41of the constitution.

Concerning obligations of **Federal government**: In Ethiopian the FDRE constitution Article 51(14) and 62(2) and proclamation number 359/2003 are the national legal provisions that lied down as the system of Federal government intervention to the regional states. According to these provision the federal government intervene to the targeted regional states, first when the regional state authority requested the federal government, Second when the regional state unable to control deteriorated security situation in the region and **thirdly**, when the House of

Federation order federal intervention in order to protect the violation of constitutional provision.

Especially, proclamation No.359/2003 articulates as federal government can intervene to regional states during human right violation as provided under Part 3 Article 7-11 of proclamation. This means based on the above legal provisions the Federal government could intervene to the Somali regions when Oromo people displaced and their human rights had violated by Somali liyu police and Somali ethnic youth during the time of displacement in September 2017. However, the Federal governments did not intervene to Somali region, when Somali regional state police force and Somali ethnic youth arbitrary displacing Oromo people from their home and their residence<sup>158</sup>.

Therefore, this clearly shows as the Ethiopian federal government also failed to fulfill its **obligation to protect** the right of these displaced people to choose their residence, to engage in economic activities and to pursue a livelihood of their choice everywhere in the country, which guaranteed under Article 32(1), 41, 40 (4 & 5) and 13(1), of the constitution.

On the other hand, currently in Ethiopia, people displaced because of ethic based conflict and violence and mostly those minority nations who lived out of their respective ethnic regional states are the victims of arbitrary displacements. The FDRE Constitution Article 39 talks about the rights to self-determination and self-administration of nation and nationality of people who share common culture language and identity lived in the contiguous territory. However, the constitution does not impose obligation on the regional state authority to protect minority nations lived out of their respective ethnic regions or within their regions by providing legislation that protect them from **arbitrary displacement**.

For instance, the FDRE constitution gives the right to self-determination and administration for Ethiopian Somali people. Nevertheless, the national constitution does not specifically impose obligation on Somali regional authority to respect and protect the rights of minority ethnic community lived in Somali region like Oromo or Amahara and other nation and nationality lived in Ethiopian Somali regions to protect them **from arbitrarily displacement** caused by ethnic conflict and violence or ethnic based displacement.

Therefore, this show as Ethiopia constitution or other domestic legislation does not expressly and clearly provides the right to self-determination and administration with obligation to

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<sup>158</sup>Focus group discussion with Misbaha Ismail and other 8 member of IDPs (n.106) and Focus group discussion with Abdi Mohammed and other 8 members of IDPs(n.126)

respect and protect the rights of minority ethnic groups who lived within such regional states to conform exactly with rule of GP, 5-9.

### 3.3.2 State response in protecting these Oromo IDPs from crimes under National Legal frameworks

At the time of displacement state has an obligation to respect and protect the rights of IDPs which includes, the right to life by protecting IDPs from crime violate such rights like crime of Genocide, Murder, Summary or arbitrary execution and enforced disappearance<sup>159</sup>. Additionally State has also obligation to protect and respect the right to dignity and physical, mental and moral integrity of IDPs by protecting IDPs from crime of rape, torture, physical injury and other crimes provided under GP, 10 & 11.

Then when we see such kind of provisions under national legislation, these rights have also provided under FDRE constitution. For instance, the right to life, the right to probation against inhuman treatment, the right to honor and reputations are provided under Article 14, 15 and 18 of the constitution, while the right to be protected from crime against humanity such as from crime of genocide, summary executions, forcible disappearance, or torture are recognized under Article 28 of the Constitution.

From this, we understood that as the provisions, which provided under GP with respect to protect IDPs from crime against their rights to life, their right to dignity and morality have been also provided under the FDRE constitutions of 1995 that can be applicable to protect the rights of IDPs in the absence of specific legal frameworks on IDPs. In other case both Federal and regional state governments has obligation to respect and protect the human right provision of the constitution as stipulated under Article 13(1) of the constitution. Then when we come to the case of Oromo IDPs displaced from Somali region, during the time of displacement, the alleged crimes such as crime against the right to life; crime of **homicide**, crime of forced disappearance were committed against Oromo ethnic IDPs in Somali regions as discussed above<sup>160</sup>.

Secondly, during the time of displacement, the other crimes such as crime against the right to dignity, physical, mental, and moral integrity of IDPs such as crime of **rape, crime of grave physical injury, torture** and cruel or in **human and degrading treatments** were committed

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<sup>159</sup> Guiding principle on internal displacement(n.25) , principle 10 (10))

<sup>160</sup> Interview with Addisu Milkesa (n.94)

on these ethnic Oromo IDPs<sup>161</sup>. These crimes had been committed on the Oromo IDPs with the incitement of Somali regional official lead by ex- Somali regional president Abdi Mohammed Ummer (*Abdille*) and while Somali regional police members and Somali ethnic youth committed the acts<sup>162</sup>.

Therefore, this shows as Somali regional government failed to fulfill its obligation to respect and protect the rights of these Oromo IDPs, the right to life, the right to probation against inhuman treatment, the right to honor and reputation which protected under national constitution Article13 (1), 14, 15, 18, 24 and Article 28 of the constitution.

The **federal government** also did not intervene on time and protect the Oromo IDPs from crime of homicide, torture, rape, inhuman degrading and treatment and forced disappearance. This also shows as the Federal government also failed to fulfill its obligation to protect the rights of Oromo IDPs displaced from Somali regions which includes, the right to life, the right to probation against inhuman treatment, the right to honor and reputation protected under Article 13(1) and 14,15,18,24 and Article28 of the national constitution.

### **3.3.3. State response in providing humanitarian assistance to IDPs under national Legal provision**

As it asserted under GP principle, 3 &25, IDPs have the right to request and to receive protection and humanitarian assistance while correspondently state has also primary obligation to provide immediate humanitarian assistance to IDPs<sup>163</sup>.

In context Ethiopian domestic legal frameworks, there is no explicitly provision, which exactly conform to provision of GP that guarantees for IDPs the right to request protection and humanitarian assistance. Exceptionally even if it is not exactly the same with the provision of GP, Article 89(3) of FDRE constitutions stipulates, as “the Government shall take measures to avert any natural and man-made disasters and *in the event of disasters, to provide timely assistance to the victim of natural disasters*”.

As we understand from this provision, it clearly imposes on the government to provide humanitarian assistance to the victims of natural and manmade disasters. This means since internal displacement caused by conflict and violence is a human made disaster, it is applicable to the case of displacement caused by conflict, and violence particularly in the

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<sup>161</sup> Ibid

<sup>162</sup> Focus group discussion with Misbaha Ismail and other 8 member of IDPs (n.106) and Focus group discussion with Abdi Mohammed and other 8 members of IDPs(n.126)

<sup>163</sup> Guiding Principle (n.25) principle 3 and 25

case of Oromo IDPs displaced from Somali regions. This means Article 89(3) of the FDRE constitution to same extent conform with Article 3(1) and 25 of GP that imposes primary obligation on state to provide protection and assistance to IDPs.

Therefore, based on this point when we examine, the response of Ethiopia government interims of providing timely assistance to these IDPs Oromo IDPs displaced from Somali region under national legal frameworks,

**First**, Oromia regional state disaster risks reduction and early warning authority provide humanitarian assistance to IDPs after they displaced from Somali region and arrived in Oromia region by cooperating with host community, wealth men and other international organizations such as, international and national Red cross society, international association for migration, and world food program<sup>164</sup>. Even if the supply of humanitarian assistance such as food, water, medical service, and shelters has some limitation, there is no death report of IDPs for the lack of ‘**timely assistance**’ during the time of displacement<sup>165</sup>. **Second** concerning the **Federal** government, the federal governments late in averting the displacement crises in Somali region, but they supply assistance to IDPs after the Federal parliament approved emergency budget to allocate resources to IDPs<sup>166</sup>.

Therefore, this indicates that since both the Federal and Oromia regional states supply ‘**timely assistance**’ to these IDPs in cooperation, and there is no death report of IDPs because of lack of timely assistance, Ethiopian government fulfill its obligation to provide timely assistance to the victims of internal displacement according to Article 89(3) and 13(1) of the constitution.

### **3.3.4 State response in providing durable Solution to IDPs under national legal Provision**

Durable solution for IDPs means ending the problem of internal displacement and status of IDPs by facilitating the voluntary return to place of origin, re-settlement in another location and local integration with local community of IDPs by providing basic needs and necessity with other necessary social services<sup>167</sup>.

Concerning providing durable solution for IDPs, Ethiopia has no specific legislation or explicitly national policy or legislation at Federal level. Nevertheless, among the nine regions

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<sup>164</sup>Interview with Begna Duresa,(n.127)

<sup>165</sup> Ibid and Interview with Mohammed Amin, (n.94)

<sup>166</sup>Interview with Mohammed Amin,(n.94)

<sup>167</sup>Guiding principle (n.25), principle, 18, 28 and 29

of the member of Ethiopian Federation only Somali regional state formulated compressive durable solution strategy which is named as “*Somali region durable Solutions Strategy of 2017-2020*”. Its objectives are to assist Somali regions IDPs, including dropout pastoralists to find durable solutions to their displacement. The Somali regional state durable Solutions Strategy stated that, as it encompasses three options, 1) Voluntary return to places of origin, 2) Local integration in areas of displacement and 3) Resettlement in another location<sup>168</sup>

Unlike Somali regional states, both Federal and Oromia regional states did not formulate durable solution strategy for IDPs at national and regional level until now. Additionally there is no specific law that imposes obligation on states to provide durable Solution for IDPs in Ethiopia.

This clearly indicate as Ethiopian federal and Oromia regional state governments did not fully fulfill its state obligation to provide legal provision that stipulates for Ethiopian IDPs the right to get durable solution and imposes obligation on state to enforce such rights when the problem of displacement has occurred in Ethiopia.

### **3.3.5 State response in providing basic needs and Social service under National legal Provision**

According to FDRE constitution state has obligation to provide houses, shelter, and Social service for every Ethiopian Citizens. For instance, FDRE constitution Article 90 ‘*stated that, “ to the extent of the country’s resources permit, policies should aim to provide all Ethiopians access to public health and education, clean water, housing, food and Social security and as education provided to the people should be in a manner that is free from any religious and political influence”*’.

Additionally, FDRE constitution Article 41(4&5) stated that “*as every Ethiopian national has the right to equal access to publicly funded social services and as state has obligation to allocate ever increasing resource to provide to public health, education and other social services”*’.

Concerning with **unemployment the National** Constitution Article 41(6) imposes obligation on state “*to formulate policies, which aim to expand job opportunities for the unemployed and poor people by under taking programme, and public works projects, which form job opportunity for unemployed citizens”*’.

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<sup>168</sup>Ethiopian Somali regional government Durable Solution strategy, 2017-2020, p 4



Therefore, in the absence of specific national legislation, the provision of constitution that imposes obligation to fulfill basic needs such as food water, clothes, houses, and public funded Social service and providing policy for Ethiopian citizens that can be applicable for the protections of the rights of IDPs, under Article 41(4&5) and 90 of the FDRE constitution.

Then when we overview whether or not Ethiopia fulfill its state obligation to fulfill under FDRE constitution by providing protection and assistance to these IDPs it looks like as follows.

- a) Concerning **Foods** and **clothes**: it has proved in the above topic as governments are providing insufficient foods and clothes' for IDPs and as mostly IDPs children are suffering both essential foods and clothes. Therefore, Ethiopian government has limitation in providing sufficient foods and clothes' for the children of IDPs in order to meet its obligation to provide foods and clothes' as stipulated under GP 18(1a) and FDRE Constitution Article 89(3), and 90(1).
- b) Concerning **houses** and basic shelter: among 247,175 Oromo IDPs displaced from Somali region the government, provide houses only for 41,053 of IDPs, which is about 16.4% of IDPs, and the remaining 206122 IDPs are still living in temporary shelter in different Oromia Zones as listed under the above chart, 1.

Therefore, these shows as Ethiopian governments do not fully fulfill its obligation to provide permanent and basic shelters for all IDPs to meet its obligation stipulated under Article 41 (4&5) and 90 of the national constitution, since the majority 83.6% of IDPs are living in temporary shelter for the past 20 months in different Oromia Zones.

Concerning **medical service**: Most of IDPs complain about the problem relating with medical service especially with regard to lack of **drugs** and **laboratory** service in the health center. For instance, most of the time, after IDPs examined at health center and took medical treatment, the health officer, or the medical doctor order IDPs to buy drugs from private pharmacy when there is no drugs in the health center. Since IDPs have no property and income they cannot pay for out service drugs and laboratory service and then IDPs remain without getting essential medical treatments<sup>169</sup>.

Therefore, because of lack of sufficient drug and laboratory in the government health center and hospital, Ethiopian government has limitation in fulfilling its obligation to

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<sup>169</sup> ibid and Focus group discussion with Abdi Mohammed and other(n.126)

provide sufficient health or medical service to IDPs as stated under Article 41(1) and 90(1) of national constitution.

**c. Educational service,** those IDPs children who settled at 11 sites in Oromia region are getting educational service equally with the children of host community since most of them re-located at the central part of the country where schools are relatively accessible to the society<sup>170</sup>. However, other unsettled IDPs children who remain in temporarily camps at different Oromia zones are not all of them on education currently because of lack of foods, lack of permanent settlement, lack of clothes, and lack of educational materials<sup>171</sup>. Therefore, this show as Ethiopian government did not fulfill its obligation to provide educational service for all unsettled IDPs children's, to meet its obligation stipulated under Article 41(4) and 13(1) of the national constitution.

**d. Job opportunity:** concerning job opportunity, the FDRE constitution Article 41(6) stated, that, *as state shall pursue policies which aim to expand job opportunities for the unemployed and the poor and shall accordingly under take programmes and public work projects*".

In case, Oromo IDPs displaced from Somali region these IDPs are vulnerable groups who lose their home, property, jobs and income because of arbitrary displacement. Because of this, the government has obligation to follows policy that create job opportunity for those IDPs displaced from their livelihood according to Article 41(6) the national constitution.

However, as collected data indicated the governments have a plane to create a job opportunity for these settled IDPs at 11 places in order to enable them to generate their own incomes. However, yet there is no a report that indicated as single IDPs got permanent job from both settled and unsettled IDPs based on governments policy<sup>172</sup>.

Therefore, this indicates, as Ethiopian government did not fully fulfill its obligation to provide national policy, which creates job opportunity for these IDPs to meet its national obligation, as specified under Article 41(6) of the constitution.

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<sup>170</sup> ibid

<sup>171</sup> Interview with Begna Duresa (n.127)

<sup>172</sup> ibid

### 3.3.6 State response in providing legal frameworks and legal remedy in case of civil matters under National legal provisions

Mostly when IDPs displaced from their permanent residence and home, they may left their immovable property, their permanent jobs and they adversely affected by displacement morally as well as materially. This makes IDPs who lose their property and job because of displacement to seek justice/compensation and relocation or durable solution for the negative effect caused to them because of displacement.

Because of this international legislation, GP principle 29 imposes obligation on state to provide effective legal remedy and legal framework that enable IDPs to claim fair compensation and other forms of reparation for the adverse effect caused to them because of displacement. Based on this international legal standard when we are looking such kind of legal provision under Ethiopian legal frameworks, FDRE constitution Article 44(2) states as *“all persons who **have been displaced** as a result of state progmmes have the right to commensurate monetary or alternative means of compensation, including relocation with an adequate state assistance.*

Nevertheless, as we understand from this provision, it has stipulated in order to protect the rights of IDPs that displaced due to **developmental displacements** and it excludes those IDPs that **arbitrary displaced due to conflict and violence**. This shows, as there is no similar legal provision that explicitly and clearly imposes obligation on state to compensate and relocate those IDPs displaced due to conflict and violence for the adverse effect of arbitrary displacement caused to them because of fault of governments.

Therefore, Ethiopian government did not fulfill its obligation to provide effective legal frameworks to facilitate those IDPs who displaced by conflict and violence to claim compensation or reparation for the adverse effect of conflict and violence displacement and to claim the recovery of their property they lost due to forced displacement.

Practically, among the total IDPs displaced from Somali region, about **247, 155 IDPs**, with total households of 56,038 IDPs, only 7949 households IDPs with total family of 41,053IDPs relocated at 11 places in Oromia sites, while about 48,089 households with 206122 total IDPs are unsettled and remain in temporary camps until now<sup>173</sup>.

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<sup>173</sup>Oromia regional state disaster risks reduction and early warning directorate updated(n.133)

Concerning the property of IDPs displaced from Somali regions, until now, none of IDPs recovers their personal property left or destroyed at their place of origin due to displacement. Moreover, these IDPs did not compensated for the negative effect caused to them because of displacement and even there is no clear procedure or policy to request the recovery of their property<sup>174</sup>. Therefore, this also shows, as Ethiopia failed to provide effective legal frameworks that enable IDPs to claim compensation and other forms of reparations for the recovery of their property and for the damage incurred to IDPs especially when the governments intentionally refrain from protecting people from arbitrary displacement. For instance, in case of Oromo people displaced from Somali region both federal and regional governments manifestly failed to protect people from arbitrary displacement. However, since there is no single national legal provision that imposes obligation on states to provide fair compensation for IDPs because of state faller in protecting arbitrary displacements of these people, none of them get legal remedy or compensation for the adverse effect caused to them and property they lost among 56,038-house hold IDPs. This shows, as Ethiopia government also did not fully fulfill its state obligation to provide **legal remedy** for these IDPs for the recovery of their property left at their previous residence and for moral and material damage caused to them.

### **3.3.7 State response to providing Legal framework and Legal remedy in case of Criminal matters under national legal provision**

Traditionally state has obligation to respect and protect human right abuse in order to fulfill its state obligation to respect and protect lay down under the laws<sup>175</sup>. However, if state failed to respect or protects certain human rights from violation by preventing the commission of acts constitute crimes, then those individual people, and society whose rights has violated needs criminal **justice** for the violation of their rights. In order to provide effective criminal justice state should established effective legal frame works, which declare certain acts that, violate human rights as crime punishable under national laws.

In the case of the protections of the rights of IDPs, IDPs have the right to be protected from acts of arbitrary displacement, Genocide, Murder, Summary, or arbitrary executions, enforced disappearance or abduction, rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment as stipulated under GP, principle, 5- 11.

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<sup>174</sup> ibid and Interview with Begna Duresa (n.127)

<sup>175</sup> Rutherford (n.29) 4

Other international convention like Kampala Convention of AU Article(6), *stipulated that, as state parties shall declare as offences punishable by laws acts of **arbitrary displacement** that amount to genocide, war crimes or crimes against humanity.* Nevertheless, as long as Ethiopia did not incorporate or ratify, Ethiopia does not bound by the rule of KC.

With regard to this issues in fact Ethiopia incorporated, *arbitrary displacement of population* as **war crime** under Article 270 (c) of national criminal code of 2005.

It states that “whoever, ***in time of war, or armed conflict** orders or engages in, against the civilian population in violation of the rules of international law and humanitarian conventions commit the compulsory movement or dispersion of population, **systematic deportation**, and transfer detention in concentration camps is punishable with rigorous imprisonment from 5 years to 25 years, or, death in serious cases”.*

This means Ethiopian national criminal provision declares as deportation or transfer of population **in time of war or armed conflict is offensive**, which is punishable under Ethiopian national criminal law. However, the national criminal laws does not declare as arbitrary displacement, deportation, or transfer of population committed during the peacetime as offence punishable by laws that amounts to genocide, war crime, or crime against humanity under Ethiopian criminal laws.

Therefore, from the above point we understand as Ethiopia declared arbitrary displacement committed during wartime or armed conflict punishable under national criminal laws, but as Ethiopian national criminal code did not criminalizes acts of arbitrary displacement committed during the **peacetime** as crime of Genocide or crime of against humanity.

**Second**, concerning other crimes, which violated the rights of IDPs, the national criminal law of 2006 declare as acts of Genocide which include, killing, bodily harm or serious injury to the physical or mental health is punishable under Article 269. Additionally acts of rape, torture, grave physical injury and crime of degrading inhuman treatment, which is committed during wartime is punishable under Article 270 (a,& f) criminal codeas war crimes.

Other crimes against the right to life such as **ordinary or aggravated home side** are also punishable under Article 539 and 40 of criminal code, while crime against health such as grave and common physical injury are punishable under Article 553- 556.

In addition, Crime against morality and dignity like crime of **rape** is also punishable under Article 620of Ethiopian criminal laws. From this, we understood that except acts of arbitrary displacement committed during the time peace all crimes that identified as acts that against

the rights of IDPs under GP declared as crime punishable as crime of Genocide or ordinary crimes. However, the Ethiopian national criminal law did not declared acts of **arbitrary displacement committed during the peacetime** to against certain groups as crime against humanity or as a crime of Genocide or as ordinary crimes. This clearly shows as Ethiopia failed to provide an effective legal framework that explicitly criminalizes **acts of arbitrary displacement committed during the peacetime** against certain groups or population.

**Providing criminal justice:** Since, Ethiopia failed to protect these Oromo IDPs from crime against their rights; such as from arbitrary displacement, crime of homicide, rape, torture, physical injury, and degrading inhuman treatment, then Ethiopia has obligation to provide **legal remedy in case of criminal matter** by prosecuting those individual who suspected for the commission of such crimes.

Currently, about 47 Ethiopian Somali regional state officials including ex- president of Somali regional state Abdi Mohammed Umar have been arrested and charged on January 29, 2019 at the Federal high court Lideta bench for the acts of displacement and other alleged crimes committed on IDPs <sup>176</sup>.

However, as the data collected from the office of Federal public prosecutor indicated, the government did not prosecute or imprison those Somali regional state officials for the alleged **crime of displacement, murder, rapes, torture, and inhuman and degrading treatment** committed against Oromo IDPs displaced from Somali regions during the time of displacement in February 2017<sup>177</sup>.

They have been charged and imprisoned for the other alleged crime, committed during the month of **June 2018 – up to July 2018**. These alleged crimes were for organizing and instigating Somali ethnic youth called ‘Heegoo’ in order to displace other non-Somali ethnic inhabitants from the region, to burn religious and oil camps, to rob banks and insurance, and to create conflict in the region. According to charge of Federal public prosecutor those Somali regional states induced and instigating Somali ethnic youths to commit the above crimes by advocating Somali ethnic youth as their country and their oils had taken by “Habasha people and as they should protect their state and their oils”<sup>178</sup>. Additionally they also charged for the completed crime such as for the death of people during the violence they

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<sup>176</sup> Charge opened on Ato Abdi Mohammed Umer and other 47 person by Federal Democratic Republic of Ethiopia Federal Attorney General, on January 29, 2019 on File No. 75/11 at Federal High court Lideta, Addis Ababa

<sup>177</sup> ibid

<sup>178</sup> ibid

created, for the destruction of religious and governmental organization, for the distractions of governmental and private property and for the displacement of people and for endangering constitutional order during the time of **June 2018 up to July 2018**<sup>179</sup>.

Nevertheless, the Federal public prosecutor stated, as those people who suspected for commission of **acts of arbitrary displacement** against these IDPs in February 2017 did not prosecuted until now. In addition, the government also did not prosecute those individuals who committed crime against humanity such as **crimes of rape, murders tortures, physical injuries and forced disappearances committed** against these IDPs, even if it is punishable under FDRE criminal laws as crime against humanity or ordinary crimes<sup>180</sup>.

The researcher investigated the reasons why the government refrain from prosecuting those, regional state officials, member of police force and individual ethnic Somali inhabitants who committed alleged acts of arbitrary displacement of 247,175 people IDPs and other crimes committed during these IDPs displaced from Somali regions in September 2017.

**First**, concerning **arbitrary displacement**, Ethiopia government refrain from prosecuting the suspects because of the legal gaps that clearly prohibit and criminalize arbitrary displacement committed **during the peacetime** by declaring as act of crime of Genocide, crime against humanity or as ordinary crimes under Ethiopian domestic legislation or by incorporating international rule that declare arbitrary displacement as crimes<sup>181</sup>..

In case of ethnic Oromo IDPs displaced from Somali region, the displacement was committed during the time of peace. Because of this, it does not fall under Article 270 of Ethiopian criminal code that criminalizes arbitrary displacement committed during wartime or occupation of the country. So that, if the government prosecutes the suspects without having clear provision of laws that criminalize acts of arbitrary displacement committed at the peacetime as a crime, the prosecution will contradicts with the **principle of legality provided** under Article 2 of FDRE criminal code. This shows, as there is legal gap in the Ethiopian criminal law, which clearly criminalizes arbitrary displacement of population during the **peacetime and that forced** Ethiopian government to refrain from prosecuting those individual suspects who causes arbitrary displacement of Oromo IDPs in Somali regions during September 2017<sup>182</sup>.

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<sup>179</sup> ibid

<sup>180</sup> Interview with Addisu Milkesa,(n.96)

<sup>181</sup> ibid

<sup>182</sup> ibid

Therefore, concerning **acts of arbitrary displacement**, the study found as Ethiopian government failed to provide **effective legal framework** that prohibits and declare arbitrary displacement of population as crime punishable under the law when it has committed during the **peacetime** against certain group of people based on their ethnic, religion, or any other grounds.

Concerning crimes of homicide, rape, physical injury, forced disappearance; degrading inhuman treatment committed against these IDPs during the time of displacement, the government can prosecute as crime of Genocide under Article 269 or as Ordinary crime under Article 539,540, 555/56, 260 of criminal code as long as such kind of acts are criminalized by criminal code.

So that since Ethiopian government refrains from prosecuting the suspects both as crime of Genocide or as an ordinary crime under the above legal provision, Ethiopian did not fully fulfill its obligation to provide **legal remedy** in case of criminal matter for the victim of crime of homicide, rape, physical injury, and forced disappearance committed against these IDPs.



## CHAPTER FOUR

### 4.1 Conclusion and Recommendation

#### 4.1.1 Conclusion

Internally displaced persons (IDPs) are persons or groups of people who have forced to flee from their home or permanent residence due to natural or human made disaster and reside within their national state borders without crossing international boundary of their own state. Since IDPs are a group of people who displaced from their home and property, they are vulnerable groups who need special protection and assistances. Because of that, international legal framework, GP and KC imposes obligation on state and other concerned authorities for the protections of the rights of IDPs.

So that this study is conducted with the aim to identify whether or not Ethiopia fulfill its state obligation by providing protections for those Oromo ethnic IDPs displaced from Somali region during the year of 2017 both under the existing international and national legal frameworks like **GP**, and **national constitution** and **national criminal laws**.

Then, **first**, the study found that, about, 247,155 ethnic Oromo people displaced from Ethiopian Somali regions from their home and their permanent residence in 2017 by acts of arbitrary displacements. These IDPs also did not return to their home currently. Additionally, during the time of displacement, crime homicide, summary execution, forced disappearance, grave physical injury, rape, torture, cruel degrading inhuman treatments had been committed against these IDPs, by the member of Somali regional state police force and Somali ethnic inhabitants.

During the time of displacement, both Somali regional state and Federal government did not attempt to protect these IDPs from such arbitrary displacement and crimes. Therefore, both Somali regional state and Federal governments' did not fulfill their obligation to protect the rights of IDPs, which include the right to be protected from arbitrary displacement and the right to be protected from crime against their rights.

**Second**, Concerning state obligation to fulfill/provide, Oromia regional state government provided immediate humanitarian assistance to those IDPs displaced from Somali regions by cooperating with organs of Federal governments, host community and other wealth men in the country and there is no death report because lack of humanitarian assistances. Therefore, this shows as Ethiopian government fulfills its state obligation to provide immediate humanitarian assistances as stipulated under GP and national constitution.

However, concerning basic needs and social service, currently IDPs are facing, lack of foods and clothes, lack of shelter, lack of adequate medical assistances, lack of educational materials, and lack of job opportunities, which shows that Ethiopian government, did not fully fulfill its obligation to provide basic needs and social service both under existing international and national legal rules.

Concerning durable solution, even though the government tried to settle about 41,053 IDPs in 11 places in Oromia region, about 206,122 IDPs are remaining in temporary camps still now. Therefore, Ethiopian government did not fully fulfill its obligation to provide durable solutions to these IDPs as per to GP.

Concerning obligation to provide effective **legal frameworks**, Ethiopian national constitution provides the right to self- administration for the nations and nationality who established their regional state boundary based on the linguistic line. However, the constitution does not impose obligation on those nations to protect other minority ethnic groups who lived within that regional state and out of their respective ethnic region from arbitrary displacement committed against them based on their ethnicity. This shows that as Ethiopia government did not fully fulfill its obligation to provide legal frameworks, which expressly provides the right **to self -administration** with obligation to protect the rights of minority ethnic groups from arbitrary displacement committed based on their ethnicity or any other grounds.

**Interims of criminal matter**, Ethiopian criminal code does not recognized arbitrary displacement committed during peacetime as crime of Genocide, or crime against humanity or as ordinary crimes to criminalize arbitrary displacement committed during the peacetime. This means under Ethiopian laws, arbitrary displacements are punishable only as war crimes if it has committed during armed conflict, occupation, or at wartime. Therefore, this shows as Ethiopia lacks providing legal provisions that declares **arbitrary displacement committed during peacetime as crime punishable under the law**.

Concerning obligation to provide legal remedy both in civil and criminal case, there are no IDPs who recovers their property and compensated for the moral and material damage caused to them because of such arbitrary displacements. Additionally in case of criminal matters, there is no individual person who prosecuted for the arbitrary displacement and crime he/she committed during September 2017 against these IDPs displaced from Ethiopia Somali region.

Therefore, Ethiopia did not fully fulfill its obligation to provide legal remedy both in case of civil and **criminal matter** for these IDPs by prosecuting the suspects of arbitrary

displacement and crime committed against the right of IDPs during the time of displacement and by recovering or compensating the property of IDPs left or disposed because such displacement.

#### **4.1.2 Recommendation**

The researcher identified whether the existing Ethiopian domestic legal rules are sufficient or not to protect the rights of IDPs in Ethiopia based on the Universal legal standard provided by UN, which called the Guiding Principle on internal displacement (GP). The researcher also examines whether or not Ethiopian government fulfils its international and national state obligation by providing protection and assistances to Oromo people displaced from Somali region in 2017 both under GP and under relevant national legal rules and provides the following recommendations for Ethiopian government to meet its obligations.

1. To protect people from arbitrary displacement Ethiopia should establish legal frameworks that explicitly provides for every person *to be protected from arbitrary displacement* that conform to rule of GP by imposing obligation to enforce such rights on state organ both at federal and regional level.
2. Currently in Ethiopia, the victims of arbitrary displacements are minority ethnic people who lived out of their respective ethnic regional state. To solve such problem, just as Ethiopia provides the right to self-administration under Article 39 of the constitution, then Ethiopia should also develop legal provision and **national principle** that imposes obligation on each regional state to protect the rights of minority ethnic people that live within that region from arbitrary displacement and other form of human right violations. Shortly, *Ethiopia should develop national principle the right to self-administration with obligation to protect minority nationality lived within that regions or lived out of their respective ethnic region.*
3. Ethiopia national criminal law do not explicitly criminalize acts of arbitrary displacement committed during a peacetime as acts which punishable under the law. Then Ethiopia should add new provision that declares arbitrary displacements committed during peacetime as crime of Genocide, crime against humanity or as ordinary crimes in order to provide legal remedy for the victims of arbitrarily displacement and to create deterrence effect of displacement.
4. Ethiopia should also provides legal provisions which asserts a right for IDPs to claim their property left at their original residence, disposed or destroyed due to arbitrary

displacement especially from those organs who causes displacements and failed to fulfill their obligation to protect. In addition, Ethiopia shall also establish specific legal rule that enable IDPs to get compensation or reparation for material and moral damage caused to them because of displacement when state manifestly failed to protect them or state fault is a cause for such arbitrary displacements.

5. To solve the problem of legal frameworks and financial problem Ethiopia should ratify the AU Kampala Convention of 2009, which provides the legal frameworks for the protection and assistance of IDPs in Africa especially to solve the legal gap seen in national criminal law and national civil laws.
6. In case of **‘Oromo people displaced from Somali region’**, Ethiopia should provide durable solution for those Oromo IDPs displaced from Somali region and remain in temporary camps without getting durable solution which are about 83.6% of total IDPs or for 48,089 house hold IDPs or for total IDPs of 206,122 that live in temporary shelter since September 2017.
7. Since all IDPs especially, IDP children’s are suffering lack of adequate foods, clothes medical treatment, Sanitation and access of education, Ethiopian government should provide such basic needs and Social service for those IDPs in order to protect their rights and to meet its obligation to fulfill.
8. Since, all IDPs displaced from Somali region did not recover their personal property left or disposed at their previous residence in Somali region, Ethiopian government should facilitate a condition in which enable them to recover their property left or disposed and enable them to be compensated for the material and moral damage caused to them because of such arbitrary displacement.
9. Finally, since not all suspects’ who committed arbitrary displacement, summary execution, homicide, rape, torture, forced disappearance and degrading inhuman treatment against IDPs did not prosecuted, Ethiopian government should prosecute them as ordinary crime or as crime against humanity under the existing criminal rules **to reject impunity** and to **provide legal remedy (criminal justice)** for the victims such crimes.

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## **7. Interviews**

Interview with Mohammed Amin, 'representative and member of IDPs displaced from Somali region and currently settled at Gara-furi of Sebeta city, (Sebeta, January 12,2019)

Interview with Addisu Milkesa, the Federal public prosecutor of transitional crimes at the Federal Attorney General, (Addis Ababa Lideta,17 January 2019)

Interview with Saladiin Sufiyan, the representative and member of IDPs displaced from Somali regions and relocated Sululta city at Tulifaxi site (07, January, 2019)

Interview with Benya Duresa, Oromia regional State disaster risks redaction and early warning commission Directorate, (Addis Ababa Ethiopia, February 28, 2019)

Interview with Mohammed Amine and AbrahimIdiris, the representative and member of IDPs displaced from Somali regions and currently settled at Gara-furi of Sebeta city, (Sebeta, 12 January 12, 2019)



Focus group discussion with Misbaha Ismail and other 8 member of IDPs displaced from Somali Regional state relocated at Sululta, (SulultaOromia 07, and January 2019)

Focus group discussion with Abdi Mohammed and other 8 members of IDPs, displaced from Somali regional state and relocated at Burayyu city Gefersa site (Burayu , 8 January, 2019)

## Appendix-I

### Interview groups

#### A. List of interview respondents

No	Name of Respondent	Position	Place	Day of interviews
1	Addisu Milkesa	Federal public prosecutor	Addis Ababa Lideta	17-01-2019
2	Begna Duresa	Director of Oromia regional state disaster risks reduction and early warning commission	Addis Ababa sar- bet	28-02-2017
3	Abdo Mohammed Rashid	The Committee member of IDPs displaced from Somali and sited at Burayyu lakku-katta site	Burayu city Laku Kata site	08-01-2019
4	Abraham Idris	Representative and member of Oromo IDPs displaced from Ethiopian Somali region	Sebeta city Garafuri site	12-01-2019
5	Mohammed Amiin	.>>	>>	>>
6	Saladiin Sufiyan	Representative and member of IDPs displaced from Somali regions and sited in Sululta city	Sululta city Tulu Fati site	07-02-2019

**B. Table shows Name of Respondent in focus group discussion**

C. List of focus group discussion respondents Group One [Sululta city site one]

On the day of **12-01-2019**

No	Name of Respondent	Age	Sex	Educational back ground	category
1	Abduhamid Ablu	40	M	Grade 3	IDP
2	Ayaan Mohammed	30	F	Grade 0	>>
3	Badiriya Mohammed	32	F	Grade 3	>>
4	Diinee Yusuf	35	M	Grade 10	>>
5	Misbaha Isma'eel	35	M	Grade 5	>>
6	Mohammed Aliyii	27	M	Grade 10+2	>>
7	Najaat Mohammed	28	M	Grade 0	>>
8	Na'ima Abubakar	28	M	Grade 0	>>
9	Najana Abibakar	30	M	Grade 3	>>

**II. Focus group discussion; group Two Burayu city Gefersa site**

1	Name of respondent	Age	Sex	Educational Back ground	category
2	Abdi Mohammed	36	M	Diploma	IDP
3	Ahimad Alii	15	M	Grade 4	>>
4	Bayan Mohammed	30	M	Grade 2	>>
5	Caaltuu Mohammed	20	F	Grade 8 <sup>th</sup>	.>
6	Dastu Anawar	22	F	Grade 6	>>
7	Janna Mohammed	22	F	Grade 8	>>
8	Ifa Kana'a	22	M	Grade 6	>>
9	Mohammed Ali	40	M	Grade 10	>>

## **I. Consent from Interview Guide**

Title of the study, is “**state obligation for the protection of the rights of IDPs: the case of Oromo people displaced from Ethiopia’s Somali region**”. My name is Tesfaye Tola. I am postgraduate Student of L.L.M in public international law at Addis Ababa University School of law. The aim of the study is to examine whether or not Ethiopia fulfills its state obligation to providing protections for the rights of IDPs in Ethiopia particularly in the case of Oromo IDPs displaced from Somali regions.

For the case of this study, the data gathered from respondent helps researcher to reach on the accurate findings and that enable the concern authority to solve existing problem of IDPs with regard to protections of their rights. The participants of both respondents’ of interviews and focus group discussion were volunteer and they can refuse or they may withdraw at any time. Their names as well as answers are completely confidential.

## **II. Interview questions for Focal group discussion and members of IDPs displaced from Somali region**

### **A) Concerning obligation to prevent displacement**

1. Where was your previous and permanent residence?
2. Why are you here?
3. Why displaced from Somali regional state?
4. What is the main cause for your displacement?
5. What do you remember about the situations of displacement?
6. Why you did not ask Somali regional State government to protect you from displacement and attacks?
7. What are the measures that Somali regional state government took in order to prevent you from displacement and attacks?
8. Why you did not ask Federal Government to protect you from displacement?
9. What are the measure taken by Federal government in order to prevent Oromo community from displacement and attack in Somali region?
10. What do you think about the actions taken by Federal government to protect you from displacement and attacks?

### **B) Concerning with providing protection and humanitarian assistance**

11. Who were provides you humanitarian assistance such as transport, food, water, medical treatment, and temporary shelter during you displaced from Somali region?
12. What was the serious problem IDPs face during the time of displacement?

- 13 What do you remember and what do you feel about the problem you face during displacement?
- 14 What kind of crime /attack was committed on IDPs during the time of displacement?
- 15 Who committed such crime?
- 16 What kind of measures regional and federal government had took to stop such attack?
- 17 Who provides medical treatment for those IDPs injured and need medical treatment?
- 18 How many families lost their children because of displacement?
- 19 How many of them unite with their children later and unable to unite?
- 20 Who protected you from crime during the time of displacement?
- 21 Who provides you humanitarian assistance such as basic needs such as water, health service, shelter, and medical treatment during the time of displacement?

**C) Concerning with Durable solution Settlement and basic needs and Social service**

21. Who do you settled here and how does you settled here?
22. What do you think about IDPs settlement program?
23. How many of you participated in on the discussion of settlement and settled according to your desire?
24. Who do you settled here?
25. How many international and national organizations participated in settling and assisting you? What are they?
26. Have you a permanent job? How many of you get permanent job?
27. Who provides you humanitarian assistance as settlement place?
28. What king of foods they provide to you?
29. How many or how much foods they provide you per a month?
30. What do you think about the quantity and quality of foods provides to you?
31. What about water provided to you?
32. What do you think about the cloth provided to you?
33. What do you think about educational service provided to you?
34. How many of your children got free educational service?
35. What is the actual problem with regard to educational service
36. What do you think about the medical service provided to you?
37. What is the actual problem with regard to medical service provided to you?
38. What do you think about your property left at your Original place?
39. How many of you recover your property left at your original residence?

40. What kinds of measures government have taken in order to recover?
41. What are the major taken by governments in order to provide you legal remedy interims of civil matters for the adverse effect caused to IDPs because of displacement?
42. What kinds of measures have taken by government in order to provide legal remedy for IDPs interims of criminal matter for acts of arbitrary displacement and crime committed against IDPs?

**D) Interview questions for directorate of Oromia regional State disaster risks reduction and early warning commission.** For Obbo Begna Duressa

**Questions**

1. What is the role of your office with regard to protections of the rights of IDPs?
2. What is the main cause for ethnic Oromo IDPs displaced from Somali region?
3. How many ethnic Oromo IDPs displaced from Somali regions?
4. How many Somali ethnic IDPs displaced from Somali regions?
5. What is the measures government take to stop displacement in Somali region?
6. Why Ethiopian government unable to prevent when Oromo ethnic community displaced from Somali region?
7. Who displaced Oromo people from Somali regional state? Who primarily provide humanitarian assistance to Oromo IDPs displaced from Somali regions?
8. Who provides protection and humanitarian for these IDPs ?
9. Who provided humanitarian assistance during the time of displacement for IDPs?
10. What is the basic needs and social service you provide to IDPs since their displacement? What is the main problem they are facing currently?
11. What is the measure you took in order to protect IDPs from acts of crime and social problem at the time of displacement, after displacement and during re-location?
12. What is the source of your financial income to cover of humanitarian assistance and to provide other protections including basic needs and Social service?
13. What kind of acts were committed against the rights of IDPs during the time of displacement and what is the action you take to prevent such acts and to protect the victim?
14. Which international and national Organizations and civil association working with you to address the overall protection IDPs need?

15. Among IDPs displaced Somali region how many of them relocated to in new place, return to their original residence and re-integrated? Where is the place of new settlement?
16. How many of IDPs remain in temporary camps? Why they remain?
17. Who provide durable solution and basic needs and social service for these IDP?
18. What is the guideline or rule do you used when you provide durable Solution?
19. What do you think about the basic need and social service provided to settled and un settled IDPs regarding with water, foods, cloths education, medical treatment, and with creating Job opportunity?
20. How many of them left their property at their Original place?
21. How many of them recover their property?
22. What is the action government are taking in order to restore the property of IDPs?
23. What is the action the government takes in order to provide legal remedy for the damage caused to IDPs and for their property destroyed?

**E) Interview questions for the federal public prosecutor**

1. What do you know about the Oromo people displaced from Somali region?
2. What are the causes for displacement why displacement had happened?
3. What kinds of crimes were committed during the time of displacement on IDPs?
4. Who instigated and committed both arbitrary displacement and crimes committed against IDPs during the time of displacement?
5. What were the numbers of victims for each crime?
6. Did your office prosecuted the suspects of arbitrary displacement and Crime committed against IDPs?
7. Do you think that the existing national laws are sufficient for protection of the rights of IDPs by providing legal remedy interims of criminal and civil matter?
8. How many Suspects accused for the acts of arbitrary displacement and crime committed against IDPs?
9. Why government did not prosecuted those individual who instigated and committed acts of arbitrary displacement in September 2017 against Oromo people displaced from Somali region?
10. What do you think about the action taken by the government in protecting the rights of IDPs by providing legal remedy for the victims of arbitrary displacement and crime committed on them?