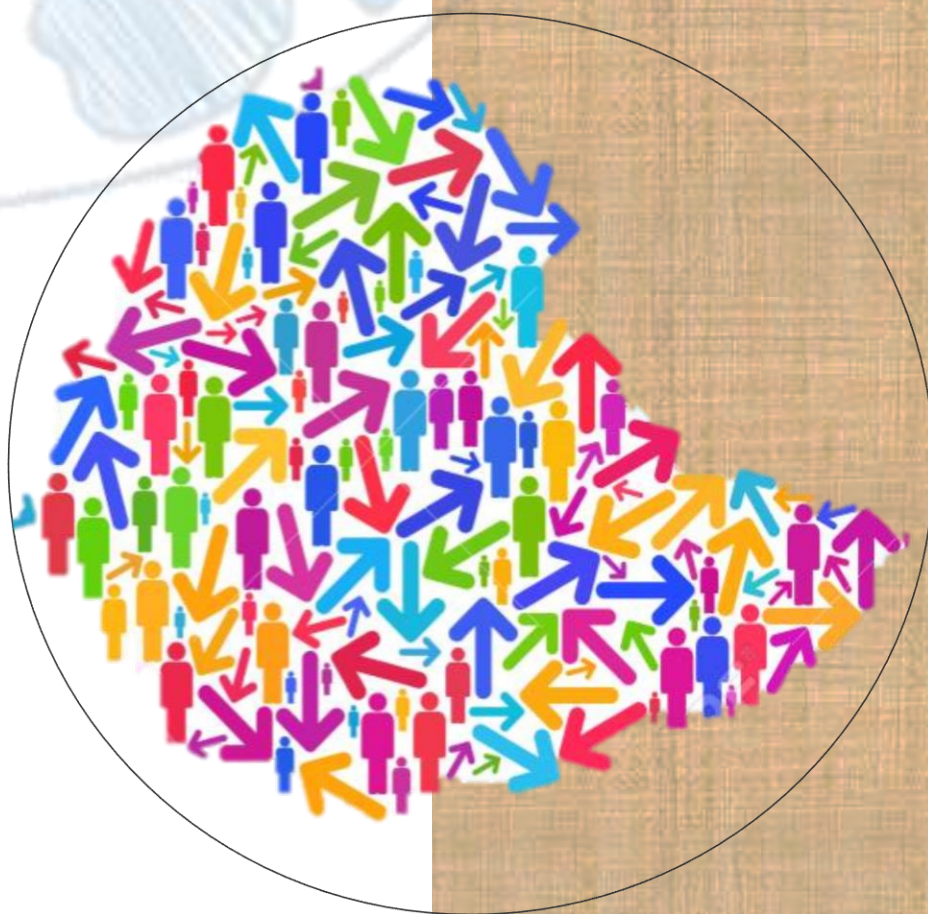


Legal and Institutional Frameworks Diagnostic Study Draft Law

The Protection of Internal Freedom of Movement, Choice of Residence, Domicile, and Internally Displaced People



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Legal and Justice Affairs Advisory Council
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The Freedom of Movement
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List of Acronyms

ACHPR - African Charter on Human and Peoples' Rights

ACACHPR - African Commission on African Charter on Human and Peoples' Rights

AU - African Union

CCI - Council of Constitutional Inquiry

CEDAW - International Convention on the Elimination of All Forms of Discrimination

ECOWAS - Economic Community of West African States

EHRCO - Ethiopian Human Right Commission

EIO - Ethiopian Institution of the Ombudsman

EPRDF - Ethiopian People's Revolutionary Democratic Front

FDRE - Federal Democratic Republic of Ethiopia

HOF- House of Federation

HPR - House of People Representative

ICCPR - International Covenant on Civil and Political Rights

ICERD - International Convention on the Elimination of all Forms of Racial Discrimination IDPs

- Internally displaced persons

ILO - International Labor Organization

IOM - International Organization for Migration

NDRMC - National Disaster Risk Management Commission

NNPs - Nations, Nationalities, and Peoples'

SDR - Self Determination

SNNPR - Southern Nations, Nationalities, and Peoples' Republic

UDHR - Universal Declaration of Human Rights 1948

UNHRC - United Nations Human Rights Committee

UNHCR - United Nations High Commissioner for Refugees

UN - United Nations

UN OHCHR - United Nations Office of High Commissioner for Human Rights

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1. Introduction

1.1. Background of the study

Freedom of movement and residence is among the basic human rights recognized under major international and regional human rights instruments. The International Covenant on Civil and Political Rights enshrined that “everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”¹ The UN Human Rights Committee in its General Comment No.27 specifically stated that the right to freedom of movement and residence under ICCPR includes protection against all forms of forced internal displacement and a prohibition of non/state agencies from preventing individuals from entering or remaining in a defined part of the territory.² UNHRC further expressly declared the right to move freely relates to the whole territory of a State, including all parts of federal States and the right must not be made dependent on any particular purpose or reason.³ The right to freely move and choose a place of residence can only be limited with a clear law in situations where it is necessary to protect national security, public order, public health or morals or the rights and freedoms of others.⁴ Any restriction to be permissible, it must be provided by law, must be necessary in a democratic society for the protection of these purposes and must be consistent with all other rights recognized under ICCPR.⁵ The Universal Declaration of Human Rights also guaranteed everyone’s right to freely move and freely choose his/her place of residence within the borders of each State.⁶ The African Charter on Human and Peoples Rights also provides that every individual shall have the right to freedom of movement and residence within the borders of a State

¹ ICCPR, Adopted by the UN General Assembly resolution 2200A (XXI) of 16 December 1966, Article 12.

² UNHRC, *CCPR General Comment No. 27: Article 12 (Freedom of Movement)*, 2 November 1999, CCPR/C/21/Rev.1/Add.9.

³ *ibid.*

⁴ ICCPR n- 1, Article 12(3).

⁵ UNHRC General Comment, n- 2, Para-3 (11).

⁶ Universal Declaration of Human Rights, Adopted and proclaimed by General Assembly Resolution 217 A (III) on 10 December 1948, Article 13.

provided he abides by the law.⁷ Article 12(5) of the same provides, ‘The mass expulsion of non-nationals (ethnic or religious groups) shall be prohibited.

Ethiopia ratified both ICCPR and ACHPR and made them, according to article 9(4) and 13(2) of the constitution, integral part of its legal system. The international or regional human rights treaties mentioned imposed a responsibility on governments that ratified them to act with due diligence to prevent, investigate and punish any violation of freedom of movement and residence. The FDRE Constitution under Article 13(2) also obliges the right to freedom of movement and residence envisaged under the FDRE Constitution to be interpreted in a manner conforming to the principles of the Universal Declaration of Human Rights, International Covenants on Human Rights and International instruments adopted by Ethiopia.

Freedom of movement and residence is enshrined under the FDRE Constitutions as part of fundamental rights under chapter three. The FDRE constitution also indirectly ushered freedom of movement when it underlines the need to build one political and economic community, which necessitates mobility of people and social and economic interaction. Constitutionally protecting freedom of movement is very crucial, not only because it is an important element of the right to personal liberty of individuals, but also because it is indispensable to realize related rights such as the right to work, the right to property, and the right to political participation.⁸

However, in a federal setup where sub-national and local boundaries are constructed along ethno-linguistic lines, the mobility of individuals presents significant challenges to the self-determination right of ethnic groups. Ethnic territories and their public institutions being controlled by one or few ethnic groups, other residents considered as “outsiders” cannot exercise their basic civil, political, economic and cultural rights including the right to freely move and choose their residence.⁹ In the last few years constitutional and institutional hurdles against freedom of

⁷ African Charter on Human and Peoples Rights, Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Article 12.

⁸ N Jayawickrama, ‘The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence’ (Cambridge University Press, 2002) 440.

⁹ The constitutions of the regional states of Oromia, Afar, Somali, Harar, SNNP, and Tigray vesting their respective state’s sovereign power solely on the dominant (otherwise indigenous) ethnic group is an implied expression of dichotomizing those with sovereign power as indigenous and others found in the region as disempowered non-indigenous groups.

movement took a foothold on the ground whereby enormous human right violations including structural discrimination, forced expulsions, evictions, and ethnically motivated killings were committed. According to the Displacement Tracking Matrix (DTM) (2019) report, Ethiopia had ranked at the top level of severe internal displacement in the world. Very large numbers of people fled their permanent residence due to ethnically motivated evictions sometimes backed by the state apparatus at the local level.¹⁰ By 2019 there were almost 1.432 million internally displaced people who fled their homes and habitual residence due to inter communal violence and ethnic based eviction in the country. The highest number of IDPs were recorded in the Somali region with a population of 722, 180 IDPs, SNNPR in the Gedeo zone with a population of 690, 364 IDPs and followed by Oromia region with a population of 674, 209 IDPs.

Despite the rampant country wide displacements and unjustified restriction of the right to freedom of movement and residence, Ethiopia failed to enact a legislation that can ensure the implementation of such rights provided under the FDRE Constitution in a generic form. Absence of detailed legislation that specifically outlines the obligation and responsibility of state and non-state actors towards the realization of the right created a gap in ensuring accountability of violators. On the top of all international human right norms to which Ethiopia is a party obliges any limitation on the right to freedom of movement and residence to be provided by law. In a situation where extra-legal violations of the right to freedom of movement by state and non-state actors are rampant it is a matter of necessity to provide a legislative and institutional framework through which the right can be exercised.

1.2. Statement of the Problem

The right to freely move and choose a place of residence within the Ethiopian territory is one of fundamental freedoms, which is entrenched under the FDRE Constitution and international human right standards to which Ethiopia is a state party. Freedom of movement and residence is intertwined with other related rights and freedoms including the right to political participation, work, and respect for cultural rights. Freedom of movement is not only one of fundamental human

¹⁰ International Organization for Migration, 'Ethiopia Records More Than 1.8 Million Internally Displaced in 2020', (September 2020), available at <https://www.iom.int/news/iom-report-ethiopia-records-more-18-million-internally-displaced-2020>.

rights and freedoms but it is also the major instrument through which the constitutional objective of creating one economic and political community can be realized. It is also crucial to the protection and enjoyment of other fundamental rights.

International human right norms to which Ethiopia is a state party requires any restrictions on the right to freedom of movement and residence to be clearly prescribed by law in compliance with international law, and necessary and proportionate to achieve one of the legitimate objectives, namely “national security, public order, public health or morals or the rights and freedoms of others.” Ethiopia as a state party is under obligation to honor its obligation through providing a comprehensive legal framework by which the legality, legitimacy, necessity and proportionality of any restriction on the right can be justified. In Ethiopia, however, the right to freedom of movement and residence is being restricted and violated contrary to its international obligation and the FDRE Constitution. The depth of restrictions and violations over the right range from unjustified constitutional and legal restrictions at a regional state level to forced eviction and displacement of those considered “non-indigenous” residents. For instance the constitutions of Oromia, Benshngul Gumuz, Harari, and Tigray regional states specifically declare one or some ethnic groups as owners of the respective regional states in exclusion of other residents. Such regional constitutions restrict the right to freedom of movement and residence through exclusion of other residents from political, economic and social decision making. The constitutional restrictions at the regional level are in contradiction to international human right standards and the FDRE Constitution as they cannot be justified by legitimate objectives of limiting the right to safeguarded national security, public order, public health or morals or the rights and freedoms of others.

In Ethiopia, according to the report of the International Organization for Migration, 1, 233,557 people were displaced from their residence due to ethnic and religious based targeting and communal violence as of September 2020. By 2018, Ethiopia recorded 2.9 million new conflict and violence related displacements, the largest ever for the country and the highest number globally for the year. In the same year, hundreds of thousands of people were displaced as a result of boarder conflict between Oromia and Somali regions. While in 2019, around 1.4 million people were internally displaced as a result of conflict and violence mainly from Oromia, Benshangul Gumuz and Amhara Regions. In many of conflict related displacements regional states failed to prevent attacks and in some cases directly participated in those human right violations.

Ethiopia has not yet developed legal and institutional framework through which the constitutionally guaranteed right to freedom of movement and residence can be exercised. The aforementioned data attests the right to freedom of movement and residence is being eroded by state and non-state actors in violation of the FDRE Constitution and international human right standards. While there is no clear law that provides details as to how freedom of movement and residence is limited, extra-legal violation of the right posed serious danger to the people. Absence of a comprehensive legal and institutional framework that sets out limitations to the right, accountability of the government, the right of citizens whose right is violated, and judicial recourse for the victims exacerbated the problem.

1.3. Research Questions

In an endeavor to come up with a working recommendations and interventions for the aforementioned problems, this action research tries to answer the following research questions:

- I. What are the gaps in the legal and institutional framework governing freedom of movement and residence in Ethiopia?
- II. What are the practical and legal restrictions and violations that are eroding freedom of movement and residence in Ethiopia?
- III. What are the causes and possible solutions to conflict related internal displacements in Ethiopia?
- IV. What possible legal and institutional reforms can be undertaken in order to tackle internal displacements and extra-legal violations of the right to freedom of movement and residence in Ethiopia?

1.4. Objectives of the Study

This diagnostic study is part of the overall reform project of the government to insure respect for human rights, democratization and rule of law in Ethiopia. This study is conducted with a plan to come up with a list of recommendations and interventions to tackle the existing hurdles related to freedom of movement and grave internal displacements in Ethiopia. The objective of this action research is to identify the major gaps in the legal and institutional framework governing freedom of movement and to provide working recommendations and interventions to solve the identified problems. This study is specifically conducted to achieve the following objectives:

- To identify the gaps and incompatibilities of the Ethiopian legal and institutional framework governing freedom of movement and residence;

- To identify legal and practical restrictions of the right to freedom of movement and residence in Ethiopia and assessing their incompatibility with the FDRE Constitution and International Human Right Standards;
- To identify the causes of conflict related internal displacements and provide working recommendations and interventions; and
- To come-up with comprehensive recommendations which involve legal, institutional and practical measures that should be taken to resolve the problem.

1.5. Methodology of the Study

This study mainly involves identification of the gaps and limitations in the domestic legal and institutional framework in light of international human right standards as far as freedom of movement and residence is concerned. Accordingly, domestic legislations including the FDRE Constitution, subsidiary legislations, regional constitutions, and regional legislations are thoroughly scrutinized in the endeavor to identify those gaps. International human right instruments including: UDHR, ICCPR, ACHPR, and UNHC general comments are also used as a standard to point out the gaps in the Ethiopian legal framework. Reports of national and international organizations such as the International Organization for Migration, International Displacement Monitoring Center, other UN agencies, and Ethiopian government agencies are assessed to identify the status and causes of conflict related internal displacements in Ethiopia. Interviews with governmental and non-governmental agencies are also conducted on the relevant government institutions to grasp the full picture of internal displacement in Ethiopia.

1.6. Scope of the Study

The study is mainly confined to identification of legal, institutional, and practical gaps in the protection of freedom of movement, residence, and IDPs within the current Ethiopian Constitutional Framework. Legal and extra-legal limitations and violations of the right at a national and regional level are scrutinized in light of acceptable human right standards with a view to point out areas that need reform. Accordingly, the basic theme of this study is identification of the incompatibilities and gaps in the Ethiopian normative, institutional, and legal framework in light of major human right instruments and the FDRE constitution as far as freedom of movement, residence, and protection of IDPs is concerned. The study also analyzed causes of conflict related displacements, and the gaps and incompatibilities in the protection of IDPs in Ethiopia. The study provides clear and implementable recommendations and interventions to improve the existing

protection of freedom of movement, residence, and IDPs within the Ethiopian constitutional framework.

1.7. Literature Review

Freedom of Movement, choice of residence and internal displacement are the major thematic areas in the international human rights framework that got significant attention from international human right agencies, human right practitioners, academicians, and the civil society. Major international human rights instruments including the UDHR, ICCPR, and ACHPR guaranteed “everyone lawfully within the territory of a State to freely move within a given country and to choose his/her residence. The Siracusa Principles on the Limitation and Derogation of Provisions of ICCPR underlines that the right to freedom of movement and residence, as part of fundamental human rights, can only be limited to achieve one of the legitimate objectives of national security, public order, public health or morals or the rights and freedoms of others. The UN OHCHR, in its 2016 report on the case of Palestine, underlined that “freedom of movement is a prerequisite for the enjoyment of a broad range of civil, political, economic, social and cultural rights such as the rights to work, health and education.” Thus, restrictions to freedom of movement can lead to limitations on a range of other human rights.

Mehari Tadele (2017) in his working paper titled “Causes, Dynamics, and Consequences of Internal Displacement in Ethiopia” demonstrated the gaps in the protection of internally displaced persons in Ethiopia. Among other things, absence of special policy and legal protection of internally displaced persons aggravated the vulnerability of IDPs in Ethiopia. Accordingly, he suggested the need for a comprehensive national IDP policy, and legislative framework that ensure accountability, introduce legal standing of NGOs, and establish specific institutions.

Yonas Girma (2013) assessed the implications of the Ethiopian federalism on the right to freedom of movement and Residence. He explained the experience of other countries with similar federal systems mainly: the former Nigeria, Switzerland, and Belgium to demonstrate the possible mechanisms through which ethnic self-determination can be exercised without violating citizens’ right to freedom of movement and residence. Yonas contested that the Ethiopian federal system along with absence of legal, procedural, and institutional safeguard mechanisms to protect the rights of individuals put individuals from “non-indigenous” ethnic groups in the respective regions under grave discriminations and exclusion including forceful displacement, and exclusion from political, and economic decision making.

Dessalegn& Fessha (2019) analyzed mobility of people in the context of the Ethiopian federal system and discovered several legal, institutional, and practical factors contributing to violations of the right to freedom of movement and residence in Ethiopia. They emphasized in the absence of a clear law providing guidance on how to manage the tension between mobility rights and the right of ethnic groups to self-government, it became very difficult to implement the two constitutionally guaranteed rights of freedom of movement and self determination in a mutually inclusive manner. Lack of political commitment on the part of regional authorities to protect the rights of those considered “outsiders” without jeopardizing the rights of native communities along with courts’ incompetence to use legitimate checks against sub-national authorities that orchestrated or played a role in mass evictions and unlawful restrictions on freedom of movement complicated the problem.

2. Internal Freedom of Movement in Ethiopia

2.1. Internal Freedom of Movement: Conceptual Foundations

Liberty is the very essence of a man. Among the reflection of liberty of a man are his right to freedom of movement and free choice of residence.¹¹ Freedom of movement denotes the right of individuals to flow without restrictions.¹² This may involve internal, international mobility and return. The first type of mobility implicates states tendency to permit their citizens to move freely throughout their territory. Also, the right applies not only to citizens but to all individuals who are lawfully within a country's territory as well. The second type of mobility originates from the Westphalian organization of the world into separate nation-states.¹³ And, it raises the question of the rights and duties of states towards noncitizens, and correspondingly, of the rights and entitlements of human beings who wish or happen to be outside their state. The third type of mobility is returning to one's own country. States shouldn't put a restriction on any person who wants to enter his or her country.

The focus of this diagnostic study is on the internal freedom of movement within the Ethiopian territory. Internal freedom of movement encompasses liberty to choose when and where to travel within a state and choose where a person wants to reside temporarily or permanently within his/her respective state. Free movement of a person is right which is also recognized under earliest documents like the Magna Carta. This document declares that:

“No free man should be arrested or imprisoned or disseised or outlawed or exiled or in any way molested; nor will we go upon him, nor will we send upon him, except upon a legal judgment of his peers or by the justice of the King in cases in which this has been the common procedure, the law of the land in effect everywhere and accepted as such.”

The contemporary international human rights standards also provide for this right. In this regard, Article 13(1) of the Universal Declaration of Human Rights states that:

¹¹ UDHR, n-6, preamble para 1.

¹² Antoine Pécoud, 'Freedom of Movement' (January 2013) Research Gate, Available at: <https://www.researchgate.net/publication/308786979_Freedom_of_movement> accessed January 10 2020.

¹³ Ibid.

“Everyone has the right to freedom of movement and residence within the borders of each state.”

The foundation idea is that in principle, citizens of a state are regarded as lawfully residing within that particular state. That gives them a right to freedom of mobility within the borders of that particular state. Again, that gives the right holders the prerogative to move around within their respective state without interference from others.

It is important to note that a free movement is often regarded as if it is effected without a challenge. Unfortunately, that is not entirely true. According to the African Commission Special Rapporteur on Refuge, Asylum Seekers, Internally Displaced Persons and Migrants in Africa have indicated that “in several African countries, the right to freedom of movement and residence of human rights defenders, members of opposition parties, internally displaced persons, migrants and refugees within the borders of states have been infringed upon by several forms of restrictions including detention and confinement.”¹⁴ According to the Commission, the realization of freedom of movement is an essential condition to bring about human development.¹⁵ This right is recognized under international, regional, and national laws as indicated below.

2.2. The Legal Regime governing Internal Freedom of Movement

2.2.1. The International/Regional Experience

2.2.1.1. Content of the Rights to an Internal Freedom of Movement

The right to internal freedom of movement has been recognized under various international and regional human rights instruments. Among the international human rights documents is Article 13 of the Universal Declaration of Human Rights,¹⁶ Article 12 of the International Covenant on Civil and Political Rights,¹⁷ Article 5 of the International Convention on the Elimination of all Forms of Racial Discrimination,¹⁸ Article 15(4) of the Convention on the Elimination of All Forms of Discrimination against Women,¹⁹ and ILO Regulation (EEC) No 1612/68 of the Council of 15

¹⁴ African Commission on Human and Peoples Right, General Comment No.5 on the African Charter on Human and Peoples' Rights: The Right to Freedom of Movement and Residence (Article 12(1)).

¹⁵ Ibid, Para. 4.

¹⁶ UDHR, n- 6, Article 13.

¹⁷ ICCPR, n- 1, Article 12.

¹⁸ International Convention on the Elimination of All Forms of Discrimination adopted by the UN General Assembly on 21 December 1965, Article 5.

¹⁹ id, Article 15(4).

October 1968 on Freedom of Movement for Workers within the Community.²⁰ This right is also protected under other African Union legal instruments.²¹

Art. 12 of the ICCPR provide that everyone has the right to internal freedom of movement and choice of residence.²² The same protection is afforded under Article 13(1) of UDHR and Article 12 of the African Charter on Human and People's rights.²³ In this regard, the General Comment No. 5 on the African Charter on Human and Peoples' Right indicates that this right is also important to the realization of other rights including liberty²⁴, the right to freedom of association, family, education and work.²⁵

The right to freedom of movement and residence is guaranteed to citizens and other foreigners who are lawfully within the state. Once a person is lawfully within the state, he/she has the right to move freely and to choose his or her place of residence. This right also extends to people who entered the State illegally, but whose status has been regularized. Accordingly, it is prohibited to restrict the right to free movement and choose a residence within the state unless the limitations are justified under the rules providing the rights. In this regard, international human rights standards emphasize that this right is applicable without any discrimination. In particular, it is not to the discretion of another person, including relatives, to decide where women can move or choose

²⁰ International Labor Organization, Regulation of Council of 15 October 1968 on Freedom of Movement for Workers within the Community, Regulation (EEC) No 1612/68.

²¹ African Youth Charter (2006), African Union Convention for the Protection and Assistance of Internally Displaced Persons (2009) (Kampala Convention), Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities (2018), Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment (2018). At the sub-regional level, various instruments have been adopted including the Economic Community of West African States (ECOWAS) Protocol relating to Free Movement of Persons, Residence and Establishment (1979); Protocol Relating to the Freedom of Movement and Right of Establishment of Nationals of Member States within the Economic Community of Central African States (1983); Protocol on the Free Movement of Persons, Labour, Services, Right of Establishment and Residence (1998); Southern African Development Community Protocol on the Facilitation of Movement of Persons (2005); Protocol on the Establishment of the East African Community Common Market (2009).

²² ICCPR, n- 1, Art. 12

²³ ACHPR, n- 7, Art. 12.

²⁴ ACACHPR General Comment, n- 14, Para. 4.

²⁵ Id, Para. 1.

to reside.²⁶ In this regard, the African Charter provides that “every individual shall have the right to freedom of movement and residence within the borders of a state-provided he abides by the law.”²⁷ More progressively, the African Commission indicated that a reference to “every individual” has been interpreted that it includes asylum seekers, refugees, undocumented migrants, IDP’s and other who are irregularly within the state.²⁸

As to the territorial application, the right to internal freedom of movement and the right to choose residence apply to all territory of that particular state including all parts of federal States. Thus, anyone lawfully within that particular state can move from one region to another or from a particular place to another freely. This area includes cities, towns and any other villages. The reference which says ‘within the borders of a state’ under Article 12(1) of the African Charter indicates the application of the right within the geographic area of that particular state.²⁹

It must be noted that the territorial application of this right also applies to the “airspace and maritime zones over which the state exercises control.”³⁰ They can establish themselves in a place of their choice by deciding to reside. According to the ICCPR General Comment No. 27 state should not require individuals deciding to move to or reside at some particular part of the territory to show reason or justifying their decision to move.³¹ The right to freedom of movement and residence also protects against all forms of forced internal displacement, prevention of the entry or stay of persons in a defined part of the territory.

2.2.2. State Obligations

States have three obligations *vis-à-vis* human rights protection in general and protection of freedom of movement in particular. States assume a duty to respect, to protect and to fulfill human rights.³² The first duty restricts states from interference on the enjoyment of freedom to move around and establish residence.³³ In this regard, a person can exercise his right to freely choose and change

²⁶ UNHRC General Comment, n-2, Para. 6.

²⁷ ACHPR, n- 7, Art. 12.

²⁸ UNHRC General Comment, n- 2, Para. 8.

²⁹ ACACHPR General Comment, n- 14, Para. 12.

³⁰ Ibid.

³¹ UNHRC General Comment, n-2, Para. 5.

³² ICCPR, n-1, Article 2.

³³ ACACHPR General Comment, n-14, Para. 9.

his/her place of dwelling within a state.³⁴ Whether his decision to reside at a certain place is temporary or permanent will not be taken into account.³⁵ The right holder may buy or rent the place of his residence. Furthermore, the fact that he belongs to that residence or not should not be taken into account when determining whether a person has the right to enjoy the right to choose his residence freely.³⁶ Thus, any impairment, whether political or socially construed, must be avoided. To that effect, the obligation to protect also applies to governments' responsibility to ensure that non-state actors would not violate these rights.³⁷ Furthermore, states must protect that the right to free movement and choice of residence is not restricted by individuals as well.³⁸

As to the second duty, the ICCPR General Comment No. 27 provides that "the State party must ensure that the rights guaranteed in article 12 are protected not only from the public but also from private interference."³⁹ States obligation to protect this right includes protection against all forms of forced internal displacement.⁴⁰ It has been indicated that the state is responsible for the acts of violation of the right to move by any state organs including police, armed forces and other state security officials.⁴¹ The state must also gazette laws protecting the right to freedom of movement and choice of residence.⁴² In case the acts of violation of this rights have been perpetrated, the state has the duty to investigate and prosecute the perpetrators.⁴³

As to the third responsibility, the government must ensure the implementation of laws affording protection for the right to movement and choice of residence to ensure the fulfillment of these rights.⁴⁴ Furthermore, the state has to take measures that enable the protection of the right to free

³⁴ Id, Para. 11.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Id, Para. 40.

³⁸ Ibid.

³⁹ UNHRC General Comment, n- 2, Para. 6.

⁴⁰ UNHRC General Comment, n- 2, Para. 7.

⁴¹ ACACHPR General Comment, n- 14, Para. 24.

⁴² Id, Para. 29.

⁴³ Id, Para. 43.

⁴⁴ Id, Para. 26.

movement and choice of residence at various levels including federal and state level.⁴⁵ According to the African Commission, such measures must include “access to roads, pathways and means of transportation for all persons including a person with disabilities.”⁴⁶ Taking into account the relative importance identity document has with free movement of a person, the government is required to avail identity documents.⁴⁷

2.2.3. Restrictions/Limitations to the Right to Move Freely and choice a Residence

The right to choose residence and move freely may be restricted in certain circumstances. The ICCPR Article 12, paragraph 3, provides for circumstances under which this right may be restricted. It is a valid limitation only when conditions under which the rights may be limited are provided by law and must be necessary in a democratic society. Furthermore, it must serve a legitimate aim as listed in the provisions. The legitimate aims listed under Article 12(3) are national security, public order (*ordre public*), public health or morals and the rights and freedoms of others. It is important to also note that the restrictions must be consistent with all other rights recognized in the Covenant.⁴⁸ That is to imply that is must not be discriminatory.⁴⁹ Limitation of right to free movement and choice of residence on the basis of race, colure, sex, language, religion, political or other opinions, national or social origin, property, birth or other status is prohibited.

It must be recognized that the above restrictions are to apply as an exception without impairing the essence of the right using precise criteria. To that effect, the laws must avoid conferring unfettered discretion on those charged with the execution of limitation to freedom of movement and freedom of choice of residence.⁵⁰ The restriction to be adopted, to that effect, are expected to be proportional to the interest to be protected and must be the least intrusive implement amidst those which might achieve the desired result.⁵¹ The ICCPR Human Rights Committee noted that some states have adopted bureaucratic barriers like “provisions requiring individuals to apply for permission to change their residence or to seek the approval of the local authorities of the place of destination,

⁴⁵ Id, Para. 30.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ UNHRC General Comment, n- 2, Para 11.

⁴⁹ Id, Para 18.

⁵⁰ Id, Para 13.

⁵¹ Id, Para 13.

as well as delays in processing such written applications.”⁵² To that effect, they have emphasized a need to avoid this kind of unjustified restrictions.

In practice, disasters, development projects, and armed conflicts affect the right to freedom of movement and choice of residence. According to the African Commission Special Rapporteur on Refuge, Asylum Seekers, Internally Displaced Persons and Migrants in Africa, freedom of movement should not be limited in the situation of natural disasters. Restriction may only be imposed if the limitation is imposed by law to protect the threat to life, health and safety of affected populations.⁵³ After the lapse of the said emergency period, they should be allowed to move anywhere and return to their choice of residence. Regarding development projects, arbitrary and/or discriminatory land grabbing must be avoided as it amounts to a violation of freedom to choose residence.⁵⁴ Anyone, who is to be evicted from his residence as a result of development projects, must be given fair prior notice. Furthermore, indigenous people must be protected against evictions.⁵⁵ In the case of armed conflict, freedom of movement may not be restricted unless civilians or military personnel's life may be endangered.⁵⁶ In such circumstances, civilians have the right to return after the end of hostilities.⁵⁷

2.3. The Legal Regime Governing Internal Freedom of Movement: Comparative Lessons (Experience of other Countries)

Comparative experience indicates that various countries have incorporated the right to internal freedom of movement and choice of residence in their constitutions.⁵⁸ The Spanish Constitution,

⁵² Id, Para 17.

⁵³ ACACHPR General Comment, n- 14, Para. 18.

⁵⁴ Id, Para. 19.

⁵⁵ Ibid.

⁵⁶ Id, Para 20.

⁵⁷ Id, Para. 23

⁵⁸ **France**: “To every man is guaranteed as a natural and civil right the power to go, to remain or to depart without being arrested or detained except in accordance with the procedure established by the Constitution.”—Article i, Constitution of France, 1791. **Argentina**: “All inhabitants of the nation enjoy the following rights in conformity with the laws which regulate their exercise; viz., to enter, to remain, to traverse and to depart from Argentinian territory.”—Article 14, Constitution of Argentina, 1853. **Switzerland**: “No Swiss citizen shall be expelled from the territory of the Confederation or from his Cantón of origin.”— Article 44, Constitution of Switzerland, 1874. **México**:

“Every man has the right to enter and depart from the Republic, to travel across its territory, and to change his residence without the necessity of a card of identity, passport, safe conduct or any other formalities. The exercise of the right shall be subject to the authority of the Courts in cases of civil or criminal responsibility, and to that of the administration in respect of the restrictions which may be imposed by laws in the matter of emigration, immigration or of public interest or which may be imposed on resident foreigners dangerous to peace.”—Article 11, Constitution of México, 1917. **Brazil:** “ In time of peace, any person, together with his property, may enter the national territory, remain there in or leave it, provided that the requirements of the law are duly fulfilled.”—Article 142, Constitution of Brazil, 1946. **Italy:** “ Every citizen may freely circúate and remain in any part whatsoever of the national territory subject to such limitations as law may generally be established on grounds of health or security. No restriction may be imposed for political reasons. Every citizen is free to leave the territory of the Republic and to re-enter, subject to the obligations imposed by law.”—Article 16, Constitution of Italy, 1948. **India:** “All citizens shall have the right... .to move freely throughout the territory of India---Nothing in the-----said clause shall affect the operation of any existing law in so far as it imposes or prevents the State from making any law imposing reasonable restrictions on the exercise of .. .the right(s)... .either in the interests of any Scheduled Tribe”— Article i9(i)(d) and 19(5) of the Constitution of India, 1950. **Germany:** “All Germans shall enjoy freedom of movement throughout the federal territory. This right may be restricted only by law and only in cases in which there exists no adequate ground for the existence of the right and as a result a special burden would fall upon the public, or in which restriction is necessary for the protection of Juveniles against neglect, or for combating danger from epidemics or to prevent criminal acts.”— Article 11, Constitution of the West Germán Republic, 1949. **Cyprus:**/ “ Every person has a right to move freely throughout the territory of the Republic and to reside in any part thereof subject to any restrictions imposed by Law and which are necessary only for the purpose of defence or public health or provided punishment to be passed by a competent Court.”—Article 13, Constitution of Cyprus, 1960. **Nigeria:** (1) Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof; and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereto. (2) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society—(a) restricting the movement or residence of any person within Nigeria in the interest of defence, public safety, public order, public morality or public health; (b) for the removal of persons from Nigeria to be tried outside Nigeria for criminal offences or to undergo imprisonment outside Nigeria in execution of the sentences of courts in respect of criminal offences of which they have been found guilty; (c) imposing restrictions upon the movement or residence within Nigeria of members of the public Service of the Federation or the public Service of a Region, members of the armed forces of the Federation or members of a police force.”—Section 27, Constitution of the Federation of Nigeria, 1963. **Ghana:** subject to such restrictions as may be necessary for preserving public order, morality or health, no person should be deprived. . . . of the right to move and assemble without hindrance.”—Article 13 of the Constitution. **Senegal:** All citizens of the Republic shall have the right to freedom of movement and the residence throughout the Republic of Senegal. This right may be restricted only by law. No persons may be subjected to security measures except in cases provided by law—Article 11, Constitution of the Republic of Senegal, 1960.

for instance, provides that all Spaniards can freely decide where they want to live and travel in the national territory, enter and leave the country and that this right can't be restricted because of a political or ideological reason.⁵⁹ It also states that all Spaniards have the same rights and obligations in any part of the territory of the State and no authority may directly or indirectly hinder the freedom of movement and establishment of persons and the free movement of goods throughout the Spanish territory.⁶⁰ In countries like Mexico, the Constitutional assures the right to travel across its territory, and to change his residence without the necessity of a card of identity, passport, safe-conduct or any other formalities.⁶¹ Other countries while giving general protection for freedom of movement they also emphasize that no restriction may be imposed for political reasons on free movement and choice of residence.⁶² Other countries have developed a policy. In this regard, Kenya and Nigeria are examples as they have a policy regulating IDP's. Kenya also has detailed legislation providing for protection against displacement.⁶³ Under this legislation they have established specific institution mandating the administration of the legislation. Most importantly it incorporates what specific conducts are expected to prevent, protect and assist victims of internal displacement assuring the right to movement and choice of residence.

2.4. The Legal Regime Governing Internal Freedom of Movement: The Ethiopian Experience

2.4.1. The FDRE Constitution

Historically, the first Ethiopian Constitution to have recognized the right to freedom of movement is the 1931 Constitution. This Constitution recognizes the right to pass freely from one place to another.⁶⁴ This Constitution, however, fails to afford protection to freedom of residence. With the revision of the Constitution in 1955, right to change domicile has been inserted in the Constitution.⁶⁵

Cameroun: “Everybody shall have the right to freedom of residence and movement, subject to the regulations concerning public order and public health.”—Cameroun Constitution of 1960.

⁵⁹ The Spanish Constitution, December 6, 1978, Article 19.

⁶⁰ Article 139(1) of the Spanish Constitution

⁶¹ Constitution of México, 1817, Article 11.

⁶² Constitution of Italy, December 1947, Article 16.

⁶³ Republic of Kenya: Act No. 56 of 2012, The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012.

⁶⁴ The 1931 Constitution of Empire of Ethiopia, 12th July 1931, Art. 22.

⁶⁵ The 1955 Constitution of Empire of Ethiopia, Art. 46.

The current FDRE Constitution contains a provision regulating freedom of movement and residence. The Constitution provides that:

*Any Ethiopian or foreign national lawfully in Ethiopia has, within the national territory, the right to liberty of movement and freedom to choose his residence, as well as the freedom to leave the country at any time he wishes to.*⁶⁶

Unfortunately, no mention of how and in what circumstance the right may be limited is mentioned under the Constitution. Compared to some constitutions mentioned earlier the details of the protection are not elaborate. For instance, as indicated above the Spanish Constitution provides that this right can't be restricted because of a political or ideological reason.⁶⁷ There is no mention as regards the free movement of goods as well. It does not also mention rules against requiring identity card, passport, safe-conduct or any other formalities.

2.4.2. The Use of Sub-National Constitutional Space Guarantying Internal Freedom of Movement

Sub national constitutions in Ethiopia are not creative in widening the rights guaranteed under the FDRE Constitutions. Mostly, they are similar in content save some issues of political relevance. In fact, instead of being a solution to the gaps under the federal Constitution, they have been the source of confusion. Concerning the right to freedom of movement and residence, they empower selected ethnic group or groups as opposed to empowering all the groups within the state including newly opting to reside at the region. Some of the state constitutions refer some group as an “indigenous” while regarding others as a “settler.”⁶⁸ Still, some regard one or more ethnic group as owner of the regional state.⁶⁹ Such a classification of people has contributed to displacement of people who are regarded as settlers for that particular area.

⁶⁶ Constitution of Federal Democratic Republic of Ethiopia, 8 December 1994, Art. 32.

⁶⁷ Article 19 of the Spanish Constitution.

⁶⁸ Christophe Van der Beken, *Ethiopian Constitutions and the Accommodation of Ethnic Diversity: The Limits of the Territorial Approach*, in Tsegaye Regassa (ed), *Issues of Federalism in Ethiopia: Towards an Inventory* (Ethiopian Constitutional Law Series, vol 2, 2009), 263-279.

⁶⁹ The Revised Constitution of the Oromia Regional State, Proclamation NO.46/2002, Magalata Oromia, Article 8. The Revised Constitution of Benshangul Gumuz Regional State ,(2003) , Article 2. The Constitution of Benishangul-Gumuz Regional State specifically declares a few ethnic groups as the ‘owners’ of the region, while merely recognizing individuals belonging to ‘other’ ethnic groups as residents. Although other people live in the region, the constitution clearly states that People from Gumuz, Berta, Mao, Como and Shinasha are the only owners of the region. The Constitution of Harari Regional State makes specific provisions to ensure the extreme overrepresentation of people of Harari origin, at the expense of the majority of the people residing in and around the city, mainly Oromos

2.4.3. Other Subsidiary Laws

The Civil Code incorporates rules relating to freedom of movement. Accordingly, it is a civil right to establish or change residence at his/her free will.⁷⁰ To that effect, the only exception that the civil code recognizes is when restrictions are justified by the rules of medical practice.⁷¹ The protection for the freedom of residence also applies irrespective of the existence of an undertaking by individuals to reside at a certain restricted area as the law does not protect such an undertaking.⁷² Interference with the right to choose residence would entail a tort liability.⁷³ The Civil Code also recognizes freedom of movement. In fact, prevention of a person from moving even for a short time is regarded as an offence without a need to show injury emanating from such conduct.⁷⁴ Freedom to choose residence is a civil right. Violation of civil right entails, again, results in criminal responsibility. According to the Ethiopian Criminal Code, any unlawful restraint of the free exercise of civil rights guaranteed under the FDRE Constitution or another subordinate legislation is punishable with simple imprisonment not exceeding three years, or fine.⁷⁵ Regarding freedom of movement, however, the criminal Code regulates it independently. Accordingly, violation of the right of freedom of movement without legal justification is punishable with simple imprisonment, or fine.⁷⁶ In situations where the perpetrator is a public servant, he/she will be punished under the relevant abuse of power related provision of the Code.⁷⁷ Considering the serious nature of the issue under investigation, the penalty provided for the intervention at the right to freedom of movement and residence may be considering insufficient. For all the mass forced displacement that is perpetrated violating the right to free choice of residence, simple imprisonment with alternative fine punishment is not sound enough to hamper the conduct.

and Amharas. The Oromia Regional State Constitution provides that sovereignty resides in the People of the Oromo Nation. This implies that non-Oromo residents residing in the Oromia region have no say as far as political, economic and social decision-making is concerned. The preamble of the Oromia Constitution begins with the phrase “We the Oromo People” and not “we the Oromia Regional State People.” The preamble unequivocally excluded non-Oromos in the region and gave all the sovereignty only to Oromo people.

⁷⁰ The Civil Code of the Empire of Ethiopia, Negarite Gazetta, 19th Year No.2, 5th May, 1960, Art. 12(1).

⁷¹ Id, Art. 12(3).

⁷² Id, Art. 12(2).

⁷³ Id, Art. 2035(1).

⁷⁴ Id,, Art. 2040.

⁷⁵ Criminal Code of FDRE, Proclamation No. 414/2004, Federal Negarit Gazeta, 9th of May 2005, Art. 601.

⁷⁶ Id, Art. 602.

⁷⁷ Id, Art. 407(2).

Furthermore, the very purpose of criminal law, i.e. of deterring the criminals or making them lesson for others⁷⁸ may not be attained.

According to the Family Code, spouses jointly decide where they want to reside, which entails residence to be decided jointly.⁷⁹ As regards where minors would be residing the guardian of the child decides.⁸⁰

2.5. The Institutional Framework

Ministry of Peace: Ministry of Peace is one of the institutions established recently to settle ethnic-based conflicts. Since its inception, the institution has participated in visiting and supporting victims of the violation of the right to freedom of movement. While the Ministry of Peace is doing a good job so far, much still needs to be done in promoting awareness to the public and getting public participation in dispute settlements.

Ethiopian Human Right Commission: The Ethiopian Human Rights Commission (Commission) was set up as a part of democratic institutions following the regime change in the early 1990s. It is a national human rights body established according to Article 55(14) of the FDRE constitution through proclamation Number 210/2000 with the mandate to promote, protect and work towards the realization of human rights in Ethiopia.⁸¹ The Commission has powers to investigate a complaint submitted to it, including the investigative power of subpoena, giving it theoretically adequate powers necessary for the examination of a complaint. Any person asked to appear for furnishing information or production of document or record should cooperate with the Commission. Practically, EHRCO has conducted many investigations concerning forced ethnic evictions, which primarily affect the right to freedom of movement and residence. For instance, ethnic displacement of Konso ethnic groups from Teltele area by Borena Oromos; Gedeo ethnic group's eviction from Anferera and Shakiso areas by the local administration; ethnic eviction of

⁷⁸ Id, Art. 1.

⁷⁹ The Federal Revised Family code 213/2000 of Ethiopia, Federal Negarit Gazeta, 4th July 2000, Addis Ababa, Article 54.

⁸⁰ Id, Art. 256

⁸¹ Mohammed Abdo, he Ethiopian Human Rights Commission and its Contribution in the Protection of Human Rights and Building of Good Governance: Challenges and Prospects, <<https://biblio.ugent.be/publication/5855951/file/5876631.pdf%20section%205.2>> accessed 17 June 2020.

Sidama and Guji Oromo of each other in Wondogenet; ethnic eviction of Oromos and other ethnic groups from Moyale area by Somalis; and others are some of the cases investigated by Ethiopian Human Rights Commission. The investigation has commenced based on written application of any individual victims or representatives of ethnic groups.

House of the Federation and Council of Constitutional Inquiry: As per article 62 of the FDRE constitution, House of the Federation has a power to entertain cases that need constitutional interpretation. Also, it has the power of organizing Council of Constitutional Inquiry and deciding on issues relating to the rights of Nations, Nationalities and Peoples to self-determination, including the right to secession. Majorly, it shall strive to find solutions to disputes or misunderstandings that may arise between States. So far, HoF has involved in the ethnic tension between Sidama and Guji that causes the displacement of Sidama and Guji in Wondogenet area. It has chiefly investigated the cause of conflict and the cause of displacement in Wondogenet and conducted a referendum to solve the ethnic dispute and displacement. Nonetheless, the institutional functions of HOF encountered shortcomings about the safeguard of the right to freedom of movement and residence in Ethiopia. First, the solution forwarded by HOF for any ethnic issues related to territory is a referendum, and a referendum is not a win-win approach. Referendum solves disputes related to the territorial belongingness of a specific ethnic group. Yet, referendums used to decide the belongingness of a particular territory to one or the other ethnic group causes peril to the minorities whose vote was beaten by the majority. Thus, HOF could not fully protect the constitutional right to freedom of movement and residence of individuals in most parts of the country. There is no guarantee for the protection of the rights of ethnic minorities who live in the territory which resolved the territorial dispute in favor of the ethnic majority. Ethnic tension and forced displacement may continue even after the referendum.

Ethiopian Institution of the Ombudsman: As per article 6 of the Ethiopian Institution of the Ombudsman Establishment Proclamation No. 211/2001, Ethiopian Institution of the Ombudsman (hereinafter referred to as EIO) is mandated with ensuring that administrative directives, decisions given by executive organs, and the practices of those bodies do not contravene the constitutional rights of citizens and the law as well. Additionally, they are responsible for receiving and investigating complaints in respect of maladministration; conducting supervision, to ensure that the executive branch carries out its functions in accordance with the law; and seeking remedies in

cases where it believes maladministration has occurred. Even though the EIO is conferred sufficient powers with the establishment proclamation to control forced expulsion of individuals inflicted by bad conduct of administrative bodies, practically, the institution is not working as provided by law.

Some cases were brought to EIO and involved the issue of violation of the right to freedom of movement and residence. The first case handled by EIO was the Gurafarda Woreda ethnic eviction. The reason given by investigators for the displacement of persons from Gurafarda was alleged illegal. However, the government at the time said the displacement that took place was justified as the victims are involved in an unlawful act of deforestation. Unfortunately, they rejected the case without proper and adequate investigation which is not a proper act for a constitutionally established human rights institution.

Police: the Federal Police Establishment Proclamation 313/2003 clearly imposes a duty to protect constitutional entrenched human and democratic rights on the Federal Police force. The regional special forces are also mandated to guard the citizens rights. Nevertheless, there is no clear road map that can pave a way to both federal and regional police forces to protect constitutional rights in a coordinated manner. As a trend, police often waits for an order from the upper bureaucrats so as to protect the rights of individuals in particular to protect the right to freedom of movement affected by ethnic violence caused forced displacements. There should be a legal platform that could replace the bad trends as far as police is the primary guard of citizens' rights.

2.6. The Practical Protection to the Internal Freedom of Movement in Ethiopia in Light of Comparative Experience

Forced displacement, and violation of freedom of movement and choice of residence is rampant in Ethiopia. As indicated above we have limited and general constitutional protection for the freedom of movement and residence. There is no independent legal document, including a policy, which ensures the right to freedom of movement and choice of residence. The scattered legislations on their part are not sufficient enough to regulate the contemporary challenge Ethiopia is facing *vis-à-vis* consistent displacement challenges.

Practically, people are evicted from their homes and prohibited from exercising their right to movement within the Ethiopian territory. At times, police exercised restraint power without pre-existing law justifying the restrictions. The most notable illegal act in this regard is the fact that

those who are victims of eviction are prohibited from returning to their choice of residence. Instead, government will be involved in returning them to what is ought to be the regional state they belong to or regarded as a default citizenry. In fact, researches indicate that opportunities in the regions are given only to those who live in their designated ethnic homelands whereas those who find themselves out of their designated ethnic homelands become non-titular and are denied access to regional resources and opportunities.⁸² That is technical intervention with choice of residence.

2.7. A Way Forward

Considering the extent of the problem that Ethiopia is facing with regard to violation of the right to movement and residence, it is vital for the government to intervene. The intervention that must be undertaken must include development of a policy regulating the matter and adoption of a legislation. Furthermore, the legislation to be adopted must include matter of prevention, protection and assistance to those who are victims of the violation of the right to movement and residence. It is also important to note the insufficiency of the criminal penalty provided and as such the legislation must also include a provision criminalizing the violation. The penalty to be provided must also have a deterring effect and must be a lesson to others. It is also important to craft an institution which is mandated with the administration of the legislation.

The law must restrict states from interference on the enjoyment of freedom to move around and establish residence. In doing so, whether the individual belongs to the dominant ethnic group residing in the area, should not be taken into account. The laws to be adopted must incorporate rules regulating individuals, non-state actors, state organs including police, armed forces and other state security officials violating these rights and protection against all forms of forced internal displacement. It must also include duty to investigate and prosecute the perpetrators ensuring the federal jurisdiction on the crime.

Incorporating other rectifying measures that must be implemented during internal displacement protecting the right to free movement and choice of residence is also vital. Among others, government must ensure access to roads, pathways and means of transportation for all persons

⁸² Adem K. Abebe & Amen Taye, One Capital for a Plurination: Building an Autonomous and Inclusive Addis Ababa in Adem Kassie Abebe (Dr) and Amen Taye (eds), 'Reimagining Ethiopian Federalism', Ethiopian Constitutional and public law Series (2019) (Volume - x) Addis Ababa University - School of Law.

including a person with disabilities. Furthermore, the government must avail identity documents to citizens and would be important to issue national identification card which operates throughout the whole territory. Special protection must also be given to women, children, people with disability, and others whose vulnerability affords special protection.

The scope of the law to be drafted could fall under the federal jurisdiction requiring the implementation at various levels including federal and state level. This could be justified under Article 55(2) d and Article 55(5) of the Constitution considering the criminal provisions to be inserted in the proclamation and as part of enforcement of political right.

3. The Legal Framework for Protecting the Right of Internally Displaced Persons (IDPS) in Ethiopia

3.1. Introduction

Around two million Ethiopian citizens are currently displaced from their home due to ethnic based conflicts, gross violations of human rights, armed conflicts, natural disasters, development related projects and other factors. The impact of the displacement on their life, family and livelihood is devastating to say the least. Here, it is important to note that those displacements caused by manmade factors amount to violation of their constitutional right to freedom of movement and their right to choose their residence enshrined under the FDRE constitution which were briefly discussed in the previous section of the study. This part aims at examining the adequacy of the legal framework for protecting IDPs in Ethiopia at all phases of displacement. Accordingly, the chapter is divided into four sections. The first section defines who an IDP is and discusses the protections under international and regional human rights law. In the second section, the experience of other jurisdictions in protecting IDPs will be briefly analyzed to draw some useful lessons. The third section examines the sufficiency of the Ethiopian normative framework for protecting IDPs in light of international standards and comparative experience of other jurisdictions. The final section finishes by way of conclusion and recommendation.

3.2. IDPs and their Protection under international Human Rights Law

IDPs are generally considered to be one of the groups particularly vulnerable to human rights violation requiring a special protection. Though there is no universally accepted definition of IDPs, two elements appear in most of the definitions given so far. The first is the fact that IDPs are forced to leave their habitual residence against their will due to manmade and natural causes.⁸³ These factors include conflict, violation of human rights, development projects and natural catastrophes. The second and most important distinguishing characteristic of IDPs is that they do not leave the territorial boundary of their home country.⁸⁴ This makes them different from refugees which cross international borders and are found in the territory of a foreign states.

⁸³ Catherine Phuong, *The international Protection of Internally Displaced Persons*, (Cambridge 2004) p. 28-37

⁸⁴ *ibid*

Like all other human beings, civil, political, economic, social and cultural rights recognized in different international human rights treaties also apply to IDPs. However, due to the peculiar circumstances IDPs find themselves they face lots of hurdles to exercise these rights to the full extent.⁸⁵ This is why it is often argued that there is a need for having a separate human rights treaty that addresses their needs properly. Unfortunately, to date there is no binding international human rights treaty that exclusively deals with the rights of IDPs. This could be contrasted with the states of refugees protected by the 1951 Convention on refugees. Part of the reason for this state of affairs is state's unwillingness to put a limit on their sovereignty and their consideration of the matter as a purely domestic issue needing no interference from outside.⁸⁶ Yet, the notion of absolute sovereignty of states has lost its currency and international law applies even to how a state treats its citizens when it has implication on human rights.

The absence of special treaty that deals with the protection of IDPs does not however mean that there were no attempts to develop at least soft law instruments. In this regard, the UN Guiding Principles on International Displacement adopted in 1998 is notable. This instrument has almost a universal recognition and is serving as a standard for the treatment of IDPs in various jurisdictions. Some authors even ascribe it the status of customary international law. The guiding principles provide protection for IDPs in all stage of displacement. It also unequivocally states the primary duty of states for protecting IDPs within their territory.⁸⁷ The Guideline begins by stating the right of IDPs to be safeguarded from unlawful and arbitrary displacement. It particularly states that 'every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence'.⁸⁸ The logic behind it is that it is better to act early and prevent displacement rather than trying to redress displacement after its occurrence. Here, it is important to note that the permanency of residence is irrelevant to acquire protection. This right of IDPs also implies that a state is expected to take several measures to prevent arbitrary displacement including the enactment of laws and establishment of institutions.

In addition to prevention of displacement, the guideline affords protection to IDPs during the phase of displacement primarily in affirming their entitlement to receive humanitarian aid and

⁸⁵ *ibid*

⁸⁶ *id*, p.16

⁸⁷ United Nations Guiding Principles on Internal Displacement 1998, principle 3

⁸⁸ *id*, principle 6 (1)

assistances.⁸⁹ This is necessary because IDPs have left their home and lack access to shelter, food, and water and health services. Thus, the state is expected to address their need and provide them with assistance in a timely manner. In case where the situation is beyond its capacity, the guideline also recognizes the possibility for a state to seek international assistances to alleviate the suffering of IDPs. In post displacement stage as well, the guideline underlines the importance of providing durable solutions to the problem of displacement.⁹⁰ As such, it recognizes return, re-integration and re-settlement as possible alternatives. As much as possible it is preferable if IDPs safely their return to their home or habitual residence and resume their normal life. However, the decision should be theirs and they should do it voluntarily. In choosing any durable solution IDPs must have effective participation in the process and their needs must be addressed properly. In addition, besides facilitating their return a state should also protect them from a security threat and discrimination upon return.

Moreover, IDPs should regain their property and means of livelihood to lead a good life upon return. Thus, the state must do everything possible to protect property that belongs to IDPs from destruction and unlawful transfer during the time of their displacement.⁹¹ In cases where their property is destroyed or incapable of being returned for a reason out of control, the guideline provides that the state must pay them adequate compensation. In the absence of these protections, returning IDPs alone would expose them and their families to greater danger. If IDPs are unwilling to return to their home the state should take all appropriate measures to reintegrate them in the society they are living currently or permanently resettle them in another part of the state concerned.⁹² In these decisions as well engagement with IDPs, provision of basic public services and means which enable them to be self sufficient are essential.

The various protections which should be provided to IDPs in all phases as per the guideline could also be construed in terms of states obligation to respect, protect and fulfill under international human rights law. Accordingly, obligation to respect requires a state to refrain from arbitrarily displacing individuals from their homes or habitual residence.⁹³ The obligation to protect primarily demands a state to protect IDPs from displacement committed by non-state actors including

⁸⁹ id, principle 24

⁹⁰ id, principle 28

⁹¹ id, principle 29

⁹² id, principle 28 (1) (2)

⁹³ The Brookings Institution , Displaced Persons: A Manual for Law and Policymakers, October 2008, p.11

violations of human rights. The duty to prevent displacement is explicitly stated in the guideline and is proactive in nature. In relation to IDPs, states also have the duty to fulfill the humanitarian and other basic needs of IDPs.⁹⁴ This includes basic shelter, food, and water and healthcare services among others.

That being said about the normative framework for the protection of IDPs at international level, it might also be helpful to briefly see the institutions working in the area. Here, it is important to note there is no single institution that has the sole mandate of protecting IDPs internationally. Rather, agencies like the UNHCR, UNICEF, WHO, WFP, IOM and ICRC work jointly to alleviate the suffering of IDPs.⁹⁵ For instance, UNHCR was primarily established to address the needs of refugees. However, overtime its mandate was extended to include assistance and protection of IDPs. Likewise, ICRC also supports IDPs in the context of armed conflict as witnessed in many jurisdictions.⁹⁶ Despite the lack of adequate coordination and focus what these institutions are doing to provide emergency relief assistance for IDPs is something which needs appreciation.

3.3. The Protection of IDPs in Africa

Africa has one of the highest populations of IDPs in the world.⁹⁷ This is one of the main reasons that motivated the members of the African Union to adopt the first ever binding convention on IDPs in 2009. Apart from being the only binding instrument on the rights of IDPs, it has also a number of features that makes it peculiar. One of them is its consideration of IDPs as right holders rather than victims.⁹⁸ With this assumption it provides in detail the obligation of states and non-state actors. This is crucial as it elevates the needs of IDPs to that of rights than privilege. In addition, the convention approaches the issue of displacement from states obligations point of view. As such, it is mainly crafted in a manner that emphasizes the duty of the state to prevent displacement, protect IDPs and implement durable solutions.⁹⁹

Like that of the UN Guiding principles on IDPs, the Kampala convention emphasizes the Primacy of preventing displacement. Accordingly, a state is obliged to outlaw arbitrary displacement in its

⁹⁴ *ibid*

⁹⁵ Phuong, *Supra* Note 83, p 76-102.

⁹⁶ *ibid*

⁹⁷ Adama Dieng, 'Protecting Internally displaced persons: The Value of the Kampala Convention as a regional Example', *International Review of the Red Cross* (2017), 99(1) 263-282

⁹⁸ *ibid*

⁹⁹ *ibid*

national law.¹⁰⁰ Here, it is important to note that the UN guiding Principles seems to exclude non-state actors from its scope of application. In contrast, the Kampala convention expressly states that both state and non-state actors must refrain from displacing individuals. This means the obligation applies to corporations and rebel groups among others. More importantly, the Convention states that those responsible for displacement must be held accountable.¹⁰¹ This may include the imposition of criminal liability.

Further, the Kampala convention emphasizes the importance of cooperation and solidarity.¹⁰² This is based on the reality that most African countries are unable to carry the huge burden of assisting a huge number of IDPs on their own as it requires a significant amount of monetary and other resources. Yet, the convention provides a number of principles which humanitarian organizations need to observe in assisting IDPs. These include neutrality, impartiality, humanity and independence.¹⁰³ The aim here is to prevent the politicization of humanitarian assistance and unnecessary interference. The duty to abide by the laws of the state in which humanitarian agencies are operating is also stated as additional criteria. Finally, the convention also contains provisions which talk about the special protection of Vulnerable IDPs and notion of durable solution. As such, it demands states to give special attention to children, women and disabled IDPs due to their greater vulnerability.¹⁰⁴ Also, a durable solution which aims at enabling the resumption of normal life by IDPs is recognized. These measures include voluntary return, re-integration, resettlement and payment of compensation.

3.4. Comparative Perspectives on the Protection of IDPs: The Case of Kenya and Colombia

In conducting any comparative study, the first issue one has to address is providing justifications for selecting jurisdictions for comparison. In this study, Kenya and Colombia were chosen because of two main reasons. The first reason is that both systems have an advanced legal and institutional regime for protecting IDPS. This has enabled them to better protect rights of IDPS and respond to their peculiar needs. Second, courts in both jurisdictions have played exemplary role in defending

¹⁰⁰ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) 2009 art 3(1) a.

¹⁰¹ *id.*, art 3(1) h

¹⁰² *id.*, art 11 (3)

¹⁰³ *id.*, art 6(3)

¹⁰⁴ *id.*, art 9(2)c

rights of IDPS and in holding their government accountable. This is particularly notable in the case of Colombia.

3.4.1. The Case of Kenya

Kenya is among African countries with huge number of displaced persons. Election and communal land related violence are the major causes of displacement.¹⁰⁵ The number of displaced persons as a result of natural disaster and development projects is also considerable. For so long, the response of the Kenyan government to the problem was uncoordinated and poor. In order to address this problem a comprehensive IDP law was adopted in 2012.¹⁰⁶ The law has several progressive features. For instance, it incorporates the UN guiding principles on IDP and makes it part of Kenyan law.¹⁰⁷ Also, it has provisions that aim at preventing displacement before happening and clearly state the obligation of the government and non-state actors. Accordingly, the law provides that ‘government and any other organization, body or individual shall guard against factors and prevent and avoid conditions that are conducive to or have the potential to result in the displacement of persons’.¹⁰⁸ The government’s responsibility of identifying risky areas in advance and to provide early warning and prevention is part of this duty. In addition, the obligation to protect persons from arbitrary displacement is also enshrined in the law.¹⁰⁹

As noted above, one of the problems in Kenyan regime of IDP protection is lack of adequate coordination. To resolve this issue, the law establishes what it calls National Consultative Coordination Committee.¹¹⁰ Its members include the attorney general and Kenyan human rights commission among other. Efficient administration of prevention displacement and provision of assistance to IDPS is its key mandate. Further, in order to meet huge the financial resources needed for assisting IDPS, the law provides for the establishment of humanitarian fund.¹¹¹ The Kenyan IDP law has also provisions regarding development induced displacement, creation of awareness and penal provisions. In relation to development related displacement, the law makes it mandatory

¹⁰⁵ Internal Displacement Monitoring Centre, *A Review of the normative framework in Kenya relating to the protection of IDPs In the context of the Kampala Convention and other supranational frameworks* August 2015, p.8

¹⁰⁶ The Prevention, Protection and Assistance To Internally Displaced Persons and Affected Communities Act No. 56 of 2012

¹⁰⁷ id, art 3(2)

¹⁰⁸ id, art 5(1)

¹⁰⁹ id, art 6

¹¹⁰ id, art 12

¹¹¹ id, art 14-16

to consult the affected individual and engage with them seriously.¹¹² It also emphasizes the duty of the government to provide basic public services in case of relocation.

More importantly, the Kenyan IDP law underscores the need for addressing the root cause of displacement by creating public awareness and create atmosphere for peaceful coexistence.¹¹³ For this, the law incorporates a number of articles. Finally, the penal provision of the IDP law criminalize various actions including displacing persons and disrupting the supply of humanitarian assistance among others.¹¹⁴ These articles of the code aim to deter people from displacing individuals and harming IDPs. What is important here to note is that Kenya adopted this law without ratifying the Kampala convention. The most common justification given for not ratifying the convention is the presence of strong domestic law that protects IDPS.

3.4.2. The Case of Colombia

Colombia had one of the highest numbers of IDPs in Latin America. The main cause of displacement in Colombia is armed conflict.¹¹⁵ As a result of this conflict, millions of people were exposed to humanitarian crisis and other serious problems. A number of measures were taken by the government of Colombia to improve this situation. Now Colombia has one of the ‘most progressive legal and judicial systems of human rights protection for IDPs’.¹¹⁶ This was achieved progressively. Until 1997 Colombia had no law that protects IDPs properly and their needs were not given that much priority.¹¹⁷ The response to the problems IDPs were facing was ad hoc and uncoordinated. Accordingly, the government adopted a comprehensive law that prevent displacement and regulates the provision of assistance to IDPs.¹¹⁸ The law provides for the list of fundamental rights of IDPs and adopts a human right based approach to the protection of IDPs. To illustrate this the law begins by stating the right to not to be forcefully displaced, right not to be discriminated, right to family reunification, right to return to their place of origin right to freedom of movement and their right to consent in finding durable solutions.¹¹⁹

¹¹² id, art 9 (4)

¹¹³ id, art 17

¹¹⁴ id, art 33

¹¹⁵ The Brookings Institution, ‘*Judicial Protection of Internally Displaced Persons: The Colombian Experience*’, November 2009, p.2

¹¹⁶ id, p.1

¹¹⁷ id, p.6

¹¹⁸ LAW 387 OF 1997 (July 18)

¹¹⁹ id, art 2

What is most striking about Colombia in protecting the right of IDPs is the role of the Constitutional court. Over the years, the court has rendered several landmark decisions that fundamentally transformed and improved the protection of IDP. The most notable in this regard is the 2004 decision of the court.¹²⁰ In this judgment, the court examined around 108 cases filed by IDPs. It noted that ‘due to action or omission by the authorities in providing displaced population with optimum and effective protection, thousands of people suffer multiple and continuous violations of their human rights’.¹²¹ In the courts opinion this constitute an unconstitutional state of affairs which must be rectified immediately. Accordingly, the court gave instruction to the government to ‘design and implementation of the relevant policies, plans and programs, the appropriation of the necessary funds in national and territorial budgets, the modification of administrative practices, the resolution of organizational and procedural flaws, the amendment of the relevant legal framework, or the advancement of administrative, budgetary or contracting procedures required to guarantee the fundamental rights at risk’.¹²²

3.5. The Legal Framework for Protecting IDPs in Ethiopia

Internal displacement is a serious problem in Ethiopia. In 2018, the country ranked third in the world having around 3 million internally displaced persons.¹²³ The current number of IDPs in Ethiopia has decreased since some portion of the displaced returned to their homes. Yet, the country still has significant IDP population. According to studies conducted, the leading causes of displacement are ethnic and border related conflicts.¹²⁴ Here, it is important to note that Ethiopia has adopted ethnic based federalism and the regional states boundaries are primarily drawn along ethnic lines. Though some accuses the federal arrangement fostering ethnic based conflicts and the displacement¹²⁵, it is unknown to what extent the system contributed to the problem. In addition

¹²⁰ Colombian Constitutional Court, Decision T-025 of 2004

¹²¹ *ibid*

¹²² *ibid*

¹²³ IOM, Ethiopia National Displacement Report Round 18: July — August 2019.

¹²⁴ Yigzaw, G. S. & Abitew, E. B., ‘Causes And Impacts Of Internal Displacement In Ethiopia’, *AJSW*, Volume 9 Number 2 2019.

¹²⁵ Yonas Girma Adimassu, *Implication of Ethiopian Federalism on the Right to Freedom of Movement and Residence: Critical Analysis of the Law and the Practice*, Thesis Submitted to Addis Ababa University College of Law and Governance, Presented in Partial Fulfillment of the Requirements for Masters of Constitutional and Public Law, (2013)

to conflict, drought and flood are also significant factors that cause displacement in Ethiopia.¹²⁶ This has also been confirmed by studies.

Despite the seriousness of the problem displacement and its devastating impact on the lives of IDPS, it did not seem to receive adequate attention until recently. As such, the focus of the government has largely been providing humanitarian assistance to displaced persons rather than addressing the roots causes of displacement and taking preventive measures. The government seems to have realized the problem with its approach and it is taking some measures which indicate change. In this regard, the ratification of the Kampala convention and the initiative to draft law on IDPs by the ministry of peace are notable.¹²⁷ With this background, let us briefly discuss the adequacy of the Ethiopian legal and policy framework for protecting IDPs in light of international standards and comparative law.

To begin with the FDRE, it contains both explicit and implicit provisions that deal with the issue of displacement. As such the constitution expressly provides that ‘Ethiopian pastoralists have the right to free land for grazing and cultivation as well as the right not to be displaced from their own lands. The implementation shall be specified by law’.¹²⁸ This provision aims to prevent displacement of pastoralists from their land. Though the provision is narrow in focus and does not specify the duty bearer, it could be taken positively for prohibiting displacement. Another provision of the constitution states that ‘all persons who have been displaced or whose livelihoods have been adversely affected as a result of State programmes have the right to commensurate monetary or alternative means of compensation, including relocation with adequate State assistance’.¹²⁹ The focus of this provision is in the post-displacement phase and it is intended to provide compensation for those individuals whose livelihood is disrupted as a result of displacement. Yet, since the sub article is found in the provision dealing with environmental rights, its application could be construed to be confined to environmental harm related displacement. Further, the constitution also provides for payment of compensation in the case of expropriation. Accordingly, it states ‘without prejudice to the right to private property, the government may expropriate private property for public purposes subject to payment in advance of compensation

¹²⁶ Ethiopia National Displacement, n- 123.

¹²⁷ Proclamation No. 1187/2020 African Union Convention for The Protection And Assistance Of Internally Displaced Persons In Africa Ratification Proclamation.

¹²⁸ FDRE Constitution n- 66, art 40 (5).

¹²⁹ id, art 44(2).

commensurate to the value of the property'.¹³⁰ Here, payment of compensation could be considered as remedial provision for those individuals who are displaced as a result of displacement.

There also provisions in the constitution which have indirect deal with displacement. For instance, the constitution states that 'any Ethiopian or foreign national lawfully in Ethiopia has, within the national territory, the right to liberty of movement and freedom to choose his residence'.¹³¹ The right not to be arbitrarily displaced is implied in the recognition of the right to internal freedom of movement as well as the right to chose residence according to ones desire. A similar provision is incorporated in most sub-national constitutions. Further, the provisions in regional state constitution are much detailed including the right to work and own property by residing in any part of the region. In addition, the constitution has provisions which deal with provisions of assistance to the displaced. These could be seen from the statement 'government shall take measures to avert any natural and man-made disasters, and, in the event of disasters, to provide timely assistance to the victims'.¹³² The provisions mentioned above are further supplemented by other fundamental rights enshrined in the constitution such as the right to life, liberty, security, property and socio-economic rights. The major challenge has been the adequate their adequate enforcement at federal and state level.

That being said regarding how the issue of displacement is dealt at the constitutional level, it is also crucial to see the protection afforded to IDPs in subsidiary laws of the country. This is essential given the abstract and generic nature of constitution. In this regard, Ethiopia lacks a comprehensive subsidiary law that focus on displacement and assisting displaced persons in an efficient manner. As such, it is lagging behind jurisdictions such as Kenya and Colombia notable for their advanced legal regime for protecting IDPs examined in the previous section of this part. Yet, this does not mean that there is no effort to have such a law in Ethiopia. Here, the draft IDP proclamation prepared by ministry of peace could be mentioned as a good example.¹³³ The initiative taken by the ministry by itself is worthy of appreciation considering the magnitude of internal displacement problem in Ethiopia. In the following paragraphs an attempt will be made to discuss the strong and weak sides of the draft law.

¹³⁰ id, art 40(8).

¹³¹ id, art 32.

¹³² Ibid.

¹³³ Proclamation No.1 2019 Internally Displaced Persons Proclamation (draft).

To begin with its strong sides, the law contains good provisions that aim to assist IDPs in post displacement phase. For this the draft law establishes a coordination committee called federal inter-regional committee composed of various ministries and relevant stakeholders.¹³⁴ It is primarily entrusted to oversee the protection and assistance provided for IDPs in addition to achieving durable solution. This is crucial as the coordination of provision of assistance is essential to address the needs of IDPs in a timely manner. Besides the draft proclamation impose the duty of protecting IDPS on all levels of the government.¹³⁵ The draft proclamation has provisions concerning particular forms of displacements. A good example for this is development led displacement.¹³⁶ The draft law sets a number of pre-conditions which must be met including requirements of legality, necessity and proportionality.¹³⁷ The specific protections of IDPs enshrined in the draft law includes their right against return to a place where there safety is endangered, protection of vulnerable groups, protection of their property and possession and protection from discrimination.¹³⁸

More importantly, the draft IDP law has provisions concerning durable solutions, individual criminal responsibility and creation of awareness. The content of this article is comparable to the IDP laws of other jurisdictions which were discussed in the section of this study that deals with comparative perspectives. It is also heavily informed by the provisions of the Kampala convention. In relation to durable solutions the law incorporates voluntary return, resettlement and re-integration.¹³⁹ It further clearly states that any of these durable solutions must be executed after consulting the individuals concerned and after acquiring their consent. Detail indicator of what constitutes durable solutions is provided in the law. Like its Kenyan counterpart the draft law criminalizes a number of conducts which cause displacement and interfere with provision of humanitarian assistance.¹⁴⁰ Both state and non-state actors are the targets here. This provision is crucial because such matter is not addressed by the criminal code in a sufficient manner. The need to creates awareness about the root cause of displacement and prevent it, has got attention in the

¹³⁴ id, art 2(9) & 10

¹³⁵ id, art 8

¹³⁶ id, art 5

¹³⁷ id, art 6 & 15

¹³⁸ id, art 7 & 33

¹³⁹ id, art 20 & 28

¹⁴⁰ id, art 34-40

draft.¹⁴¹ Having such provision is necessary as it is impossible to prevent displacement in the absence of sufficient public awareness about the gravity of the matter.

The above being the main strengths of the draft law, let us see some its weakness which need to be improved. One of the problems with the draft law is that it does not seem to adopt a human rights/IDP centered approach. This means the law should first begin by identifying individuals/IDPs as right holders. In its preamble and the body the law should expressly states that individuals have the right to freedom of movement, right to choose residence and the right not to be displaced arbitrarily. In post displacement phase as well, it would be good if the law begins by identifying and listing the rights of IDPs. Based on these rights it would be meaningful for the law to impose various obligations on both state and non-state actors. Further, in the preamble part of the law it would be helpful if the law states the devastating impact of displacement on the lives and of individuals and the need to provide assistance in timely manner while providing durable solutions.

The other weakness of the law is its failure to give proper attention to preventing displacement. As noted above, most of the provisions of the draft law talk about provision of assistance in post displacement phase. Though assistance to IDPS, it is equally important to have detailed provisions that aim at prevent it. Further, the draft law needs to give particular emphasis to preventing ethnic based and border related displacement as it is the major cause why people forcibly leave their homes. The duty of various levels of governments to adopt policy and action plans that aim at preventing such forms of displacement needs to be incorporated in the law. In the part of the draft law dealing with the post displacement the provision which talk about compensation and restitution to IDPS who lost their property might be difficult to implement considering the reservation Ethiopia made on the Kampala convention.¹⁴² The position of the Ethiopian government is that the duty to pay compensation only applies for persons displaced as a result of expropriation for public purpose. In support of its position the government invokes the FDRE constitution art 40 (8). For other cases of displacement the government only accepts its duty to provide assistance.

Yet, this position of the government is not acceptable and it entails a serious infringement on the rights of internally displaced persons. Under international human rights law, the Ethiopian government has the duty to protect persons from displacement. This also applies in cases where

¹⁴¹ id, art 41

¹⁴² Proclamation No. 1187/2020 (n45) art 3(1) a

the displacement is caused by non-state actors. When the government fails to discharged its duty to protect persons from displacement, it is reasonable to impose obligation to compensate internally displaced persons who lost their property as a result of the incident. Imposing such obligations will also make the government to be vigilant about preventing internal displacement and take the rights of IDPs seriously. Further, there is nothing in the FDRE constitution that prevents the government from paying compensation in other cases of displacement. As such, the government's duty to pay compensation for internally displaced persons on a case by case basis stipulated in the Kampala convention and the draft IDP proclamation should be retained.

Finally, the law does not envisage how IDPS would secure remedy if the protections provided by the law are not implemented. In countries like Colombia, IDPS have easy access to the constitutional court and they can make fundamental rights infringement claims. On several occasions, the court has held the government responsible in various forms. These includes asking it to review its laws, polices, programs and action in a manner that adequately addresses the needs of IDPS. Similarly, it would provide an additional safeguard if the draft law expressly gives jurisdiction to ordinary courts to entertain IDP right related claims and provide remedy. Here, it might be necessary to briefly talk about institutions in Ethiopia primarily dealing with IDPs. Accordingly, the ministry of peace is the main organ that is responsible for preventing displacement and providing assistance.¹⁴³ On a number of occasions the ministry had visited IDPs and coordinated the activities of several organs to assist them. The other institution is the disaster and risk management commission which mainly works in provision of humanitarian aid and emergency relief to IDPs.¹⁴⁴ The Ethiopian human rights commission and institution of ombudsman have also the mandate to protect the right of IDPs from violation. Yet, there is a problem of lack of coordination between these organs and the draft law may be helpful in this regard.

3.6. Conclusion and the Way Forward

Internal displacement is a problem troubling many countries across the globe. Yet, there is no binding international treaty that protects IDPS. Comparatively speaking, Africa is better placed in this regard after the adoption of the Kampala Convention on the protection and assistance of

¹⁴³ Getnet Ayalew, *The Protection of Internally Displaced Persons: An Assessment of The Legal And Institutional Framework In Ethiopia* 2019, pp. 137-146

¹⁴⁴ *ibid*

internally displaced persons by the African Union in 2009. The convention aims at addressing the rampant displacement problems in the continent and alleviates the suffering of IDPS. Ethiopia is one of the countries in Africa with huge number of displaced persons. Many studies indicate that the major cause of displacement in the country is ethnic or boarder related conflicts. Though the FDRE constitution contains provisions which explicitly and implicitly deal with displacement their enforcement has been a big problem so long. Further, the absence of a comprehensive subsidiary law that deals with prevention of displacement, assistance and provision of durable solutions has further exacerbated the problem. The recent imitative by the ministry of peace to develop a new law on IDPs is a positive development in this regard. However, the law fails to adopt a right centered approach, focuses much on assistance than prevention of development and lacks provision which ensure appropriate remedy among others. The reservations and interpretive declarations made by Ethiopia on the Kampala convention further limited the protection afforded to IDPs. These gaps in the existing law need to be rectified in the future to adequately prevent displacement and protect IDPs.

ረቂቅ የዜጎችን የመንቀሳቀስ መብት ለማስከበር የወጣ አዋጅ,

አዋጅ ቁጥር.../2013

የካቲት/2013

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በኢትዮጵያ በሀገር ውስጥ የተፈናቀሉ ዜጎችን ኢትዮጵያ ተቀብላ ባጸደቀቻቸው አለማቀፍ የሰብዓዊ መብት ሰነዶች እና በኢ.ፌ.ድ.ሪ ህገ-መንግስት የተጠቀሱ መብቶቻቸው በተጨማሪም ተግባራዊ ለማድረግ የህግ ማእቀፍ በማስፈለጉ፤

በኢትዮጵያ ፌደራላዊ ሪፐብሊክ ህገ-መንግስት አንቀጽ 55(1) መሰረት የሚከተለው ታወጧል፡፡

ምእራፍ አንድ፡ ጠቅላላ ድንጋጌዎች

1. አጭር ርዕስ

ይህ አዋጅ ዜጎች ያላገባቸውን እንዳይፈናቀሉ ለመጠበቅ እና የተፈናቀሉ ሰዎች መብቶች ለማስከበር የወጣ አዋጅ ተብሎ ሊጠቀስ ይችላል፡፡

2. ትርጓሜ

በአዋጁ ውስጥ ሌላ ትርጉም ካልተሰጠው በቀር በአዋጁ የተገለጸ ቃል ወይም ሀረግ የሚከተለውን ትርጉም ይይዛል፡፡

- 1) **ኢትዮጵያዊ ዜጋ** ማለት በኢ.ፌ.ድ.ሪ ህገ መንግስት አንቀጽ 6 ላይ እና በሌሎች ህጎች የተገለጹትን ያሟላ ዜጋ ነው፡፡
- 2) **ቡድናዊ መለያዎች** ማለት አንድን ግለሰብ ወይም ማህበረሰብ ከሌላው ግለሰብ ወይም ማህበረሰብ ለመለየት የሚያስችሉ የብሄር፣ ጎሳ፣ ሀይማኖት፣ የፖለቲካ አመለካከት፣ የቆዳ ቀለም፣ ወይም ተመሳሳይ መለያዎች ናቸው፡፡
- 3) **የግዛት ወሰን** ማለት በኢ.ፌ.ድ.ሪ ህገመንግስት አንቀጽ 2 ስር የተገለጸው ነው፡፡

4) ...

5) በዚህ አዋጅ ለወንድ የተገለጸው የሴትንም ጾታ ያጠቃልላል።

3. የተፈጻሚነት ወሰን

- 1) ይህ ህግ ተፈጻሚ የሚሆነው በህጋዊ መንገድ በየትኛውም የኢትዮጵያ ግዛት ውስጥ ለሚኖሩ ኢትዮጵያውያን ዜጎች ነው።
- 2) ቡድናዊ መለያዎችን መሰረት በማድረግ በህጋዊ መንገድ ከሚኖሩበት ቦታ ተገደው ለሚፈናቀሉ ዜጎች ይህ አዋጅ ተግባራዊ ይሆናል።

ምእራፍ ሁለት፡ መሰረታዊ መርሆች

4. መርህ

- 1. ማንኛውም ኢትዮጵያዊ ዜጋ በየትኛውም የኢትዮጵያ ግዛት ክልል ውስጥ የመንቀሳቀስ፣ የመስራት እና በፈለገው ቦታ የመኖሪያ ቦታውን የመወሰን እና በመረጠው ቦታ የመኖር መብቱ ህገ-መንግስታዊ መብቱን ለማስከበር መንግስት ጥበቃ ያደርጋል።
- 2. ማንኛውም ሰው በየትኛውም ከሚኖርበት የኢትዮጵያ አካል ከሆነ አካባቢ ያለፈቃዱ ተገዶ መኖሪያ ቦታውን ለቆ እንዲወጣ አይደረግም። ለዚህም የመንግስት አካል ጥበቃ ያደርጋል።

5. በግዳጅ መፈናቀል

ለዚህ አዋጅ አላማ አንድ ሰው ያላግባብ በግዳጅ ተፈናቀለ የሚባለው በሚከተሉት ሁኔታዎች ነው።

- 1) በሚኖርበት ቦታ የመንግስት ስልጣን ባለው ግለሰብ ወይም ተቋም ቀጥተኛ በሆነ-መንገድ የመብት ረገጥ ተፈጽሞበት ለመኖር የማይችልበት ሁኔታ ሲያጋጥም እና በዚህ ምክንያት አካባቢውን ለቆ ሲወጣ፣
- 2) ግለሰቡ በአካባቢው በሰላም ለመኖር እንዳይችል በሌሎች ሰዎች ቀጥተኛ የመብት ጥሰት ሲደርስበት እና ይህንንም በሚኖርበት አካባቢ ባለ የጸጥታ ሀይል ጥሰቱን ማስቆም ካልቻለ

- 3) የታጠቀ ሀይል ወይም ቡድን ምክንያት በሚኖርበት አካባቢ በህይወት የመኖር መብቱ እና ሌሎች መሰረታዊ ህገመንግስታዊ መብቶቹ ሲጠሱ

ምእራፍ ሶስት፡ ተቋማዊ መዋቅር

6. የመርማሪ ቦርድ መቋቋም

- 1) የዜጎች ከቦታ ቦታ የመንቀሳቀስ እና በመረጡት ቦታ የመኖር መብት ጥሰቶች ጋር የተያያዙ ጉዳዮችን የሚመረመር ቦርድ ይቋቋማል።
- 2) የቦርዱ አባላት የፌዴሬሽን ምክር ቤት አባላትን ከሁሉም ክልሎች የተወከሉ በሰብዓዊ መብቶች ላይ የሰሩ ገለልተኛ ሰዎችን ያካትታል።
- 3) ቦርዱ 11 አባላት ይኖራታል።

7. የመርማሪ ቦርዱ ስልጣን እና ተግባራት

መርማሪ ቦርዱ የሚከተሉት ተግባር እና ስልጣናት የኖሩታል።

- 1) የተፈጸሙ የሰብዓዊ መብቶች ጥሰቶችን በመመርመር የመንቀሳቀስ መብት ጥሰቶችን የሚመለከት ሪፖርት ማቅረብ
- 2) የመንቀሳቀስ መብት ጥሰቶች የእርምጃ እና የመፍትሄ ሃሳብ ማቅረብ
- 3) የመንቀሳቀስ መብት መጣስ ስጋት ያለባቸውን ዜጎችን አቤቱታ በመቀበል ለሚመለከተው የጸጥታ አካል በማሳዎቅ ጥበቃ እንዲያገኙ ማድረግ።
- 4) የመንቀሳቀስ መብት መጣስ ባጋጠመ ጊዜ ይህንኑ በመመርመር የእርምጃ እና የመፍትሄ እንዲወሰድ ለፌዴሬሽን ምክር ቤት የዉሳኔ ሀሳብ ማቅረብ።

8. የፌዴሬሽን ምክር ቤት ሃላፊነቶች

- 1) የፌዴሬሽን ምክር ቤት የብሄሮች ብሄረሰቦች እና ህዝቦች መብቶች በየትኛውም የኢትዮጵያ የግዛት ክልል ህገ-መንግስታዊ መብቶቻቸው ተከብሮላቸው የሚኖሩበትን አስተዳደር ምቹ ሁኔታ መኖሩን ያረጋግጣል።
- 2) የክልል ህገ-መንግስታት በክልሉ የሚኖሩ ሁሉም ዜጎች በእኩልነት እንዲኖሩ ዋስትና የሚሰጥ መሆኑን ያረጋግጣል። የክልል ህገ-መንግስታትም ይሁኑ ሌሎች ህጎች በፌዴራል ህገ-መንግስት የተቀመጡትን የዜጎች መብቶች የሚጥሱ ከሆኑ ዉድቅ ያደርጋል።
- 3) በዚህ አንቀጽ ንዑስ አንቀጽ 2 ላይ የተጠቀሰውን ተግባራዊ ለማድረግ መደበኛው የህገ-መንግስት ትርጉም አሰጣጥ ስነ-ስርዓት ተግባራዊ ይደረጋል።
- 4) የመንቀሳቀስ መብት ጥሰት የተፈጸመበት ክልል ባለስልጣናትን ጠርቶ በፌዴሬሽን ምክር ቤት ማብራሪያ እንዲሰጡ ማድረግ፣ የመጠየቅ እና መግለጫ ለህዝብ መስጠት ይኖርበታል።

9. የክልል መንግስት ተቋማት ግዴታዎች

- 1) ማንኛውም ክልል በክልሉ የሚኖሩ ሁሉም ዜጎች በእኩልነት የሚኖሩበት ሁኔታ ማመቻቸት ይኖርበታል።
- 2) በክልሉ የሚወጡ ህጎች የፌዴራሉን ህገ-መንግስት መርሆች እና መብቶች መሰረት ያደረጉ መሆናቸውን ማረጋገጥ አለበት
- 3) በክልሉ የሚኖሩ ሁሉም ዜጎች የብሄር ፣ ሀይማኖት፣ ወይም ሌላ ማንኛውም መለያ ሳይደረግባቸው በሰላም የሚኖሩበትን ሁኔታ ማመቻቸት አለበት
- 4) የክልል መንግስታት የብሄር ወይም የሃይማኖት ግጭት ስጋት ያለባቸውን አካባቢዎች በመለየት በቂ የጸጥታ ሀይል ከክልሉ ወይም ከፌዴራል እንዲገባ ማድረግ አለባቸው።

10. የጸጥታ ተቋማት

- 1) ማንኛውም የጸጥታ ተቋም ቡድናዊ መለያዎችን መሰረት በማድረግ በዜጎች ላይ የሚቃጠሉ ጥቃቶችን የመከላከል ግዴታ አለበት።

2) ቡድናዊ መለያዎችን መሰረት በማድረግ የሚፈጸሙ የወንጀል ድርጊቶችን በመከታተል ህግ የማስከበር ሀላፊነቶች አሉባቸው።

11. የወረዳ አስተዳደር አካላት

- 1) በየትኛውም ክልል የሚገኙ የወረዳ መዋቅር አስተዳደሮች በወረዳው የሚኖሩ ሁሉም ሰዎች የቡድናዊ መለያ ሳይደርግባቸው እኩል አግልግሎት ያገኛሉ።
- 2) በየትኛውም ክልል የሚገኙ የወረዳ አስተዳደር የመንግስት ባለስልጣናት በወረዳው የሚኖሩ ሰዎችን ቡድናዊ መለያ በማድረግ ከመኖሪያ ቀያቸው እንዲለቁ ከማድረግ መቆጠብ አለባቸው።
- 3) የወረዳ አስተዳደር በሁሉም ቀበሌዎች ሰዎች በተናጠል ወይም በግል የመፈናቀል ስጋት ሲኖርባቸው አቤቱታ የሚያቀርቡበትን ስርዓት መዘርጋት ይኖረባቸዋል።

12. የሲቪክ ማህበራት

- 1) የሲቪክ ማህበራት ዜጎች በህገመንግስቱ የተቀመጡላቸውን መብቶች እንዲከበሩላቸው፣ መቻቻል እንዲኖር እና በተለይም የዜጎች ከቦታ ቦታ ንቀሳቅሶ የመኖር መብት እንዲከበር የግንዛቤ መፍጠር ስራ ሊሰሩ ይችላሉ።
- 2) የሲቪክ ማህበራቱ በሚያሰራጩት መረጃ ዜጎች ከቦታ ቦታ ተንቀሳቅሶ የመኖር መብት እንዲጣስ መነሻ አለመሆኑን ማረጋገጥ አለባቸው።

ምእራፍ አራት፡ የሚወሰዱ እርምጃዎች

13. መልሶ የማቋቋም

በዚህ አዋጅ አንቀጽ 6 ላይ የተጣለበትን ግዴታ ባለመወጣቱ ከክልሉ የተፈናቀሉ ዜጎች ባጋጠሙ ጊዜ ተገቢውን እርምጃ በመወሰድ ወደ ቦታቸው የማይመልስ ከሆነ ---ለዚህ አላማ በተቋቋመው ቦርድ የሚከተሉት እርምጃዎችን ይወስዳል፤

- 1) የክልሉ መንግስት ተፈናቃዮቹ በ3 ወራት ውስጥ አስፈላጊ ዝግጅቶችን እና አስተማማኝ ጥበቃ በማድረግ ወደ ቀድሞ ቦታቸው እንዲመለሱ ያደርጋል።

2) የወደመጣቸው ንብረት በክፊል ወይም በሙሉ እንዲተካ አስፈላጊውን እገዛ ያደርጋል።

14. የበጀት ቅጣት

1) በዚህ አዋጅ አንቀጽ 13 ተግባራዊ በማያደረግ ክልል ላይ ዜጎች በተፈናቀሉበት አመት ካለው ቀጣይ አለመት ለክልሉ ከፊደራል መንግስት ከሚሰጠው የበጀት ድጎማ ላይ እስከ 25 ፕሮሰንት የሚሆነው እንዲቆረጥ የፌደሬሽን ምክር ቤት ሊወስን ይችላል።

2) በዚህ አንቀጽ ንዑስ አንቀጽ 1 የተቆረጠው ገንዘብ የመንቀሳቀስ እና በመረጡት ቦታ የመኖር መብታቸው የተነፈገባቸው ሰዎችን ለማቋቋም ጥቅም ላይ ይውላል።

3) ይህን ድንጋጌ ለማስፈጸም የሚኒስትሮች ምክር ቤት ደንብ ያወጣል።

15. በወረዳ አስተዳደር ላይ የሚወሰድ እርምጃ

በዚህ አዋጅ የተጣለበትን ሀላፊነት ባለመወጣት ሰዎች የተፈናቀሉበት የወረዳ አስተዳደር ላይ የሚከተሉት እርምጃዎች ይወሰዳሉ።

- 1) አስተዳደራዊ መዋቅሩ እንዲስተካከል ወይም እንዲቀየር ማድረግ
- 2) የደምዘ እና መሰረታዊ ወጪዎችን ሳይጨምር ለካፒታል ከተያዘለት አመታዊ በጀት ላይ በተፈናቀሉት ሰዎች ቁጥር የሚታሰብ ገንዘብ እንዲቆረጥ ማድረግ።

16. አስተዳደራዊ እርምጃዎች

1) ማንኛውም በክልል ወይም በወረዳ ደረጃ የሚገኝ የመንግስት አካል በዚህ ህግ የተቀመጡትን ግዴታዎች ባለመወጣቱ የዜጎች ከቦታ ቦታ ተዘዋወሮ የመኖር መብትን በሚጥስ መልኩ ከአካባቢያቸው ከተፈናቀሉ ለህዝብ አገልግሎት ከሚሰጡበት የመንግስት ስልጣን እንዲለቅ መደረግ አለበት።

2) የዚህ አንቀጽ ንዑስ አንቀጽ 1 ተፈጻሚ የሚሆነው የመርማሪ ቦርዱ ሪፖርት በወጣ በአንድ ወር ጊዜ ውስጥ ይሆናል።

17. የወንጀል ቅጣት

- 1) ማንኛውም ሰው ሌላውን በህጋዊ መንገድ ከሚኖርበት ቦታ ወይም ቤት በግዳጅ ለቆ እንዲወጣ በማሰብ ጉዳት ካደረሰ በ15 ዓመት ድኑ እስራት ይቀጣል።
- 2) ማንኛውም የጸጥታ አካል የሰዎችን ከቦታ ቦታ ተንቀሳቅሶ በመረጡት ቦታ የመኖር መብትን የሚጥስ ሁኔታ የተጠቀሰ ሀይል መኖሩን ካወቀ በህግ እንዲጠየቅ ማድረግ አለበት።