

The Quest for Remedies for Violations of IDPs` Right to Land and Property in Ethiopia

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Abstract

The predicament of IDPs has emerged as one of the great human tragedies in the world today, including in Ethiopia. Millions of people have been forced to abandon their houses, land and other property because of conflicts, disasters, and development projects. This made them more vulnerable to homelessness, economic hardship, social disarticulation, psychological trauma, and various forms of severe deprivation of human rights. However, there remains a lack of an effective mechanism to respond to the multiple claims of IDPs. This doctrinal article examines the extent to which the existing international, regional, and national legal instruments are applicable to remedy violations of IDPs' right to land and property in Ethiopia. The article emphasizes inadequate policy, legal, and institutional framework as one of the critical gaps in providing and enforcing judicial and administrative remedies upon violations of the rights in question. Compared to development-induced displacement, where the Expropriation Proclamation has made a good start, remedies and reparations for conflict and disaster-induced displacements are still inadequate and found scattered in the various substantive and procedural laws of the country. A review of related literature also informs that the problem is exacerbated by other practical challenges such as lack of awareness and political will, the prevailing culture of impunity for human

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rights violations, issues in land registration and formalization of property rights, the absence of separate fund and procedural difficulties to lodge actions. The article underlines the need to introduce a comprehensive legal framework, ensure land and property registrations, establish a separate fund, and strengthen Public Interest Litigation (PIL) and class action as key reform priorities.

Keywords: IDPs, Land and Property Rights, Violations, Remedies, Ethiopia

1. Introduction

Internally Displaced Persons (IDPs) are persons or groups of persons who have been forced to leave their residences and have not crossed an internationally recognized State border.¹ What makes IDPs different from other persons of related situations, such as refugees, is that they stay within their own country and remain under the protection of their government, even in cases where the government is responsible for the displacement. Although accurate data remain unknown, Ethiopia has one of the largest Internally Displaced People (IDPs) in Africa, with an estimated 4.2 million as of September 2021 and 4.7 million as of October 2022.² Political instability and ethnic conflicts, natural disasters (such as drought, floods, and locusts), and expansion of development projects are the primary and underlying causes of

¹United Nations High Rights Office of the Higher Commissioner, Guiding Principles on Internal Displacement, 1998, (E/CN.4/1998/53/Add.2), (Hereinafter UN Guiding Principles) 2nd Paragraph. Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), African Union, 2009, Art. 1(1)

² International Organization for Migration (IOM), 'Ethiopia Crisis Response Plan: 2022', <https://crisisresponse.iom.int/response/ethiopia-crisis-response-plan-2022> (accessed August 25, 2022); Camp Coordination and Camp Management (CCCM), 'Ethiopia', < <https://ccmcluster.org/operations/Ethiopia> > (accessed February 15, 2023).

internal displacement challenges in the country.³ Empirical evidence shows that conflict is the primary (over 85%) driver of displacement, followed by natural disasters and climatic shocks.⁴ There are also cases of development-induced displacements undergoing in Ethiopia.⁵ However, compared to other types, there is a clear set of legal procedures, and remedies for this type of displacement for the FDRE Constitution and other legislations provide for participation and consultation rights as well as compensation and rehabilitation rights.⁶ However, the remedies available for conflict and climate-induced displacements are less apparent even though they persist most in Ethiopia. These two causes form the focus of this article.

³ Mister Sew, 'Internally Displaced People and Humanitarian Crisis in Ethiopia', (August 30, 2021, <https://www.ethiopia-insight.com/2021/08/30/internally-displaced-people-and-humanitarian-crisis-in-ethiopia/>) (accessed August 25, 2022); Benyam Masresha, Thriving to Survive: Resettlement of Internally Displaced Persons in Sululta Town of Oromia Regional State, MSc Thesis, Addis Ababa University, (2020). Tadele Akalu, Internal Displacement in Ethiopia: A Scoping Review of its Causes, Trends and Consequences, *Journal of Internal Displacement*, Vol. 12 No. 1, (2022), pp. 2-31. Endris Jafer et al, Post Conflict-Induced Displacement: Human Security Challenges of Internally Displaced Persons in Oromia Special Zone Surrounding *Finfinne*, Ethiopia, *Cogent Social Sciences*, Vol. 8 No.1, (2022). Mehari Taddelle, Causes, Dynamics, and Consequences of Internal Displacement in Ethiopia, German Institute for International and Security Affairs Working Paper No. 8, (2017).

⁴ IOM, *supra* note 2.

⁵ Almaz Mekonnen, Development Induced Displacement of Urban Dwellers in Addis Ababa: An Implication for Rebuilding Social Capital, MSc Thesis, Addis Ababa University, (2019). Negera Gudeta, Human Rights Impacts of Development Induced Displacement in Addis Ababa: The Case Study of Kirkos Sub City, *Journal of Poverty, Investment and Development*, Vol. 57, (2020).

⁶ The Constitution of Federal Democratic Republic of Ethiopia (hereinafter FDRE Constitution), Proclamation No.1/1995, Federal Negarit Gazeta, (1995), Arts. 40 (8), 43 (2) & 44 (2); Expropriation of Landholdings for Public Purposes, Payments of Compensation and Resettlement of Displaced People (hereinafter, Expropriation Proclamation No.1161/2019), Proclamation No. 1161/2019, Federal Negarit Gazetta, (2019).

Ethiopia has been exposed to numerous natural and artificial disasters (such as droughts, floods, pests, epidemics, and earthquakes) that caused 202, 202 (in 2019) and 240, 000 (in 2021) internal displacements in the different parts of the country.⁷ As indicated above, Ethiopia's biggest displacement problem appallingly comes from conflict and violence. There is a growing consensus among researchers and policy-makers that the ethnic-based federal system⁸ is the primary responsible factor for inter-communal conflicts in the country.⁹ The politics of "othering" and mega-ethnic syndrome have led to escalating grievances, animosities, and severe competitions that exacerbate ethnic-based violence and repeated displacements never happened in history.¹⁰ Even though the federal system in Ethiopia is said to empower ethnic groups by recognizing the right to self-determination, it fails to pay the required attention to the 'non-indigenous' (non-native) residents of the regional states.¹¹ The federal system does not provide systems of protection to these millions of

⁷ Internal Displacement Monitoring Centre (IDMC), 'Country Profile: Ethiopia', <https://www.internal-displacement.org/countries/ethiopia>, (accessed February 19, 2023); United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), Ethiopia National Displacement Report 9, Round 26: June - July 2021 <https://reliefweb.int/report/ethiopia/ethiopia-national-displacement-report-9-round-26-june-july-2021>, (accessed February 15, 2023).

⁸ FDRE Constitution, Arts. 46 and 47.

⁹ Takele Bekele Bayu, Is Federalism the Source of Ethnic Identity-Based Conflict in Ethiopia? *Insight on Africa*, Vol. 14, Iss. 1, (2022), pp. 104–125; Dereje Regasa et al, In Search of the Invisible People: Revisiting the Concept of "Internally Displaced Persons" in Light of an Ethiopian Case Study, *Refugee Survey Quarterly*, Vol. 41, Iss. 2, (2022), pp. 320–341.

¹⁰ IOM, Rapid Response Assessment Benishangul Gumuz/ East and West Wellega: Round 1, (February 8-16, 2019), <https://dtm.iom.int/reports/ethiopia-%E2%80%94benishangul-gumuz-east-and-west-wellega-rapidresponse-assessment-1-8-%E2%80%9416> > (accessed August 26, 2022)

¹¹ Yonatan Tesfaye and Van Der Beken, Ethnic Federalism and Internal minorities: The Legal Protection of Internal Minorities in Ethiopia, *African Journal of International and Comparative Law*, Vol. 21, No. 1, (2013), pp. 32-49. Beza Dessalegn, The Right of Minorities to Political Participation under the Ethiopian Electoral System, *Mizan Law Review*, Vol. 7. No.1, (2013), pp. 75-78.

Ethiopians ('non-natives') who find themselves in politically wrong regional states.¹² In some regional states, the problem has a constitutional basis in that some ethnic groups are legally recognized as owners of the region while others labelled as are late-comers to the region and as such deprived of the status recognized for the former ones.¹³ Such Constitutional stipulations have let post-1990s nationalist political groups kill or displace millions of ethnic Amhara residents from Oromia, SNNPR, and Benishangul-Gumuz regions.¹⁴ In 2018, around 900,000 people were displaced because of the inter-clan conflicts between Oromia and Somali regions.¹⁵ In 2019, a conflict broke out between West *Guji* (Oromia region) and *Gedeo* (Southern Nations, Peoples, and Nationalities region) that displaced an estimated 1.4 million people.¹⁶ Ethiopia's IDPs have increased dramatically since 2021 due to the armed conflict that broke out in northern Ethiopia and displaced over 2.11 million people in Tigray, Amhara, and Afar regions.¹⁷

During conflict and natural hazards, people often leave their residences at short notice and cannot secure their property rights. Their land, house, and property may be vulnerable to robbery, destruction, or arbitrary seizure by

¹² Getachew Assefa, Federalism and Legal Pluralism in Ethiopia: Preliminary Observations on Their Impacts on the Protection of Human Rights, *East African Journal of Peace and Human Rights*, Vol. 17 No. 1, (2011), p. 180.

¹³ Benishangul-Gumuz Regional State Revised Constitution, Proclamation No. 31/2002, Art. 3. Harari People Regions State Revised Constitution, Proclamation No. 46/2002, Art. 8; Oromia National Regional State Revised Constitution, Proclamation No 46/2002, Art. 8

¹⁴ Gizachew Wondie, Indigenous' and 'Non-indigenous' People's Rights in Benishangul-Gumuz Regional State: The Right to Political Participation of 'Non-Indigenous' People in Bambasi Woreda, (MA Thesis), Addis Ababa University, (2015).

¹⁵ Addis Ababa University Institute for Peace and Security Studies (IPSS), Peace and Security Report, Ethiopia Conflict Insight, Vol. 1, (2020)

¹⁶ *Id*

¹⁷ *Id.*

authorities.¹⁸ In conflicts, land and property are destroyed or appropriated by others as instruments of warfare or ethnic cleansing.¹⁹ In the same way, violations of deprivation of land and property rights are deliberate ethnic, political, or military strategies aimed at terrorizing, punishing and displacing particular communities and altering the ethnic or religious composition of a specific community or area.²⁰ In addition to the physical property, there can be loss or destruction of property titles, personal identity or residence cards, civil registries (such as birth, marriage, divorces, or deaths of relatives) and other documents that represent rights.²¹ In the same way, public offices that keep records of property rights and related documents might be destroyed. Violations of the land and property rights of the IDPs would severely compromise their ability to earn a living and easily expose them to various risks such as poverty, family disintegration, social breakdown, loss of identity, marginalization, harassment, exploitation, lack of adequate food and safe water, and lack of essential public services such as education and health care.²² IDPs face the same terrible situations while in camps or whenever they try to return to their homes.²³

¹⁸ Global Protection Cluster Working Group (GPCWG), Handbook for the Protection of Internally Displaced Persons, GPCWG, (2007). Menno de Vries, Natural Disasters and Property Rights Theory, Dutch NGO Practice and Recommended Strategies', (MSc Thesis), Wageningen University, (2010); Walter Kälin, Guiding Principles on Internal Displacement: Annotations, The American Society of International Law, (2008)

¹⁹ *Id.*, GPCWG

²⁰ Endris, *supra* note 3; IPSS, *supra* note 15; Belayneh Worku, Internal Displacement in Ethiopia since 2016: Challenges and Prospects of Local Integration in Sekela Woreda, Amhara Region, (MSc Thesis), Bahir Dar University, (2020)

²¹ *Id.*

²² Dereje, *supra* note 9 ; Endris, *supra* note 3.

²³ United Nations Organization for the Coordination of Humanitarian Affairs, 'Ethiopia: Humanitarian Needs Overview', <https://www.humanitarianresponse.info/en/operations/ethiopia/document/ethiopiahu>

Protecting the land and property rights of IDPs and providing remedies for violations is the primary responsibility of the government under international and national laws. This is particularly important in countries like Ethiopia, where land is the source of all material wealth in both urban and rural contexts. Indeed, the restoration of land and property is one of the critical conditions in providing durable solutions to internal displacement. However, there is general negligence in protecting IDPs and providing remedies for violations of their rights during displacement.²⁴ Compared to the refugees, IDPs do not enjoy clear and robust legal and institutional protections and access to remedies at the national and international levels.²⁵ As a result, millions of Ethiopians affected by internal displacement are left without appropriate remedies for the harm they sustained to their land and property. To the authors' best knowledge, no single claim is presented for courts in quest of remedies such as restitution, compensation, or guarantee of non-repetition for violations of land and property rights of IDPs. The issue of IDPs

manitarian-needs-overview-(january-2020), (accessed August 26, 2022); Jacky Habib, Ethiopia Set a World Record for Displacements in a Single Year: 5.1 million in 2021', (May 28, 2022), <https://www.npr.org/sections/goatsandsoda/2022/05/28/1100469734/ethiopia-set-a-world-record-for-displacements-in-a-single-year-5-1-million-in-20> (accessed August 25, 2022).

²⁴ Benyam, *supra* note 3; Bereket Godifay, Socio-cultural and Economic Impacts of Development Induced Displacement on Resettled People: The Case of Welkayt Sugar Factory in Tigray Region, Ethiopia', *International Journal of Sociology and Anthropology*, Vol.12 No. 4, (2020), pp. 94-103. Enguday Meskele, The Adequacy of Law and Policy Frameworks on Internal Displacement in Ethiopia: A Critical Appraisal, In: Romola Adeola (eds) National Protection of Internally Displaced Persons in Africa, Sustainable Development Goals Series, *Springer*, (2021). Solomon Tekle, Displacement from Land as a Limit to the Realization of the Right to Development in Ethiopia', *Journal for Juridical Science*, Vol. 45 No. 1, (2020). Abdi Mohammed, The Protection of Internally Displaced Persons (IDPs) in Ethiopia: The Analysis of Legal and Institutional Frameworks, (LL.M Thesis), Ethiopian Civil Service University, (2020)

²⁵ *Id.*, Enguday; Solomon

remains a crosscutting lifesaving humanitarian agenda than a durable legal question. The recent ratification of the Kampala Convention and attempt to enact various non-binding frameworks (such as the peacebuilding strategy, voluntary return program and durable solution strategy) are still inadequately put into effect due to institutional problems.²⁶ Coming to academia, save some works on the legal protection of IDPs in general, the issue of land and property rights and available remedies in cases of violations remain an unexplored legal issue in the country.

Against this backdrop, this article aims to identify and examine the various judicial and administrative remedies available in cases of violations of IDPs' right to land and property in Ethiopia. It relies on employing a doctrinal legal research method to critically review the literature and analyze legal instruments at national, regional, and international levels. The article is organized into five sections, including this introduction. Section two briefly presents an initial synopsis of the legal regime governing the land and property rights of IDPs, including remedies in cases of violations. Section three discusses the nature and importance of remedies. Section four is about the system of remedies available in Ethiopia. Section five identifies significant gaps in the law and the practice, and the final section provides for concluding remark.

2. Understanding the Land and Property Rights of IDPs, State Obligations and Remedies

Given the dearth of scholarly articles on the area, this section intends to highlight the land and property rights of IDPs and state obligations as a foundation for discussion on available remedies in cases of violations. Despite the increasing scope of the problem, there is no legally binding international

²⁶ Mistir, *supra* note 3.

instrument that explicitly confers rights and imposes obligations in relation to IDPs under international law.²⁷ Some even reject the need to enact a separate international legal instrument, like the 1951 Geneva Convention for refugees, for the issue of IDPs is an internal matter that must be left to domestic legal order.²⁸ Yet, the rights of IDPs squarely fall within the domain of international human rights and humanitarian laws and enjoy protections like other human beings. And, governments must respect, protect and fulfill the human rights of all persons, including IDPs, without discrimination.²⁹ IDPs' rights to land and property are protected under the existing internal human rights and humanitarian law. The international and regional human rights laws protect the property rights of IDPs under several instruments.³⁰ These instruments protect the right to peaceful enjoyment of land and property including the right to own, acquire, manage and enjoy property without arbitrary interference and discrimination. However, it should be noted that the

²⁷ Enguday, *supra* note 24; Walter, *supra* note 18.

²⁸ Enguday, *supra* note 24; Abdi, *supra* note 24.

²⁹ Walter, *supra* note 18.

³⁰ UN General Assembly, Universal Declaration of Human Rights (UDHR), (1948), Arts. 12 and 17; UN General Assembly, International Covenant on Civil and Political Rights (ICCPR), (1966), Art. 17; UN General Assembly, International Covenant on Economic, Social and Cultural Rights (ICESCR), (1966), Arts. 1 (2) & 11; UN General Assembly, The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), (1979), Arts. 16, 15 and 23; UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), (1969), Art. 5; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), (1984); Convention on the Rights of the Child (CRC), (1989); International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), (2010); OAU, African Charter on Human and Peoples' Rights (ACHPR), (1981), Art. 14; European Union, European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), (1950), Arts. 1 and 8 (Protocol No. 1); American Convention on Human Rights (ACHR), (1969), Arts. 11 & 21.

right to land is not expressly enshrined in international instruments³¹ and the fact that property right is not expressly mentioned under ICCPR and ICESCR has long been a challenge to enforce land and property rights.³² Moreover, they need more specificity to address IDPs' real situations and questions.³³

In the same way, as internal displacements may occur in times of armed and non-armed conflicts, the international humanitarian law, which regulates the conduct of parties engaged in conflict (*jus in bello*), provides protections by requiring parties to a conflict to protect civilian objects, not to destruct property or not to use property to shield military operations.³⁴ Recently, countries have applied the doctrine of *jus post bellum* to socio-economic rights in post-conflict situations to return the victims to the legal *status quo ante* and ensure lasting, just and sustainable peace.³⁵ However, IHL does not expressly regulate the right to land, housing, or property to the extent

³¹ This is except for International Labor Organization (ILO) Convention No. 169/ 1989 concerning indigenous and tribal peoples and the Declaration on the Rights of Indigenous Peoples, (2007), which recognizes the importance of land for those who own it collectively for whom it is part of their culture.

³² Elisenda Martínez and Aitor Anabitarte, Right to Land, Housing, and Property, in Carsten Stahn and Jens Iverson (eds), 'Just Peace After Conflict: Jus Post Bellum and the Justice of Peace', Oxford Scholarship Online, (2021). Although Art. 17 of the UDHR established the right to own property and non-arbitrary deprivation, the ICCPR is silent, and the ICESCR mentions it indirectly as a 'means of subsistence' and 'adequate standard of living' under I (2) and Art. 11.

³³ Abdi, *supra* note 24; Belayneh, *supra* note 20.

³⁴ International Conferences (The Hague), Hague Convention Concerning the Laws and Customs of War on Land (Hague Convention), (1907), Art. 28; International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), (1949), Arts. 33-34 and 53; International Committee of the Red Cross (ICRC), Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), (1977), Arts. 51-52; UN General Assembly, Rome Statute of the International Criminal Court (last amended 2010) (Rome Statute), (1998), Art. 2(b) (xvi).

³⁵ Elisenda and Aitor, *supra* note 32.

required; instead, it protects objects indispensable to the civilian population's survival. Thus, the existing international humanitarian and human rights instruments need to be more adequate to address the issues of IDPs' land and property rights. Many writers thus suggest the development of clear and specific legal instruments at an international and regional level, just like the 1951 Geneva Convention for refugees.³⁶

Such understanding has led to the development of two crucial soft laws: the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons and the UN Guiding Principles on Internal Displacement.³⁷ Although these instruments are not legally binding, they provide more specific stipulations for the protection of land and property rights of IDPs as well as claims of remedy during violations of the rights (such as restitution and compensation).³⁸ In particular, the *Pinheiro Principles* are praised for providing helpful guidance on the international standards governing the effective implementation of housing, land and property restitution programs and mechanisms. Accordingly, the property rights of IDPs, including all types of rights (to use, control, transfer and enjoy), are available to all types of holders of rights (owners, tenants, cooperative dwellers, customary land tenure owners and users, casual sector dwellers and squatters without secure tenure) in the statutory or customary regimes.³⁹ Based on these principles, the recently agreed Kampala Convention developed more innovative formulations and regulatory standards about IDPs and their land and property rights in particular.⁴⁰ It requires State parties to

³⁶ Abdi, *supra* note 24; Enguday, *supra* note 24.

³⁷ Walter, *supra* note 18; UN Guiding Principles, *supra* note 1; Centre on Housing Rights and Evictions, United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (Hereinafter the Pinheiro Principles), (2005).

³⁸ UN Guiding Principles, Principle 21 & 29; The Pinheiro Principles, Principle 2 & 21

³⁹ *Id.*, Pinheiro Principles.

⁴⁰ Kampala Convention, *supra* note 1.

take necessary measures to protect individual, collective and cultural property left behind by displaced persons and in areas where IDPs are located.⁴¹

In addition to international and regional instruments, experiences show that domestic legislative actions play a crucial role in domesticating rights and providing procedures to enforce the rights. As Dirikgil rightly argues, the "right not to be arbitrarily displaced" has to be specified in the national laws to strengthen pre-displacement and prevention tasks, and thereby addressing the root causes.⁴² The UNHCR also recommends and supports states to adopt, update and strengthen their legal, policy and institutional framework as part of their specific commitment to IDPs and providing durable solutions.⁴³ According to Phil Orchard, as of 2017, forty States have passed laws and policies directly related to internal displacement taking the Guiding Principles and the *Pinheiro Principles* as a benchmark.⁴⁴ In Africa, Kenya and Uganda have registered successes in protecting rights and providing remedies during violations by specific domestic legislations and policy frameworks.⁴⁵

Ethiopia has yet to develop such specific legal and policy frameworks so far.⁴⁶ Yet, the various land and property rights of IDPs can be read from the Constitution and other land and property laws of the country that recognize

⁴¹ *Id.*, Art.. 9

⁴² Naziye Dirikgil, Addressing the Prevention of Internal Displacement: the Right Not to Be Arbitrarily Displaced, *Journal of International Migration and Integration*, (2022).

⁴³ UNHCR, Global Trends 2013: War's Human Cost, UNHCR, (2014), p. 72

⁴⁴ Phil Orchard, The Role of National Legislation and Policies in Protecting Internally Displaced Persons, Submission to the UN Secretary General's High-Level Panel on Internal Displacement, https://www.un.org/internal-displacement-panel/sites/www.un.org.internal-displacement-panel/files/published_phil_orchard_submission.pdf (accessed February 16, 2023)

⁴⁵ Alelign Wondim and Misganaw Gashaw, Protection of Land and Property Rights of IDPs in Ethiopia: Lessons from Other Countries, *International Migration*, (2023), Forth Coming Edition.

⁴⁶ *Id.*

the right to access, use, control and transfer. The country has also ratified most of the above-mentioned human rights and humanitarian instruments that form an integral part of the law of the land.⁴⁷ The FDRE Constitution recognizes the right to free access to land and protections of property rights as;

"[e]very Ethiopian citizen has the right to private property ownership. Unless prescribed otherwise by law on account of public interest, this right shall include the right to acquire, use, in a manner compatible with the rights of other citizens, and to dispose of such property by sale or bequest or to transfer it otherwise".⁴⁸

Without discrimination or arbitrary deprivation, this right is available to every citizen, including the IDPs. The Constitution further protects access to land and full right to permanent improvements.⁴⁹ These constitutional stipulations are further documented in the various subsidiary rural and urban land laws at federal and regional levels.⁵⁰ However, these legislations need to address the land and property rights of IDPs in the language of the Guiding Principles and the *Pinheiro Principles* discussed above. They need to provide specific remedies in cases of violations. Indeed, the new expropriation proclamation provides remedies (i.e., compensation payments and resettlement) for violations during development-induced displaced peoples. Its implementation remains haphazard and firefighting due to problems in the institutional

⁴⁷ FDRE Constitution, Art. 9 (4).

⁴⁸ *Id.*, Art. 40 (1)

⁴⁹ *Id.*, Art 40 (3 &7)

⁵⁰ *Id.*, Art. 40(4-6); FDRE Rural Land Administration and Land Use Proclamation, Negarit Gazette, 11th Year No. 44, Proclamation No. 456/2005 (Hereinafter Proclamation No. 456/2005); FDRE Urban Land Lease Proclamation, Federal Negarit Gazette, 18th Year No 4, Proclamation No. 721/2011 (Hereinafter Proclamation No. 721/2011)

framework and the judiciary's enforcement of human rights in general.⁵¹ However, if displacement has occurred due to conflict or natural disaster, the country has no clear legal frameworks to treat loss of property rights. There are only a few scattered substantive and procedural provisions, as will be discussed in section four.

From the discussion in this section, one can safely conclude that, with all inadequacies, the land and property rights of IDPs can be implied from the various national, regional and national human rights instruments. Under these instruments, the rights of IDPs impose correlative tripartite human rights obligations on government bodies: to respect, protect and fulfill in their respective jurisdictions.⁵² The FDRE Constitution also emphasizes that human rights are inviolable and inalienable, and government organs must respect and enforce them at all levels.⁵³ The Constitution requires the government to take measures to avert any natural and man-made disasters and, in the event of disasters, to provide timely assistance to the victims.⁵⁴ Governments should not only arbitrarily deprive land and property rights but also protect the right from illegal interference (such as theft, destruction, or arbitrary seizure) by individuals or groups.⁵⁵ They must take legislative, administrative and judicial measures to the best realization of IDPs' right to land and property and provide an effective remedy (such as restitution and compensation) for arbitrary deprivation.⁵⁶ States also have to assist IDPs with

⁵¹ See Expropriation Proclamation No. 1161/2019, *supra* note 6.

⁵² Erin Mooney, *Realizing National Responsibility for Internally Displaced Persons*, the Brookings Institution, (2004) ; Human Rights Committee, General Comment 31: The nature of the general legal obligation imposed on States Parties to the Covenant', Eightieth session, (March 29, 2004)

⁵³ FDRE Constitution, Arts. 10 (1) and 13 (1)

⁵⁴ *Id.*, Art.. 89(3)

⁵⁵ UN Guiding Principles, *supra* note 1.

⁵⁶ *Id.*.

returning and recovering their lost properties and possessions. When recovery (or restitution) is impossible, appropriate compensation or other forms of fair reparation should be envisaged.⁵⁷ The Kampala Convention also requires states to seek lasting or durable solutions in three possible locations (voluntary return, local integration, or resettlement/relocation) based on sustainability, safety and dignity.⁵⁸

Secondly, the right of IDPs entails what is known as the right to an effective remedy in cases of violations. In the international human rights system, the “right to a remedy” was first expressed under UDHR, which guaranteed every person “the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”⁵⁹ and subsequently affirmed in numerous other international⁶⁰ and regional⁶¹ instruments. Although the ICESCR does not include an explicit right to domestic remedies, the UN Committee on Economic, Social and Cultural Rights (CESCR) has repeatedly found that the obligation to realize economic and social rights “by all appropriate means” under article 2 entails the domestic provision of “judicial or other effective remedies”.⁶² The right also finds its root under instruments of international humanitarian law.⁶³ The FDRE also recognizes the right to remedy as part of the provision on access to justice and fair trial.⁶⁴ Despite its recognition under the international, regional and national human rights systems, devising remedies for violations of IDPs

⁵⁷ GPCWG, *supra* note 18.

⁵⁸ Kampala Convention, Art. 11.

⁵⁹ UDHR, *supra* note 30, Art. 8.

⁶⁰ ICCPR, *supra* note 30, Arts. 2 & 26; ICERD, *supra* note, Art. 6.

⁶¹ ACHPR, *supra* note 30, Art. 7; ACHR, *supra* note 30, Art. 25 ; ECHR, *supra* note 30, Art. 13.

⁶² ICESCR, *supra* note 30, Art.2; UNCHR, General Comment No. 3, (1998).

⁶³ Hague Convention, Art. 3; Protocol Additional, Art. 91; Rome Statute, Arts. 68 & 75.

⁶⁴ FDRE Constitution, Art. 37.

rights has been the most challenging, legally and practically.⁶⁵ This is because none of the above instruments define the types and normative content of the remedies and procedures for dealing with alleged violations.⁶⁶ Some, for example, interpret the right to remedy to include the right to restitution and compensation for the lost property as reinforced by other specific rights such as “the right to return”, “the right to choose one’s residence”, “the right to freedom of movement”, “the right to respect for the home”, and “the right to an adequate standard of living”.⁶⁷ In this way, national and international adjudicators have arbitrarily applied various preventive, compensatory, and restorative remedies over the years. It is the United Nations Commission on Human Rights that, for the first time, recognized the interests of victims of human rights violations by adopting the "Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Violations of International Human Rights and Humanitarian Law".⁶⁸ This instrument

⁶⁵ Rhodri Williams, *The Contemporary Right to Property Restitution in the Context of Transitional Justice*, International Center for Transitional Justice, (2007); Dinah Shelton, *Remedies in International Human Rights Law*, Oxford University Press, (2015); Christine Evans, *The Right to Reparation in International Law for Victims of Armed Conflict*, Cambridge University Press, (2012).

⁶⁶ Scott Leckie, *Housing and Property Issues For Refugees and Internally Displaced Persons in the Context of Return: Key Considerations for UNHCR Policy and Practice*, *Refugee Survey Quarterly*, Vol. 19, No. 3, (2000), pp. 5-63; Jon Unruh et al., *A Digital Advance for Housing, Land and Property Restitution in the War-Affected States: Leveraging Smart Migration*, *Stability International Journal of Security & Development*, Vol. 6 No. 1, (2017), pp. 1-17; Tetyana Antsupova, *Post-Conflict Reparation: Ukrainian Restitution Remedies for Property and Restitution Complaints before the European Court of Human Rights*, *Kyiv-Mohyla Law and Politics Journal*, No. 2, (2016), pp 217-226; Felix Torres, *Reparations: To What End? Developing the State's Positive Duties to Address Socio-economic Harms in Post-conflict Settings through the European Court of Human Rights*, *The European Journal of International Law*, Vol. 32 No. 3, (2021).

⁶⁷ Jon, *Id.*; Tetyana, *Id.*

⁶⁸ UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and*

underlines the importance of recognizing remedies in domestic legal systems and identifies and spells out five reparations: restitution, compensation, rehabilitation, satisfaction and guarantee of non-repetition.⁶⁹ According to Theo van Boven, these forms and modalities are not exclusive (more than one form of reparation may be commended at a time) and often involve a mix of judicial and non-judicial as well as monetary and non-monetary forms.⁷⁰ As far as the IDPs are concerned, the nature of the right to a remedy is recently elaborated in the *Pinheiro Principles*, which recognizes forms of reparations including restitution and compensation.⁷¹

3. On the Nature and Importance of Remedies

As discussed in section two, the State must ensure the availability of remedies to IDPs whose land and property rights are violated due to internal displacement. This section intends to highlight the nature and importance of the remedies. Restitution, which is recognized as an effective and preferred remedy, is defined as an instrument to restore the victim to the original situation before the violations occurred.⁷² In the sense of IDPs' right to land and property, restitution includes the return to one's residence and the return of property that existed before the occurrence of the displacement.⁷³ The issue of housing and property restitution (*restitutio in integrum*) for IDPs has received considerable attention as preferred remedies to the increased

Serious Violations of International Humanitarian Law (Hereinafter, Basic Principles and Guidelines), Resolution 60/147, (2005)

⁶⁹ *Id.*, Guideline 19-23.

⁷⁰ Theo van Boven, 'Victims' Rights to a Remedy and Reparation: The New United Nations Principles and Guidelines, in Ferstman et al (eds.), *Reparations for Victims of Genocide, War Crimes and Crimes Against Humanity*, Koninklijke Brill NV-Netherlands, (2009), pp. 19-40.

⁷¹ *Pinheiro Principles*, Arts. 12 & 13.

⁷² *Basic Principles and Guidelines*, Guideline 19.

⁷³ *UN Guiding Principles*, Principle 29.2.

destruction of property, arbitrary confiscation of housing and violations of property rights.⁷⁴ If effectively enforced, it restores the victims to the actual situations by a warranting return to the original residence and restoration of land and property. The right to return is recognized by human rights instruments such as Art 13 of the UDHR and Art 12 of the ICCPR as a necessary part of the right to freely choose one's place of residence or the right to adequate housing.⁷⁵ This right of IDPs is also asserted by UN Security Council (1993) in dealing with Bosnia and Herzegovina by stating that “all displaced persons have the right to return in peace to their former homes and should be assisted to do so”.⁷⁶ Restitution has been preferred for several reasons. In the first place, restitution can redress the wrong done. Secondly, it facilitates return and reintegration in the area of origin. Third, land and other property may have a symbolic, cultural, or religious value that other remedies, such as compensation, can rarely address. Paraskeva indicated that the right to restitution is not restricted to those holding legal title or ownership but also other property rights such as tenancy, occupancy, or user rights in the collective or communal property.⁷⁷ Although it is the preferred form of reparation for violations of land and property rights of IDPs, it is not always possible to restore the situation that would have existed but for the violation. Sometimes, the land or property of IDPs might be in the hands of legitimate third parties, who acquired it in good faith, and restoring the thing to the original owners indulges a legal question for restitution affects third parties. This also happens when the property of IDPs is destroyed. In such cases, the

⁷⁴ Tetyana, *supra* note 66; Felix, *supra* note 66.

⁷⁵ United Nations High Commissioner for Refugees (UNHCR), *Global Consultation on International Protection, Voluntary Repatriation*, (2002).

⁷⁶ Felix, *supra* note 66.

⁷⁷ Costas Paraskeva, *Protecting Internally Displaced Persons under the European Convention on Human Rights and Other Council of Europe Standards: A Handbook*, Council of Europe & ACCESS, (2017).

victims should be provided with other forms of reparation, including compensation.

Compensation, in cash or kind, is another form of reparation. The various forms of damage (such as physical and mental or moral harm, lost opportunities and costs incurred) caused by displacement are assessed and settled up with IDPs instead of or along with restitution.⁷⁸ The compensation shall reflect the property's current value, moral damage, and costs and expenses.⁷⁹ Article 20 of the Basic Principles and Guidelines provides that compensation shall be appropriate and proportional to the violation's gravity and the case's circumstances. Although cash compensation is often viewed as administratively simple, there are doubts that it can adequately redress the problem due to cost, fairness and ethics-related problems. In particular, it can be challenging to calculate the value of the lost property for the value of land and property changes with time. There is also a fear that compensation might have the effect of institutionalizing or recognizing the problem, especially in post-conflict property issues. With these limitations, the World Bank recommends that states and other actors bypass cash compensation except in well-justified instances and look for creative measures such as constructing residences or building materials.

As mentioned above, where the damage cannot be made good by restitution or compensation alone, rehabilitation, satisfaction, guarantees of non-repetition and other appropriate modalities can be considered as additional remedies to the violation of the land and property rights of IDPs.⁸⁰ As

⁷⁸ Elena Katselli, *The Right to Return Home and the Right to Property Restitution under International Law*, In Elena Katselli Proukaki (eds), *Armed Conflict and Forcible Displacement: Individual Rights under International Law*, Routledge, (2018).

⁷⁹ *Id.*

⁸⁰ Scott, *supra* note 66.

stipulated under Article 21 of the Basic Principles and Guidelines, rehabilitation includes medical and psychological care and legal and social services. Satisfaction, as one can refer to Article 22 of the Basic Principles and Guidelines, consists of a broad range of measures, from those aiming at the cessation of violations to truth-seeking, the search for the disappearance, the recovery, and the reburial of remains, public apologies, judicial and administrative sanctions, commemoration, human rights training, etc. In the same way, a guarantee of non-repetition is a form of reparation requiring the cessation of existing violations and putting in place mechanisms for preventing future violations. This can be done by requiring the State to provide assurances and guarantees of non-repetition. According to Article 22 of the Basic Principles and Guidelines, guarantee of non-repetition comprises broad structural measures of policy nature, such as institutional reforms aiming at civilian control over military and security forces, strengthening judicial independence, the protection of human rights defenders, the promotion of human rights standards in public service, law enforcement, the media, industry, and psychological and social services.

On the other hand, other remedies can be considered to better protect and enforce IDPs' rights in relation to land and property.⁸¹ For example, interim remedies such as injunctions and declaratory reliefs can be considered if there are acts of governments or laws that violate the land and property rights of IDPs. In addition, courts can impose a duty on states to consult the people concerned or launch community development funds to solve the problems and sustainably rehabilitate the victims. The common challenge such remedies face is that the executive may refuse to respond to the injunctive order or declaration of incompatibility. It should be noted that courts have

⁸¹ Kent Roach, Remedies for Laws That Violate Human Rights, in Kent Roach (eds), Remedies for Human Rights Violations: A Two-Track Approach to *Supra*-national and National Law, Cambridge University Press, (2021), pp. 177-237.

different powers in different countries and there are good experiences from domestic court practices.⁸² For example, in the UK, courts should have continued to award damages when Parliament refused to respond to a declaration that a ban on prisoner voting was inconsistent with rights. The South African Constitutional Court (2007) also declared that indigenous people are entitled to land where they are displaced in favour of a large commercial farm. However, it has frequently been argued that domestic courts are reluctant to grant interim relief to enforce land and property rights because balancing the relief to the plaintiff against the injury that the defendant will sustain is not something every court can afford.⁸³ In this regard, supra-national courts are generally more prepared for they readily address concerns about the balance of convenience and governments report to them about the measures taken to comply with interim measures.⁸⁴ The Inter-American Court of Human Rights is apprised to order various forms of relief for violations of IDPs, such as cessation of ongoing violations, land restitution, apologies, memorials, legislative reform, training programs for state officials, and community development schemes. The African Court of Human and Peoples' Rights (2013) has issued provisional measures to restrain the eviction of 15,000 Ogiek people from their traditional lands.

4. Remedies Available in Ethiopia

From the long-standing doctrine of state responsibility, the Ethiopian government is primarily responsible for protecting the land and property rights of IDPs and effective remedies when they are violated by holding

⁸² *Id.*

⁸³ Kent Roach, Remedies for Violations of Indigenous Rights, in Kent Roach (eds), 2021, Remedies for Human Rights Violations: A Two-Track Approach to *Supra*-national and National Law, Cambridge University Press, 2021 PP. 454-515.

⁸⁴ *Id.*

perpetrators accountable. As discussed above, politically motivated and ethnically targeted attacks and displacements have continued as a common phenomenon in the country. Consequently, there have been various forms of violations against land and property rights and the victims remain without remedies. Despite the government's repeated pledge to provide a lasting solution, millions of IDPs are still displaced and found in temporary camps or other areas without necessities and tangible choices for their future. Returnees faced the same problem: their land and property are taken by others, lost or destroyed. According to a study by IOM, the house and property of most IDPs (77.7%) are damaged or destroyed and exposed to a lack of livelihood and food insecurity.⁸⁵ On the other hand, as experience shows, international and regional forums such as The International Court of Justice (ICJ) and the African Court on Human and Peoples' Rights (African Court) are not accessible and reachable by the poor IDPs in Ethiopia, and the role of NGOs and public-spirited individuals is also limited in bringing violations to such forums.⁸⁶

This section identifies the possible ways IDPs, individually or in a group, can claim and enforce remedies for land and property rights violations against State or non-state actors in Ethiopia. In this regard, domestic systems are supposed to offer a more accessible and effective forum for victims of violations. However, as briefly explained by Theo Van Boven and Avitus A.

⁸⁵ International Organization for Migration (IOM), 'Ethiopia National Displacement Report Round', (October 23, 2019) <https://dtm.iom.int/reports/ethiopia-%E2%80%94-national-displacement-report-1-june-%E2%80%94-july-2019> (accessed August 25, 2022).

⁸⁶ Fikire Tinsae, Justiciability of Socio-Economic Rights in Ethiopia: Exploring Conceptual Foundations and Assessing the FDRE Constitution and Judicial Perspective, *Beijing Law Review*, 9, (2018), pp. 322-344; Sisay Alemahu Yeshanew, The justiciability of human rights in the Federal Democratic Republic of Ethiopia, *African Human Rights Law Journal*, Vol. 8, (2008), pp. 273-293.

Agbor, the right to effective remedies has both substantive and procedural components.⁸⁷ Dealing with these substantive and procedural components requires far greater effort and time. One of the most commonly presented justification is the absence of clear and specific substantive and procedural laws that provides for remedies in Ethiopia.⁸⁸ This section attempts to identify and examine the different judicial and administrative remedies available in the Ethiopian legal system as it stands now. First, the various remedies discussed above are mainly found in soft international laws, and the government shall domesticate new legal and policy documents. Domestic laws that provide for remedies are found scattered. Secondly, judicial and quasi-judicial organs must be empowered to conduct a thorough and effective investigation and provide unhindered and equal access to justice.

4.1. Judicial Remedies

Everyone has the right to bring a justiciable matter to the Court and to obtain a decision or judgment by a court of law or any other competent body with judicial power.⁸⁹ The FDRE Constitution establishes an independent judiciary and exclusively vests judicial powers, both at federal and State levels, in the courts.⁹⁰ The Constitution also provides that the House of Federation (HoF) can interpret the Constitution and adjudicate constitutional disputes with the assistance of the Council of Constitutional Inquiry, mainly composed of legal experts.⁹¹ Thus, if the claims of IDPs invoke a constitutional matter, the HoF may award claimants the remedies discussed above. With this power of HoF,

⁸⁷ Theo, *supra* note 70; Avitus Agbor, Pursuing the Right to an Effective Remedy for Human Rights Violation(s) In Cameroon: The Need for Legislative Reform, Potchefstroom Electronic Law Journal, Vol. 20 No. 1, (2017).

⁸⁸ IOM, *supra* note 85.

⁸⁹ FDRE Constitution, Art. 37.

⁹⁰ *Id.*, Arts. 78 & 79.

⁹¹ *Id.*, Arts. 62 & 82 – 84.

courts often avoid adjudicating cases involving human rights or interpreting the Constitution and international human rights instruments.⁹² Litigants also avoid referring to these legal instruments before the courts even when they are directly relevant.⁹³ However, the power of HoF does not take away the power of courts to enforce the Constitution or decide the unconstitutionality of administrative acts.⁹⁴ This is an inherent business and a definite duty of courts under Articles 9(4) and 13(1) of the FDRE Constitution. The Federal Courts Proclamation provides explicitly that courts can interpret and settle disputes based on international treaties and may render the decision to protect justiciable human rights specified under chapter three of the Constitution.⁹⁵ The Cassation Division of the Federal Supreme Court has recently passed landmark decisions regarding applying the Constitution and international human rights treaties by courts of law in Ethiopia.⁹⁶ Recently, the Federal High Court has established a special division that entertains human rights violations under Chapter three of the FDRE Constitution. Judges thus must take judicial notice of domestic and international human rights instruments in adjudicating cases and provide various remedies to address violations of the land and property rights of IDPs.⁹⁷ In addition, the lack of a predictable, coherent and clear legislative regime for judicial review of administrative

⁹² Sisay, *supra* note 86.

⁹³ Fikire, *supra* note 86.

⁹⁴ Tsegaye Regassa, Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights In Ethiopia, *Mizan Law Review*, Vol. 3 No.2, (2009), pp. 288-330.

⁹⁵ Federal Courts Establishment Proclamation, Proclamation No. 1234/2021, Federal Negarit Gazeta, (2021), Arts. 3(2) and 6(1) (a).

⁹⁶ Miss Tsedale Demissie Vs. Mr Kifle Demissie, Federal Supreme Court Cassation Division, File 23632, (November 6, 2007); G. Agri POC PLC and Getahun Asfaw Vs. Ethiopian Revenues and Customs Authority, Federal Supreme Court Cassation Division, File 84623, (June 12, 2012).

⁹⁷ Federal Negarit Gazeta Establishment Proclamation, Proclamation No. 3/1995, Federal Negarit Gazeta., (1995), Art. 2(2) and (3).

decisions that violate the rights and interests of citizens has long been a problem.⁹⁸ The new Federal Administrative Procedure allows individuals to apply for judicial review of administrative decisions to the Federal High Court, which shall establish special benches for this purpose.⁹⁹ Meaning, courts may revoke administrative acts that lead to internal displacement and, as a result, violate the land and property rights of IDPs. There is nothing that can prevent courts to order restitution, compensation and other forms of remedies for violations in relation to the land and property rights of IDPs.

For litigation often take some time to be concluded, it is a general principle of law that courts and tribunals provide discretionary provisional, protective or interim remedies to preserve rights, prevent violations, and grant effective relief.¹⁰⁰ IDPs can claim provisional and protective remedies in both civil and criminal proceedings to protect their land and property rights from being disposed of, alienated, removed, or damaged. The Civil Procedure Code bestows courts with such powers and provides two most common provisional measures: attachment of property and injunction.¹⁰¹ In criminal proceedings, restraint, freezing, or seizure orders can restrain assets suspected of criminal proceeds. Request for such remedies can be initiated at any stage of the suit, including at the time of the claim lodging or appeal. Its compliance is supposed to be high for the violation of the measures is punishable under

⁹⁸ Khushal I. Vibhute, 'Non-Judicial Review in Ethiopia: Constitutional Paradigm, Premise and Precinct', *African Journal of International and Comparative Law*, Vol. 22, No. 1, (2014) PP. 120-139.

⁹⁹ Federal Administrative Procedure Proclamation, Proclamation No. 1183 /2020, Federal Negarit Gazeta, (2020), Arts. 20ff.

¹⁰⁰ Eva Rieter, Preventing Irreparable Harm Provisional Measures in International Human Rights Adjudication, *Intersentia*, (2010).

¹⁰¹ Civil Procedure Code of the Empire of Ethiopia, (Hereinafter CvPrC), Decree No. 52/1965, Negarit Gazeta (1965), Arts. 151 & 154.

criminal law.¹⁰² However, in provisional orders, the defendant's intent is crucial but often difficult to prove. Moreover, the Court may order withdrawal whenever the defendant furnishes the security required.¹⁰³ According to Gebreyesus, Courts in Ethiopia have yet to formulate clear standards for deciding on provisional measures or withdrawing the same.¹⁰⁴

4.2. Administrative Remedies

The Ethiopian government has established various institutions and branches following the federal structure with the responsibility to protect and enforce fundamental rights and freedoms. The most direct government institution in this regard is the Ministry of Peace which is principally responsible for preventing and resolving conflicts replacing the former Ministry of Federal Affairs. Administrative remedies can be sought from these government institutions.¹⁰⁵ It is also mandated to make appropriate preparations for natural and man-made disasters and take post-displacement measures in collaboration with the National Disaster Risk Management Commission.¹⁰⁶ In 2019, Ethiopia Launched a National Durable Solutions Initiative for IDPs, which was supposed to support interventions in areas of legislative reform and institutional strengthening, voluntary return, relocation or local integration, and access to livelihoods. In practice, IDPs are offered three choices: local

¹⁰² Id, Art. 156(1); FDRE Criminal Code Proclamation, Proclamation No.414/2004, (Hereinafter Criminal Code), Federal Negarit Gazeta, (2004), Art. 449.

¹⁰³ CvPrC, *supra* note 101, Art. 153.

¹⁰⁴ Gebreyesus Abegaz Yimer, Standards for Provisional and Protective Measures in Civil Litigation: What Ethiopian Courts May Learn from US Courts, *African Journal of International and Comparative Law*, Vol 24 No.3, (2016), pp. 329–345.

¹⁰⁵ FDRE Definition of Powers and Duties of the Executive Organs Proclamation, Proclamation No. 1097/2018, Federal Negarit Gazeta, (2018).

¹⁰⁶ National Disaster Risk Management Commission Establishment Council of Ministers Regulation, Regulation No. 363/2015, Federal Negarit Gazeta, (2015).

integration, relocation, or voluntary return to their home village.¹⁰⁷ The study by IOM indicates that 78% of IDPs prefer to integrate locally, while 12% and 10% prefer to return and relocate, respectively.¹⁰⁸ In all possibilities, the recognition of land and property rights and effective remedies are mandatory for claims of restitution of property, compensation for lost or destroyed property, cessation of violations, etc., are inevitable. The question is whether and in what form such claims can be addressed. The ministry and the commission are political organs that often need more competence and expediency in deciding constitutional and legal matters. In Ethiopia, internal displacement is a political problem, and very often, a lack of progress in effectively responding to internal displacement is attributed to a lack of political will. The Ministry and the Commission have no binding authority over the regional states and are often criticized for being toothless institutions. Thus effective legal remedies cannot be expected from these institutions. If there is any meaningful measure that the political body is willing to take, it shall be based on the recommendation of national and international human rights institutions. In Ethiopia, the human rights commission and the office of the ombudsman are known to provide policy guidelines, study human rights problems, codify norms of human rights protection, monitor the observance of human rights and independently investigate alleged violations of rights. These institutions, as part of their mandate to protect and promote human rights, are supposed to provide an easily-accessible forum for the implementation and enforcement of IDPs' right to land and property through quasi-judicial and administrative procedures. The law clearly empowered the Ethiopian Human Rights Commission to ensure that all citizens, organs of the State, political organizations, and other associations respect citizens' human rights, including

¹⁰⁷ IOM, *supra* note 85

¹⁰⁸ *Id.*

IDPs.¹⁰⁹ It has also the power to receive and investigate complaints on human rights violations and seek a remedy through the courts or other administrative means. In the same way, the Institution of Ombudsman is established to prevent or rectify unjust decisions and orders of executive organs.¹¹⁰ The institution can ensure that the laws and decisions of the executive do not contradict citizens' constitutional rights.¹¹¹ In this regard, IDPs can approach the ombudsman if the internal displacement is caused by the decisions or rules of a government body or if the government body wrongly assesses the claims of IDPs in relation to their land and property.

Establishing these institutions with the mandates mentioned above could contribute to the enforcement of the land and property rights of IDPs. However, while they entered into force in 2000¹¹², the institutions have yet to be fully operationalized so far.¹¹³ Except that they play facilitative and intermediary roles, both institutions do not have the power to rectify the injustice by granting compensatory or other remedies.¹¹⁴ They still need to apply human rights treaties and the provisions of the Constitution for better protection and promotion of human rights as well as the provision of remedies in cases of violations.¹¹⁵ Both institutions face problems that relate to the execution of their recommendations or decisions and a shortage or lack of

¹⁰⁹ Ethiopian Human Rights Commission (EHRC) Establishment Amendment Proclamation, Proclamation No. 1224/2020, Federal Negarit Gazeta, (2020), Art. 6.

¹¹⁰ The Ethiopian Institution of the Ombudsman Establishment Amendment Proclamation, Proclamation No. 1142/2019, Federal Negarit Gazeta, (2019), Art. 6.

¹¹¹ *Id.*

¹¹² Ethiopian Human Rights Commission Establishment Proclamation, Proclamation No. 210/2000, Federal Negarit Gazeta, (2000); Institution of the Ombudsman Establishment Proclamation, Proclamation No. 211/2000, Federal Negarit Gazeta, (2000).

¹¹³ Abdi, *supra* note 24.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

manpower and facilities that are needed for their effective functioning.¹¹⁶ Their track record in the past few years also indicates that the two institutions are not immune from the problem of ignoring atrocities including ethnically motivated mass violations of IDPs right to land and property. This is a pure act of fear of investigation and reinforces the culture of impunity. Thus, by resolving these limitations and expanding the branch offices over the country, the two institutions can offer easily-accessible and speedy quasi-judicial remedies to violations of IDPs' rights to land and property.

4.3. Establishing Individual Legal Liability

Individualization of liability is one of the indispensable requirements in both civil and criminal justice administrations. It is thus essential to establish individual legal liability as far as the violations of the land and property rights of IDPs are concerned. This section intends to shed light on the importance of and limitations in establishing liability at an individual level in the Ethiopian civil and criminal justice administration system.

4.3.1. Violations of the Land and Property Rights of IDPs as a Crime

The various provisions of the Criminal Code establish the acts of displacing and violating the land and property rights of IDPs as a criminal act punishable with imprisonment and/or fine. The law provides that confiscation, destruction, or appropriation of property constitutes war crimes against the civilian population and is punishable with rigorous imprisonment from five years to twenty-five years, or, in more severe cases, with life imprisonment or death.¹¹⁷ It's also stipulated that causing injury to the property of others (buildings, inhabited houses, crops or agricultural products, forests, timber, or

¹¹⁶ *Id.*

¹¹⁷ Criminal Code, *supra* note 102, Arts. 270 & 273.

any other object) by setting fire and provocation of natural disaster (such as flood or submergence, a landslide, a fall of rock or earth, a collapse or any other like catastrophe) that create a danger to the property is punishable by rigorous imprisonment not exceeding fifteen years.¹¹⁸ Violations of the privacy of domicile, house, or premises are also punishable acts under the law.¹¹⁹ The details of different crimes against property and rights in property with respective punishments are clearly provided under Book VI of the Criminal Code.¹²⁰ It is the obligation of the State, particularly the Ministry of Justice or Regional Justice Bureaus, to prosecute those who commit crimes and violate human rights.¹²¹

The Criminal Code states that the victims of crime are entitled to civil remedies and that any property that the criminal has acquired by the commission of the crime or any fruits of a crime shall be forfeited to the State.¹²² Moreover, where a crime has caused considerable damage, restitution and compensation can be claimed as a remedy.¹²³ For this purpose, such a civil claim can be joined with the criminal suit and entertained in the criminal justice administration.¹²⁴ However, the victim shall meet requirements, specify the claim amount, and provide evidence under pain of dismissal.¹²⁵ After evaluating the evidence adduced, the Court may order the defendant to pay compensation, court fees, and other costs.¹²⁶ The other good

¹¹⁸ Id, Arts. 494 & 495.

¹¹⁹ Id, Art. 604.

¹²⁰ Id, Arts. 662 *ff*.

¹²¹ Federal Attorney General Establishment Proclamation, Proclamation No. 943/2016, Federal Negarit Gazeta, (2016), Art. 16 .

¹²² Criminal Code, *supra* note 102, Arts. 98 & 100.

¹²³ Id, Arts. 101 and 102.

¹²⁴ Criminal Procedure Code of Ethiopia Proclamation, Proclamation No. 185/1961, Negarit Gazeta, (Hereinafter CrPrC), (1961), Arts. 154-157.

¹²⁵ Id, Arts. 155-157.

¹²⁶ Id, Art. 159.

thing is that once admitted, the acquittal of the accused does not extinguish the compensation claim; instead, it changes the nature of the suit, from a criminal suit to a civil suit.¹²⁷ Where it appears that compensation will not be paid by the criminal or those liable on his behalf on account of the circumstances of the case or their situation, the Court may order that the proceeds or part of the proceeds of the sale of the articles distrained, or the sum guaranteed as surety, or an amount of the fine or the yield of the conversion into work, or confiscated property be paid to the injured party.¹²⁸ The claim of the injured party who has been compensated shall be assigned to the State, which may enforce it against the person who caused the damage. This being the case with the black letters of the law, setting criminal justice in motion will not be an easy task. This is because most of the displacements in the country are political, deliberate, and associated with the state apparatus in one way or another.¹²⁹ The police and justice departments may not impartially investigate crimes and prosecute those who commit crimes and violate the land and property rights of IDPs.

4.3.2. Violations of the Land and Property Rights of IDPs as a Tort

The Ethiopian legal system devises a civil or tort liability regime by which private entities and government organs will be held accountable for the harm they inflict on IDPs with or without fault.¹³⁰ The laws in Ethiopia prohibit the violent or unlawful incursion of one's land, house, and property, except as is provided by law.¹³¹ The country's urban and rural land laws also provide various rights to control, use, enjoy and transfer shorn of arbitrary

¹²⁷ Id, Art. 158.

¹²⁸ Id, Art. 102 .

¹²⁹ Endris, *supra* note 3; Tadele, *supra* note 3; IOM, *supra* note 3; Dereje, *supra* note 9.

¹³⁰ Ethiopian Civil Code Proclamation (Hereinafter, Civil Code), Proclamation No. 165/1960, (1960), Arts.. 2035 *Cum* 2168-2178.

¹³¹ FDRE Constitution, Art. 26; Civil Code, Art. 13.

deprivation.¹³² Acts of interference (a trespass or assault on the property) against the economic interest of the owner or the holder amounts to violations of the land and property rights of IDPs and constitute tort under the civil code.¹³³ As the saying goes, where there is a right, there is a remedy, and remedies such as restitution and compensation can be granted to put the IDPs in a position they would have now had not the injury-causing event occurred.¹³⁴ The Ethiopian tort regime contains all forms of reparations mentioned above. The Civil Code recognizes compensation (for material and moral damage) as a form of reparation and lays down rules applicable to its assessment and determination.¹³⁵ The law also recognizes restitution as another form of reparation for the breach of the property right.¹³⁶ The courts can make injunctions and other orders, which can be considered satisfaction or guarantees of non-repetition.¹³⁷

The Ethiopian Civil Code also incorporates provisions applicable to unjust enrichment to protect the rights and interests of property.¹³⁸ Art 2162 of the Civil Code sets the general principle as follows:

“[w]hosoever has derived a gain from the work or *property of another without a cause justifying* such gain shall indemnify the person at whose expense he has enriched himself to the extent of the latter’s impoverishment and within the limit of his enrichment.” (Emphasis added)

¹³² See generally FDRE Constitution, Art. 40 (1 & 2); Federal Urban Lands Lease Holding Proclamation, Proclamation No. 721/2011, Federal Negarit Gazeta, (2011); Federal Rural Land Administration and Land Use Proclamation, Proclamation No. 456/2005, Federal Negarit Gazeta, (2005).

¹³³ Civil code, *supra* note 130, Arts. 2053 and 2054.

¹³⁴ *Id.*, Arts.1161, 1164 and 2118.

¹³⁵ *Id.*, Arts. 2090-2104 and 2105-2117.

¹³⁶ *Id.*, Art. 2126 (2).

¹³⁷ *Id.*, Arts. 2120-2122.

¹³⁸ *Id.*, Art.s 2168-2178 .

A person who has unjustly enriched himself from the displacement shall make restitution or compensation to the IDPs. The problem with this option is that the gain derived might be far less than what the IDPs impoverished. Moreover, enforcing civil liabilities, in general, is more complex than it may seem. In the first place, proving the cause of the damage (causal-effect relationship) or enrichment is provided as a mandatory prerequisite, ignoring the situations that give rise to the displacement and realities of IDPs. The second challenge relates to the assessment of the damage. The harm sustained by IDPs often demands a remedy beyond the rules of compensation provided under tort law. In other words, land and property rights violations often caused a series of mishaps and defilements of other rights and to the IDPs. Finally, even though tort and unlawful enrichment solutions can be claimed with all the limitations, procedural and technical limitations might bare complete remedies. As mentioned above, most internal displacements are political and deliberate cleansing of specific rights based on ethnic identity.¹³⁹ Thus, government institutions, including the judiciary, may need to be open to properly investigating and determining the quantum of damage IDPs sustained or the amount others unlawfully enrich themselves.

5. Major Gaps, Challenges and Reform Priorities

The discussion under section four indicated that the existing rules providing protections and procedures to claim remedies and reparations for violations of land and property rights are inadequate and scattered in the different substantive and procedural laws in the country. It should be noted here that for development-induced displacement, with all the limitations, the new expropriation proclamation provides the types of compensable properties and

¹³⁹ Endris, *supra* note 3 ; Belayneh, *supra* note 20; Mistir, *supra* note 3 ; Tadele, *supra* note 3 ; IOM, *supra* note 3 ; Dereje, *supra* note 9.

various forms of reparations (such as property compensation, displacement compensation, displacement assistance, economic loss compensation, and social ties discontinuance and moral damage compensation) and resettlement packages.¹⁴⁰ However, there is no clear and comprehensive legal framework by which restitution, compensation, and other remedies can be awarded for disaster and conflict-induced displacements as provided under the *Pinheiro Principles* and the UN Guiding Principles. Similar to other forms of human rights violations, the different reparations and orders can only be inferred from the various criminal and tort laws provisions.¹⁴¹ The country's attempt to promulgate specific laws on IDP remains incomplete.¹⁴²

While completing the draft law at the earliest possible moment is one thing, the full realization of IDPs' right to land and property, as well as remedies in cases of violations in domestic legal systems, is often determined by the relationship between international law and national law.¹⁴³ In the literature, there are two primary schools of thought regarding the relationship between international law and municipal law.¹⁴⁴ The Monist approach in the

¹⁴⁰ See generally Expropriation Proclamation No.1161/2019.

¹⁴¹ Abdi Jibril, Remedies for Human Rights Violations: A Reform Proposal for Addressing Victims of Criminal Proceedings in Ethiopia', *Northwestern Journal of Human Rights*, Vol 19, No 1, (2020); Kidus Meskele, The Right to Reparation for Human Right Violation in Ethiopian Legal Framework, *Journal of Poverty, Investment and Development*, Vol 31, (2017); Khushal Vibhute, Compensating Victims of Crime in Ethiopia: A Reflective Analysis of the Legislative Paradigm and Perspective, *Journal of the Indian Law Institute*, Vol. 51, No. 4, (2009), pp. 439-466.

¹⁴² Alelign and Misganaw, *supra* note 45.

¹⁴³ Getachew Assefa, The Place of International Law in the Ethiopian Legal System', In book: Ethiopian Yearbook of International Law, (2017).

¹⁴⁴ Joseph Starke, Monism and Dualism in the Theory of International Law', in Stanley L. Paulson (ed.), Normativity and Norms: Critical Perspectives on Kelsenian Themes, Oxford University Press, (1999); Wilfred Mutubwa, Monism or Dualism: The Dilemma in The Application of International Agreements Under the South African Constitution, *Journal of CMSD*, Vol. 3 No. 1, (2019).

application of international law essentially entails the direct observance of international law as part of the laws of the State without the necessity of domesticating the enabling treaty or convention. On the other hand, the dualist states provide that international law instruments entered into by the State do not automatically form part of the state party's sources of law and become applicable only after domestication through domestic statutes and legislative processes. The dualists' approach is criticized for snubbing the automatic application of rights recognized under international and regional frameworks. Ethiopia has acceded to almost all the major international human rights treaties, and its legal system adopts a hybrid approach to implementing international law. While Article 9 (4) of the FDRE Constitution provides that all international treaties ratified by Ethiopia are integral parts of the law of the land, Article 13 (2) of the same Constitution requires that international human rights treaties must be interpreted in a manner conforming to the principles of the International Covenants adopted by Ethiopia. In other words, the provisions of international instruments would supplement the Constitution or be taken as Ethiopian law, primarily until the promulgation of laws on IDPs. Thus, the inadequacy or scattered nature of the laws regulating the rights and remedies should not be taken as a defense for the non-observance of IDPs' land and property rights and the absence of remedies during violations. The Constitution requires all Federal and State legislative, executive and judicial organs at all levels to respect and enforce the land and property rights of IDPs including the provision of remedies.¹⁴⁵ On top of legal framework gaps, there are several practical challenges that limit the quest for effective remedies for IDPs in Ethiopia. These challenges are so severe that they can hamper the IDPs from legally claiming reparations judicially or administratively. They can restrict governments' attention and resources to temporary and firefighting humanitarian measures rather than securing remedies through

¹⁴⁵ FDRE Constitution, Art. 13 (1).

formal proceedings and durable solutions. It also compels stakeholders in the area (such as researchers, private attorneys, justice offices and courts) to attach less weight to criminal charges and civil suits for reparation involving IDPs in general and violations of land and property rights in particular.¹⁴⁶ Thus, despite the growing problem of human rights violations, it is uncommon for courts or other organs with judicial powers to entertain claims of reparations such as restitution, compensation, or other remedies such as rehabilitation, satisfaction, and guarantee of non-repetition.¹⁴⁷ In particular, although the country set a world record for displacements for consecutive years, to the authors' knowledge, no federal or regional government organ is held accountable for the problem. In the same way, no individuals or groups are held criminally or civilly liable for violations of the land and property rights of IDPs. There are only informal attempts. For example, based on the study by IOM on the availability of reparation mechanisms in Ethiopia, compensation and restitution mechanisms were available for damaged or destroyed housing or land only in 251 villages (38%) and in 457 villages (69%), respectively.¹⁴⁸ From the reading of contemporary literature, this section identifies three significant practical challenges that should be considered as governments' reform priorities.

The first challenge is the culture of impunity, especially when the perpetrator is a government organ or official. The pervasive culture of impunity in the country continues to be a significant challenge in realizing remedies for human rights violations in general.¹⁴⁹ On the one hand, questions about IDPs and remedies to violations of land and property rights are easily politicized among the elites. On the other hand, the general public needs to be more

¹⁴⁶ Abdi, *supra* note 24.

¹⁴⁷ Khushal, *supra* note 141; Kidus, *supra* note 141.

¹⁴⁸ IOM, *supra* note 85.

¹⁴⁹ Abdi, *supra* note 141.

aware of the rights and remedies. This is especially true in the case of conflict-induced IDPs. The second challenge relates to the large size of informal land holdings and unclear property rights in the country. In Ethiopia, like much of Africa, land administration in general and land registration and cadastral systems, in particular, are found rudimentary, largely informal, and not developed well.¹⁵⁰ It is easier to realize access to justice and provide an effective remedy to IDPs with land registration and formalization of property rights. As the study IMO indicates, more than 75% of returning IDPs have access to tenure documentation and evidence of their housing, land, and property rights before displacement. In contrast, the rest of the returning IDPs have no access to tenure documentation.¹⁵¹ The problem of legal access is also exacerbated by the loss or destruction of property titles, personal identity or residence cards, and civil registries during or after displacement. In the same way, public offices that keep records of property rights and related documents might be destroyed. The third challenge is the need for funds for compensation, rehabilitation and other measures. This is a common challenge facing institutions working on IDPs in developing countries.¹⁵² The different remedies and government measures cannot be successful without a proper funding mechanism or a separate fund dedicated to reparation for the victims. The experience from Kenya and Colombia is beneficial in establishing a separate fund dedicated to IDPs.¹⁵³ In the same way, there has yet to be a

¹⁵⁰ Melkamu Belachew, Formalization of Customary Tenure or Informalization of Non-Customary Tenure? Paradox in the Cadasteral System Development Efforts in Most of Africa, *The International Journal of Ethiopian Legal Studies*, Vol.4, No. 1, (2019).

¹⁵¹ IOM, *supra* note 85.

¹⁵² Internal Displacement Monitoring Centre (IDMC), Global Report On Internal Displacement', (MAY 2022) <https://www.internal-displacement.org/publications/2022-global-report-on-internal-displacement> (accessed July 8, 2022).

¹⁵³ Alelign and Misganaw, *supra* note 45.

dedicated national budget for internal displacement in Ethiopia. The sources of such a fund can be voluntary contributions and donations from individuals, private organizations, and international donors. Violations against the land and property rights of IDPs were redressed. In summary, given the rampant abuses of the land and property rights of IDPs and gross disregard for the remedies, there shall be strategies to curb the prevailing toxic culture of impunity, politicization of problems, lack of awareness, issues related to land and property registration and certification, and lack of separate and adequate funding must be tackled for justice to prevail.

Finally, given the challenges mentioned above in the law and the practice, the authors believe that Public Interest Litigation (PIL) and class action (CA) are beneficial instruments in the quest for remedies for violations of IDPs' right to land and property in Ethiopia.¹⁵⁴ PIL (also known as public law litigation, social action litigation, and strategic impact litigation) is a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community has interest by which their legal rights or liabilities are affected.¹⁵⁵ The Ethiopian legal system was introduced to the concept in 2002 as part of environmental protection efforts.¹⁵⁶ A class action is a related procedural device whereby one or more members of a class are allowed to sue or be sued on their own behalf and on behalf of all other members of the class even while some class members are absent or unaware of the matter.¹⁵⁷ It has been recognized under the Ethiopian

¹⁵⁴ Yenehun Birlie, Public Interest Environmental Litigation in Ethiopia: Factors for its Dormant and Stunted Features, *Mizan Law Review*, Vol. 11, No.2 (2017); Kassahun Mulatu, The place and Relevance of Public interest litigation in Ethiopia', (LL.M Thesis), Addis Ababa University, (2017).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ Getacbew Aberra, The Scope and Utility of Class Actions under Ethiopian Law: a Comparative Study, *Journal of Ethiopian Law*, Vol. 20, (2000).

legal system since the adoption of the Civil Procedure Code and further strengthened with the adoption of the FDRE Constitution.¹⁵⁸ While class actions are basically joinder devices, PILs gain increasing attention worldwide because it improves access to justice for marginalized groups like IDPs. Both PIL and Class action are very important for developing countries like Ethiopia, where there are escalating problems of IDPs. Still, there is a vast law enforcement deficit, and conventional litigation is expensive, burdensome, and unpredictable due to the nature of IDP problems and the relief sought.¹⁵⁹ PILs and class action help to manage procedural questions in relation to *jurisdiction* easily (question of whether the Court has competence), *standing* (question of whether the party has a cause of action or vested interest), and *justiciability* (whether the matter is adjudicated in Court). They also help to avoid inconvenience caused by an assortment of suits and injustice caused by the impossibility and impracticability of joining all persons with the same question of law and fact in a case. PIL and class action are thus particularly important for conflict and disaster-induced displacements where a single measure or cause causes the land and property rights of thousands or millions of IDPs. However, little progress has been recorded in practicing and developing PIL and class action as a litigation tool due to gaps in judicial activism, legal culture, political will and the absence of strong civil society and public-spirited individuals.¹⁶⁰

Concluding Remark

Save for the absence of specific treaties for IDPs, the land and property rights of IDPs and remedies for violations of the rights are spelled out under international and regional human rights instruments. The right to an effective

¹⁵⁸ Ethiopian Civil Code, Art. 38 ; FDRE Constitution, Art. 37 (2) (b).

¹⁵⁹ Dereje, *supra* note 9.

¹⁶⁰ Yenehun, *supra* note 154; Getachew, *supra* note 157.

remedy is central to enhancing the protection and promotion of the rights. As a party to most of the instruments, Ethiopia is bound to adopt measures aimed at giving effect to the land and property rights of IDPs as well as remedies for violations. This article has tried to assess the various international, regional, and national instruments applicable to the protection of land and property rights of IDPs, state obligations and remedies, and reparations available in cases of violations. It concludes that the absence of clear and specific policy and the legal and institutional framework in Ethiopia has been a critical challenge to providing and enforcing judicial and administrative remedies upon violations. Remedies for conflict and disaster-induced displacements are still inadequate and found scattered in the country's different substantive and procedural laws (such as criminal, tort and administrative laws). Other practical challenges, such as a lack of awareness and a prevailing culture of impunity for violations, issues in the land registration and formalization of property rights, and the absence of separate and adequate funds, exacerbate the problem. Moreover, most of the displacements in the country are political, deliberate, and associated with the state apparatus in one way or another. The article underlines the need to introduce a comprehensive legal framework for IDPs and the use of PIL and class action as key reform priorities to improve access to justice and realize the quest for remedies for violations of IDPs' right to land and property in Ethiopia.