EKITI STATE UNIVERSITY, ADO-EKITI

LAW JOURNAL

VOLUME 8, 2024

Editorial Advisory Board	vi
Editorial Committee	vi
Foreword	vii
Citation	viii
1. Copyright Protection in The Nigerian Digital Age: A Critical Analysis of The Current State of The Law - *A.A. Isa and T.P Akeredolu*	1-16
2. Rights of Internally Displaced Persons (IDPs) in Myanmar, Ukraine, Azerbaijan, Turkey, South Sudan and Somalia vis-a-vis Shari'ah Jurisprudence *F. I. Ekene and A. A. Muhammed-Mikaaeel*	17-56
3. Artificial Intelligence Governance In Nigeria: Analysis Of Gaps In Existing Legal Frameworks - *Olaide Awwal-Bolanta*	57-80
4. Public-Private Partnership Projects: Potentials, Financing and Private Sectors' Expectations In Nigeria - *Isa Yusuf*	81-108
5. Towards A Revolution Of The High Court Civil Procedure Rules: Delta State of Nigeria in Perspective - *Dr. Brown Etareri Umukoro*	109-153
6. Accidents And Other Unintended Engagements In Armed Conflict: Russia-Ukraine Experience - *Oyedotun Omoteye*	155-174
7. Nationally Determined Contributions: Analysis of Its Legal Implications for Nigeria *C.J.P. Ogugbara*	175-196
8. Analysis Of The Legal Regime For Copyright Protection in Nigeria's Digital Space *U. A. Dubagari and M. A. Agbo*	197-227
9. Implementation of International Humanitarian Law (IHL) In Nigeria: The Role of Legal Practitioners - *Haruna Hassan*	229-248
10. The African Union's Role In Promoting Peace and Stability In Africa: An Analysis of Its Legal Framework and Enforcement Mechanisms For Conflict Prevention and Resolution - *J. I. Tobi-Mulero*	249-267
11. Establishing A Framework For Corporate Sustainability Governance: Redefining Policy Reforms for Nigeria's Future - *Onefeli, Lynda Ojiugo*	269-310
12. Policy and Practice of Public-Shaming of Sex Offenders in the Prevention and Control of Sexual Offences: A Comparative Investigation of Nigeria, South Africa and The United States - *Oluwatosin Ademola, Babalola*	311-338
13. Governor's Consent In Nigeria Land Law: Issues and Challenges. *Ayodeji Samson Aina*	339-367
14. The Role of The Ecowas Court in The Administration of Environmental Justice in Nigeria - *Beauty Ubogun-Nze*	369-401
15. Contemporary Legal Issues on Data Protection Regime in Nigeria - *Ogbah, Isaac Omuta*	403-439
16. A Critique of The Defence of Provocation and Its Application Within The Nigerian Legal System - Tobiloba Awotoye	441-470
17. Private Prisons And Corrections In Advanced Jurisdictions: A Comparative Analysis of Legal Frameworks and Implications for Nigeria's Prison Reform *M. S. Afolayan, and S. O. Afolayan*	471-502
18. An Appraisal of The Efficacy of The International Criminal Court In Addressing International Crimes: A Case for Reforms *Sunday Abdul, Vera B. Monehin , Adama Jeremiah*	503-522
19. An Examination of Export and Import Procedure in Nigeria *Rashidat Olayinka Ajise and Stephen Opeyemi Ademuagun*	523-563
20. Legal Protection of Bank Customers' Data in Nigeria and the United States of America: A Comparative Analysis - *Ohwomeregwa Ogechi Bernice*	565-585
21. Evaluating Company's Management Practices and Minority Protection under the Current Nigerian Company Law - *ObinuchiChimezule and Ifoegbu, Joy Ijeoma*	587-612

CHAPTER 2

RIGHTS OF INTERNALLY DISPLACED PERSONS (IDPS) IN MYANMAR, UKRAINE, AZERBAIJAN, TURKEY, SOUTH SUDAN AND SOMALIA VIS-A-VIS SHARI'AH JURISPRUDENCE

Dr. Francis Ikebundu Ekene
FE Ikebundu& Co. (Principal Partner, Elohim Chambers)
Email: francisikebundu@gmail.com
Phone Contact: 08034644573

Ahmed Abiodun Muhammed-Mikaaeel
Kwara State University
Email: ahmed.muhammed-mikaaeel@kwasu.edu.ng
Phone Contact: 07035064745

Abstract

Reports on violations of the IDPs' rights spurs this study to examine the rights of IDPs in Myanmar, Ukraine, Azerbaijan, Turkey, South Sudan and Somalia. Through doctrinal methodology, the study analyses the legal framework for the IDPs' protection in the selected countries vis-a-vis Shari'ah jurisprudence. The study finds that Myanmar focuses on land acquisition as the major tool for addressing IDPs' issues in the country; Ukraine adopts principle of non-discrimination in addressing the plights of the IDPs; Azerbijan focuses on poverty tackling and social right guaranteeing in their legal framework for the protection of the IDPs' rights; Turkey adopts compensation approach towards solving different problems confronting the IDPs with stiff criticism; Sudan addresses the right issues faced by the IDPs through the principle of return, resettlement and reintegration in compliance with Kampala Convention; and Somalia focuses on the exploration of both national laws and

international instruments with a view to solving numerous right issues being contended with by the IDPs. The study finds that Shari'ah jurisprudence is committed to the plights of the IDPs. The study identifies the common lapses in the selected countries and thus recommends the tackling of the root cause of armed conflicts by governments.

Keywords: Rights, Internally Displaced Persons, Shari'ah Jurisprudence, Selected Countries, Refugee

1.0 Introduction

The menace of armed conflicts is a globalised issue.[1] Since the occurrence of first and second world wars, armed continue to be familiar phenomenon rocking the globe. Apart from it being the global issue, most regions of the global continents continue to face the negative effect of armed conflict. The various nations have equally been specific victims of the armed conflicts. The effect or aftermath of armed conflict cannot be overemphasised. The negative experience of armed conflict includes loss of property, temporal anarchy, loss of lives and displacements of people from their original abodes.[2]

Armed conflicts thus introduced the regime of refugee and Internal Displaced Persons (IDPs).[3] Though, the armed conflict comes forth with both short and long term effects, no doubt, the incidence of refugee and IDPs are the major long term effects of armed

---

[1] U Sarangi, Peace and Conflicts Studies: A Global Perspective" 2017 https://nsuworks.nova.edu/cgi/viewcontent.cgi?article=1046&context=pcs_conference accessed on the 9 March 2024

[2] P Justino, 'The Impact of Armed Conflict on household Welfare and Policy' 2011 <htpps://www.ids.ac.uk/download.php?file=files/dmfile/Wp384.pdf> accessed on the 9 March 2024

[3] S Nina, 'Protection in Practice: Protecting IDPs in Today's Armed Conflicts' *International Journal of Refugee Law* (2018) 30(2) 292-306

conflict across the globe. The aftermath of armed conflict led the IDPs into entirely different environment with risk of vulnerability.[4] Because, they turn to dependents while they cannot effectively fend for themselves like before. This is such a pitiable circumstance the IDPs find themselves after displacement.

In view of the vulnerable state of the IDPs, serious campaigns have been advanced to propose that the current situation of IDPs cannot be used to deny them those basic rights and enjoyment of life. Better still, more peculiar rights to their present circumstance should be fathomed to do parallel justice to their well-being.[5] The nature of right is a matter of human right law which is tacitly legal framework based. Thus, owing to the various reports[6] concerning the violation of IDPs' rights, hence, this study embark on the assessment of IDPs' right from the perspectives of extant legal framework analysis in the selected countries via-a-vis Shari'ah jurisprudential standpoint on IDPs' rights. To this end, the study examines the available legal framework for the protection of IDPs' rights in Myanmar, Ukraine, Azerbaijan, Turkey, South Sudan and Somalia for analysis and assessment.

2.0 Emergence of IDPs in Myanmar

Myanmar continues to experience humanitarian needs driven by armed conflict, inter-communal violence and vulnerability to natural disasters.[7] Since 2011, the conflicts have led to the

---

[4] ibid

[5] HTC Lalrinchhana, 'Rights of Internally Displaced Persons (IDP) with Reference to the Guiding Principle of IDP https://djaizawl.nic.in /actsnstatisticsnarticles/RIGHTS%200F%20INTERNALLY% 20DISPLACED% 20PERSONS.pdf' accessed on the 25 April 2024

[6] ibid

[7] See United Nations Migration IOM; Global Crisis Response Platform Humanitarian and Crisis Transition Activities; and Myanmar Crisis Response Plan 2020.

internal displacement of more than 244,000 persons.[8] The escalating conflict in Rakhine State has added to the complexity of issues impacting Myanmar, where almost one-third of the country is affected by the conflict.[9] The Rakhine crisis alone has led to more than 800,000 people fleeing into Bangladesh, where they are now residing in refugee camps. In addition, the ongoing open conflict in Rakhine has led to an increase in militarization and high levels of displacement. Notably, in Kachin and Shan States in the North-eastern part of the country, numerous outbreaks of violence have occurred in 2018 and 2019, involving fighting between the Myanmar Armed Forces and Ethnic Armed Organizations.[10] This has caused regularized cyclical temporary displacement of thousands of people annually, causing significant humanitarian needs that are expected to persist among all affected communities throughout 2020.

The low development indicators and the complex humanitarian situation in Myanmar contribute significantly to the vulnerability of local communities and thus, as seen during times of crisis, to the prevalence of dangerous migration patterns, poor regard for human rights and cyclical vulnerability to natural disasters. These factors have resulted in strong drivers for migration across all affected communities and have contributed to the growth of inter-communal tensions and xenophobia.[11]

---

[8]N Nyein, 'KIA Objects to Use of Vacant IDP Land' *The Irrawaddy* 2017 https://www.irrawaddy.com/news/burma/kia-objects-use-vacant-idp-lands.html accessed 6 June 2024

[9]LA Tun, 'KBC tries to arrange return of IDPs to 27 Villages in Kachin State' *Eleven Myanmar* 2017 http://www.elevenmyanmar.com/local/12327 accessed the 25 January 2024

[10] ibid

[11] K Htun, 'Kachin IDPs fear land grabs in the villages they once called home' *Frontier Myanmar* 2018 https://frontiermyanmar.net/en/kachin-idps-fear-land-grabs-in-the-villages-they-once-called-home accessed on the 25 January 2024

Kachin, the Northernmost state of Myanmar, has a population of 1.64 million people (5.5 per cent of the country's population), of which around 97,000 (6 per cent) are internally displaced due to the conflict between the Kachin Independence Army (KIA) and the Myanmar Armed Forces that resumed in 2011 following the breakdown of a 17-year ceasefire.[12] Kachin State is ethnically diverse with a sizeable population of ethnic Kachin, a group often understood to comprise six sub-groups, the largest of which is the Jinghpaw.[13]

2.1 Framework on Protection of IDPs Rights in Myanmar

To the mind of the researchers, much of the available laws on the rights of IDPs in Myanmar are economic and emergency related and do not sufficiently answer the welfare question of Internally Displaced Persons. Rather, it focuses on land appreciation, possession and alienation with only a passing reference to the rights of the indigenous peoples who one could absolutely conclude are the Internally displaced persons.

That notwithstanding, various laws on the rights of Internally Displaced Persons in the state of Myanmar are viz:[14]

i. The 2016 National Land Use Policy (NLUP)
ii. The 2012 Vacant, Fallow and Virgin Lands Management Law (VFV Law)
iii. The 2012 Farmland Law.

---

[12]DPP (2016). Baseline Report, 27. Most participants said that their reason for return was 'better economic opportunities' or 'hope for the future'.
[13]See United Nations Office on the Coordination of Humanitarian Affairs; Humanitarian Needs Overview Myanmar and Iss. 2020.
[14]"Myanmar Laws" http://www.myanmar-law-library.org/law-library/laws-and-regulations/laws/myanmar-laws-1988-until-now/union-solidarity-and-development-party-laws-2012-2016/myanmar-laws-2013/pyidaungsuhluttaw-law-no-32-2013-law-of-protection-of-the-farmer-rights-and.html accessed the 25 January 2024

iv. The 2013 Law of Protection of Farmers' Rights and Enhancement of their Benefits

v. The 2013 Natural Disaster Management Law

These laws, policies and principles from the Government of Myanmar suggest that IDPs retain their rights to their land of origin, even when displaced.[15] According to these laws, there are no legal provisions[16] allowing for other actors to arbitrarily take over land forcibly abandoned by IDPs. Moreover, provisions relating to the exceptional circumstances of displacement and loss of livelihoods as a result of armed conflict, within the official definition of natural disaster, can be interpreted to address the situation of IDPs, both in terms of damage to and loss of land and property, as well as restitution, and in terms of protections.

2.2.1 2013 Natural Disaster Management Law of Myanmar

The Natural Disaster Management Law,[17] whose definition of natural disaster includes *man-made accidents*, makes explicit reference to *violence and armed insurgencies* as a listed cause of a natural disaster.[18] It goes on, under Article 18, to outline the procedures to minimize losses and includes both short-term and long-term emergency response measures. This includes keeping records of damages and losses and stipulates that the government has a positive obligation towards 'rehabilitation in order to restore agriculture, livestock breeding and other vocations required for victims. This law explicitly stipulates government responsibility to provide health, education and livelihood opportunities for persons

---

[15] For a comprehensive overview of land laws, see International Commission of Jurists (ICJ) (2017). Special Economic Zones in Myanmar and the State Duty to Protect Human Rights https://www.icj.org/wp-content/uploads/2017/02/Myanmar-SEZ-assessment-Publications-Reports-Thematic-reports-2017-ENG.pdf accessed the 25 January 2024

[16] See International Commission of Jurists 2017.

[17] Also known as the Pyidaungsu Hluttaw Law No. 21, 2013; The 9th Waning of Waso, 1375, M.E.; 31 July 2013.

[18] S. 2 of the Law.

affected by natural disaster is broadly in line with the UN Guiding Principles, which reiterate the duty to support IDPs to recover property or land and to assist in reparation.

2.2.1 Law of Protection of Farmer's Rights and Enhancement of their Benefits (2013)[19]

The Law of Protection of Farmers' Rights and Enhancement of their Benefits relates to offering priority assistance to farmers who own small plots of land and are faced with the challenges of damages to their farm land and crops due to a natural disaster or infestation of pests or diseases and other causes.[20] This provision is significant because it stipulates a case of exception, since in Myanmar violence and conflict are part of the legal definition of natural disaster[21]or other causes. Assistance to farmers required under the law for those who have lost their land would surely include measures to assist them in restoring their farms and livelihoods.[22]

2.2.3 National Land Use Policy 2016

The 2016 National Land Use Policy[23] also recognizes that, for ethnic nationals who have lost their land resources due to civil war, land confiscation, natural disaster or other causes, the desire to resettle to their original lands, adequate land use rights and housing rights shall be systematically provided in accordance with

---

[19] (Pyidaungsu Hluttaw Law No. 32, 2013) 4th waxing of Thadinkyut, 1375 M.E (8 October 2013)

[20] S. 3 of the law *ad effectum*.

[21] By virtue of the Natural Disaster Management Law Also known as the Pyidaungsu Hluttaw Law No. 21, 2013; The 9th waning of Waso, 1375, M.E.; 31 July 2013.

[22] ibid

[23] ibid

international best practices and human rights standards.[24] This implies that policy is guided by the three sets of international principles mentioned above. It is also significant that the NLUP recognizes customary land tenure rights. This is of relevance because most IDPs in Kachin were living and farming under customary land tenure arrangements prior to their displacement in 2011.[25]

The NLUP provides some general guidance for IDPs' return and land restitution, committing to the basic principle of implementing fair procedures related to land tenure and housing rights of IDPs. The NLUP, however, is not a legally enforceable document, and current legislation must still be reviewed and revised to reflect these basic principles. Despite the recent announcement of the Union government of the formation of a National Land Use Council,[26] the implementation of this, including the development of a planned National Land Law, has barely started, two years after the policy was announced.

Myanmar's Land laws, however, do not provide sufficient guidance on IDPs' return to land of origin or restitution.[27] Internally Displaced Persons are largely unable to engage in a process of documenting land claims or formalizing their land tenure rights so as to make them eligible to enjoyment land of

---

[24] T Kramer, 'Ethnic Conflict and Lands Rights in Myanmar' 2015 http://themimu.info/sites/themimu.info/files/documents/Academic_article_Ethnic_Conflict_and_Land_Rights_Tom_Kramer_2015.pdf accessed 22 July 2024

[25] Pierce, C. and YeYint, Htun "Land committees: An opportunity for inclusion" *Frontier Myanmar* 2017 https://frontiermyanmar.net/en/land-committees-an-opportunity-for-inclusion Last accessed 25th January 2021

[26] Eleven Myanmar 'KIO releases a warning against land-grabbing' 2017 http://www.elevenmyanmar.com/local/12603 accessed 22 July 2024

[27] M Boutry, and K Allaverdian, 'Land tenure in rural lowland Myanmar: From historical perspectives to contemporary realities in the Dry one and the Delta' *Of lives of land Myanmar research series* (2017) https://themimu.info/sites/themimu.info/files/documents/Report_Land_Tenure_in_Rural_Lowerland_Myanmar_GRET_2017.pdf accessed 25th January 2024

origin for their own purposes, through these laws. Also, ongoing conflict in Myanmar also inevitably results into a situation in which armed actors from all sides are involved in the occupation of land[28], much of which is likely to be for strategic military purposes, rather than commercial, residential or agricultural purposes. Thus, as long as these activities causing displacements linger, the powers of the relief laws will not be adequately harnessed.

2.2.4 Vacant, Fallow and Virgin Lands Management Laws[29]

The VFV Law provides for the transfer of land to 'Myanmar citizen investors' and to 'rural farmers and families who wish to carry out manageable agricultural project'.[30] It is reported to have been used by external actors to acquire IDP land for economic exploitation. This was found to have occurred across several townships, particularly Waingmaw and Momauk.[31] In some instances, it may simply have been opportunistic action on the part of non-displaced communities and in other cases it was on a larger scale by bigger actors.

There are two main issues at stake here in the analysis of the Vacant, Fallow and Virgin Lands Management Laws. First, when other actors, be they military personnel or separatist leaders, succeed in formally acquiring IDP land, it makes the IDPs' eventual return even more challenging, owing to the presence of

---

[28] M Moe, 'Ex-Ministers, Armed Groups Operate Farms in Kachin's Conflict Areas' *The Irrawaddy* 2017 https://www.irrawaddy.com/features/ex-ministers-armed-groups-operate-farms-kachins-conflictareas.html accessed the 23 January 2024

[29] Republic of the Union of Myanmar 'Vacant, Fallow and Virgin Lands Management Rules' 2012, 3 http://www.burmalibrary.org/docs14/VFVM_Rules-en.pdf accessed 23January 2024

[30] M Boutry, and K Allaverdian, (n 27)

[31] ibid

secondary occupants on their land who, with a legal permit or farmland certificate, may have lived on or invested in the land for a significant period of time.[32]

Secondly, the way the VFV Law is used by others to acquire IDP land suggests flaws in the implementation of procedures under the law, which should be revised. In the VFV Law, there are clear procedures that must be followed to ensure that land is actually available before it is allocated to farmers or businesses. Township officials must verify 'whether the lands are in fact vacant, fallow and virgin lands. Additionally, the Central Committee for the Management of Vacant, Fallow and Virgin Land has a positive obligation to 'negotiate with the said peasants and take action to ensure that they are not unfairly or unjustly dealt with', should there be sufficient evidence to prove that the land was not vacant. While not explicit, it can be assumed that it is 'unfair' to acquire the rights to the land of farmers who have fled conflict, who are not present and who cannot give their permission.

The land claim process outlined in the VFV Law demonstrates how easily the law can be used to dispossess IDPs of their land of origin. After submitting an application for the right to work or utilize 'vacant, fallow and virgin land', the relevant township official is obligated to notify the public by displaying a notice in the relevant government department office. Thereafter, any individual has the right to raise an objection if they submit the necessary paperwork, together with evidence proving that the land in question is not in fact vacant.

Although the VFV and Farmland laws were enacted in 2012, after the displacement of most IDPs, they do recognize that under certain circumstances normal rules do not apply. The concern that farmers must 'use it or lose it' is reinforced by the Farmland Law, since theoretically rights to farmland that is unused, or left

[32]ibid

'fallow', can be revoked and the land rights reallocated. In practice, the research has shown that the inability of IDPs to farm their land of origin has indeed offered another avenue for third parties to register this land in recent years. Article 12(i) of the law states, however, that 'farmland shall not be fallow without a sound reason.'

The presence of armed conflict and insecurity preventing an IDP from returning to farm their land should qualify as a 'sound reason' to become a case of exception. Similarly, the VFV Law includes provisions to protect land rights of whoever has acquired land under the law but has failed to develop it within a stipulated four-year period, if there are exceptional circumstances, 'for reasons such as delays caused by natural hazards or lack of security due to other causes'. While there is no explicit reference to displacement as a result of conflict, the category of 'other' would logically include conflict-related displacement. IDPs say they have a distinct lack of access to land-related information and justice mechanisms. This is partly because of their isolation in camps, and partly because the majority of displacement in Kachin occurred in 2011, whiles the VFV and Farmland laws was enacted in 2012.

In camps, IDPs reported that they have limited exposure to the details of the land laws and it is difficult to access relevant legal information and engage local authorities. When disputes or complaints arise, IDPs indicated that they often do not know who to turn to, they cannot access the right people or do not have the resources to assert their land rights.

2.2.5 National Strategy on Resettlement of Internally Displaced Persons

The Government of Myanmar launched its National Strategy on Resettlement of Internally Displaced Persons (IDPs) and Closure

of IDP Camps in November 2019.[33] However, despite commitment by the Government to offer sustainable solutions for those displaced, reports from the ground indicate the authorities continue to follow an approach focused on the construction of permanent housing without any change to existing movement restrictions, denying IDPs the right to choose where they wish to relocate or return to. This approach risks leading to the continued encampment and permanent segregation of displaced communities. IDPs in Kyauk Ta Lone IDP camp in Kyaukpyu townships are the first to experience an IDP camp closure process initiated after finalization of the National Strategy. They have reported being pressured to relocate to a substandard and isolated flood-prone area. IDPs have protested the relocation; however, plans for construction are ongoing at the new site.

3.0 Emergence of IDPs in Ukraine

The cause of protracted internal displacement in Ukraine is a product of the power struggle/tussle between factions within Ukraine. One of the factions wants to align with the European Union and the other, with Russia. The genesis of this problem being that Ukraine, as one of the founding states of the defunct Soviet Union, had been an important contributor to the Soviet Union's economy between 1920–1991. By March of 2014, the current crisis erupted when Russian Special Forces occupied Ukraine's Crimean Peninsula.[34] Russia defended her actions by claiming that it was protecting its port access to the Black Sea.[35] Between2014–2018, a military conflict between Ukrainian

---

[33] European Union, "Displaced and Dispossessed: Conflict-affected communities and their land of Origin in Kachin State" *Myanmar* May, 2018, 11-15.

[34] K Amadeo, 'Ukraine Crisis Summary and Explanation' August 21, 2020. https://www.thebalance.com/ukraine-crisis-summary-and-explanation-3970462 accessed the 7 February 2024

[35] ibid

soldiers and Russian-backed separatists continued in eastern Ukraine. More than 10,000 people were killed.[36]

The annexation of Crimea in March 2014 and the armed conflict that began in eastern Ukraine in April 2014 have resulted in mass displacement both within Ukraine and across borders. As of June 2016, there were close to 1.8 million internally displaced persons (IDPs) registered in Ukraine.[37]

3.1 Framework for Protection of IDPs in Ukraine

Bulk of the laws of Ukraine is modelled after the approach of the European Union. The researcher does not find this quite surprising since the genesis of the country's problem was integrating herself into the European Union instead of Russia. It would thus naturally follow, in the opinion of the researcher, that the nearest point of reference as regards the laws on protection of the rights of IDPs would be the European Union. Except for the dearth of judicial decisions and NGOs activities in Ukraine, the legal regime for IDPs in Ukraine could be concluded EU-born.

It must be noted that Ukraine's first law specifically addressing internal displacement[38] was adopted by the Verkhovna Rada of Ukraine[39] on 20 October 2014. The adoption of a national law on IDPs was welcomed by many national and international stakeholders, particularly but not surprisingly the European Union. Unfortunately, however, Article 1 of the Law defines an IDP to mean that an:

> 'Internally displaced person is a citizen of Ukraine, foreigner or stateless person who legally stays on the territory of Ukraine and has a right to permanent residence in Ukraine and who was forced to leave a place of

[36] ibid
[37] ibid
[38] the Law on Ensuring Rights and Freedoms of Internally Displaced Persons
[39] Another name for Ukraine's Parliament.

residence as the result of, or in order to avoid, the effects of armed conflict, temporary occupation, situation of generalized violence, mass violations of human rights or natural or human-made disasters.'

Unlike the Guiding Principles of the United Nations on Internally Displaced Persons, the Law of Ukraine does not allow for circumstances where persons who may not have a right to permanent residence may be displaced. Therefore, giving an unsure or non-existent status to those with temporary rights of residence or not right at all. On the other hand, although not particularly evident in the IDP definition, Ukraine's regulations on registration of IDPs[40] have the effect of creating a legal IDP status. The regulations make it necessary for all IDPs to register as IDPs and obtain an IDP certificate, even those who do not require humanitarian assistance but simply want to enjoy their basic rights and access social services. Eligibility for IDP registration is based on the above-mentioned definition provided for in national legislation. This issue is covered in more detail in the chapter on Data Collection, which also addresses IDP registration.

Article 2 of the Law on ensuring rights and freedoms of internally displaced persons provides that Ukraine shall undertake all possible measures envisaged by the Constitution of Ukraine, Ukrainian laws and international treaties ratified by Ukraine, to prevent internal displacement. Article 3 (1) of the IDP law stipulates that citizens of Ukraine, foreigners and stateless persons who legally stay in Ukraine and are legal permanent residents in Ukraine are entitled to the Government's protection against arbitrary displacement.

[40]Cabinet of Ministers Resolution No. 509 on registration of internally displaced persons, adopted on October 2014, para. 8.

3.1.1 Criminal Code/Law of Ukraine

While the Criminal Code of Ukraine contains a chapter on crimes against humanity, it does not include a prohibition of arbitrary displacement. It would also be recalled that since Ukraine has not ratified the Rome Statute, it did not integrate penalization of war crimes into the text of the Criminal Code of Ukraine.[41]

However, by virtue of Article 8 of the Ukraine– European Union Association Agreement[42], Ukraine accepted its responsibility to ratify the Rome Statute. On 16 January 2015, the draft law No. 1788 "On amending Article 124 of the Constitution of Ukraine[43] was registered with the Parliament. The draft law proposes to add a part 6 to Article 124 of the Constitution of Ukraine that would contain the wording:

> '*Ukraine can accept jurisdiction of the International Criminal Court according to provisions of the Rome Statute of the International Criminal Court.*'

It should also be noted that Article 438 of the Criminal Code of Ukraine criminalizes non-compliance with international humanitarian law and indeed the Guiding Principles of the United Nations on Internally Displaced Persons. It also penalizes conducting hostilities in a time of war, including arbitrary displacement with the motive of engaging immigrants or the displaced into forced labour.[44] However, only arbitrary displacement conducted with the purpose of forced labour. This suggests the inference that any other type of displacement may not be covered by the Criminal Code.

---

[41] ibid

[42] 16September 2014

[43]. The law is as regards the acceptance of Rome Statute as a binding Law in Ukraine.

[44] Criminal Code of Ukraine Vidomosti of the Verkhovna Rada of Ukraine (VRU), 2001, No. 25-26, 131

3.1.2 Principles of Prevention and Combating Discrimination in Ukraine

The Ukrainian Constitution, like every other constitution also confirms that citizens have equal constitutional rights and freedoms and are equal before the law.[45] Therefore, no privileges or restrictions shall be shared or imposed based on racial differences, colour of skin, political ideology, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, linguistic or such other variables. foreigners and stateless persons who are in Ukraine on legal grounds enjoy the same rights and freedoms and also bear the same duties as citizens of Ukraine, with the exceptions established by the Constitution, laws or international treaties of Ukraine.

In the same vein, the Law on Principles of Prevention and Combating Discrimination in Ukraine elaborates more upon the Constitutional provisions regarding non-discrimination. The Law prohibits direct and indirect discrimination and considers oppression (harassment), defined as a form of treatment that is degrading or creates a tense, hostile or offensive atmosphere, as a form of discrimination.[46] By virtue of Article 8 of the Law, all draft laws and by-laws shall be adequately scrutinized in respect of compliance with non-discrimination standards. Thus, any such new law must conform to the Law and the Ukrainian Constitution against discrimination.

The Cabinet of Ministries have therefore resolved from the foregoing grounds[47]that such examination should be carried out by the legal department of the State body that is drafting the legislation. As it relates to rights of IDPs, the Law on Ensuring

---

[45] Art 24 of the Constitution of Ukraine

[46] Art 8 of the Law on Principles of Prevention and Combating Discrimination in Ukraine.

[47] Resolution No. 61, dated 30 January 2013

Rights and Freedoms of Internally Displaced Persons declares[48] that IDPs shall enjoy the same rights and freedoms as other citizens of Ukraine, foreigners and stateless persons who have permanent residence in Ukraine; discrimination of IDPs on the basis of their displacement is prohibited.

In the same vein, however, the IDP Law itself contains provisions that are discriminatory towards IDPs and results in their stigmatization. For example, the enjoyment of some rights is guaranteed to register IDPs only[49], and IDPs have some specific obligations that are not typical for other citizens.

3.1.3 Right to Freedom of Movement of IDPs in Ukraine

The Constitution of Ukraine recognizes the right to freedom of movement and specifies that it encompasses the right of everyone who legally stays in Ukraine to move freely within the country, to choose a place of residence, and to freely leave the territory of Ukraine, with the exception of cases stipulated by the law.[50] On the legislative level, freedom of movement is regulated by the Law on freedom of movement and free choice of place of residence. Article 2 of this law guarantees freedom of movement inside the country for persons who legally stay in Ukraine, with exceptions stipulated by the law.[51] The law on freedom of movement also envisages a procedure of state registration of persons' place of residence. However, in Article 2 the Law states that lack of such registration cannot prevent persons from exercising their rights

---

[48] Art 14 of the Law on Ensuring Rights and Freedoms of Internally Displaced Persons.

[49] ibid, Art 7

[50] homas de Waal, "The Nagorny-Karabakh Conflict: Origins, Dynamics and Misperceptions" https://europeanmovement.eu/wp-content/uploads/2015/05/2013.09-Current-situation-Nagorno-Karabakh.pdf Last accessed the 25 January 2024

[51] ibid

and freedoms.[52] Regarding IDPs, the Law on ensuring rights and freedoms of internally displaced persons does not restate guarantees regarding freedom of movement. In the National strategy in the field of human rights, it is mentioned that the Government faces difficulties in guaranteeing the rights of IDPs. However, in the detailed description of such problematic areas, freedom of movement is not mentioned.[53] However, domestic legislation does present a number of challenges to IDPs' right to freedom of movement.

Specifically regarding the Internally Displaced Persons, the Ukrainian Parliament amended the Law on ensuring rights and freedoms of internally displaced persons on 24 December 2015 to include the declaration that every IDP has the right to family unity, including the assistance of executive authorities, local governments and private entities in searching for and reuniting with family members who lost contact due to internal displacement.[54] The Law also provides in Article 11 that the central executive body responsible for the implementation of state migration policy (immigration and emigration), namely the State Migration Service, shall facilitate reunification of IDP families through providing such persons with information regarding the location of missing family members. No special measures for unaccompanied or separated children or other vulnerable groups are indicated. Generally, local state administrations are responsible for the placement of orphans and children deprived of parental care into protective institutions.[55]

---

[52]ibid

[53]CMU, Resolution No. 682 on certain aspects of implementation of the Law of Ukraine on Social Housing, adopted 23 July 2008

[54]UN, Ukraine: 2016 Humanitarian Response Plan, January–December 2016 (January 2016) 23

[55]UN, Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons, ChalokaBeyani. Mission to Ukraine, UN Doc.A/HRC/29/34/Add.3 (2 April 2015), para. 88.

3.1.4 Law of Ukraine on Securing the Rights and Freedoms of Citizens and Legal Regime of the Temporarily Occupied Territory of Ukraine

By the provision in Article 8 of the Law, there is a guaranteed right for citizens of Ukraine resident in the economic free zone of Crimea to vote during the elections of the President of Ukraine, the people's deputies of Ukraine, and the All-Ukrainian referendum. It establishes that the voting of the citizens of Ukraine shall not be organized or conducted in the temporarily occupied territory. It however provides to the contrary subsequently that citizens of Ukraine residing in the temporarily occupied territory shall be provided with the conditions to express their will freely during the elections of the President of Ukraine, the people's deputies of Ukraine, and the All-Ukrainian referendum in rest of the territory of Ukraine.

3.1.5 Law of Ukraine on Guaranteeing the Rights and Freedoms of Citizens and on the Legal Regime in the Temporarily Occupied Territory Of Ukraine

The Law states that citizens of Ukraine who reside in the temporarily occupied territory or who have been displaced from it have a right to continue their education in other regions of Ukraine at the expense of the State Budget of Ukraine.[56] Such persons may take part in competitions for admission to study in Ukraine's state and community educational institutions under the general procedure, with a student hostel residence provided during these studies.

[56] Council of Europe, Revised ESC, 3 May 1996, ETS 163, Art 17 on the right of children and young persons to social, legal and economic protection, paras. 1a and 2.

3.1.6 Law on Portable Water and Water Supply

According to Article 24 of the Ukraine Law on Potable Water and Water Supply,[57] governmental bodies have a responsibility, as a preventive measure, to stock adequate supplies of potable water as a preparedness measure for human-made and natural disasters. There are no such provisions for cases of armed conflict. The Law on ensuring sanitary and epidemiological welfare does not specify any obligations for governmental bodies in the event of conflict or of human-made or natural disasters or any obligations regarding IDP in Nigeria.

3.1.7 Executive Policies and Resolutions on IDPs Rights in Ukraine

First, on 1 October 2014 the Cabinet of Ministers adopted Resolution No. 509 on registration of internally displaced persons that established the registration procedure. Subsequently, on 4 March 2015, the Cabinet of Ministers adopted Resolution No. 79 that amended Resolution No. 509 to set out more specific (and more discriminatory) rules for registration of IDPs. Law No. 921 on amending some laws regarding strengthening guarantees of ensuring rights and freedoms of internally displaced persons as of 24 December 2015 introduced changes to the IDP Law, including new procedures for data collection and issuance of IDP certificates.

4.0 Emergence of IDPs in Azerbaijan

The conflict between Armenia and Azerbaijan over Nagorno-Karabakh started in 1988 and has since led to the displacement of hundreds of thousands of ethnic Azeris who have fled into other parts of Azerbaijan.[58] It is estimated that about 200,000 ethnics Azeris were forced to flee from Armenia; while 500,000 others

[57] ibid

[58] European Movement International, 'The Nagorno-Karabakh conflict between Armenia and Azerbaijan: An overview of the current situation' *Brussels*, 24-09-2013.

were displaced within Azerbaijan.[59] A cease-fire was however negotiated in May 1994 which by all indications did not last very long. According to Azerbaijan's official registration, the conflict resulted in 209,000 refugees and 576,000 IDPs.[60]In the most recent government statistics,[61] 571,272 persons are still considered to be IDPs from Nagorno-Karabakh and other occupied areas. According to WFP, only one third of the IDPs reside in ordinary houses while more than 90,000 are living in 28 camps/settlements and around 300,000 people are settled in public buildings, including rail wagons. It is estimated that at least half of the IDPs are living in urban areas, especially Baku and Sumgait. Those IDPs in urban centres have a comparative advantage over IDPs in rural areas and camps/settlements, where services are randomly provided and employment opportunities are extremely limited. As a result, WFP has been mainly targeting food assistance to IDPs outside the major urban areas.

As per a United Nations Report,[62] the Government of Azerbaijan has been intensifying its efforts to improve the standards of living of the IDP communities and IDPs generally. Government proactive steps can be viewed in terms of an array of presidential decrees, laws passed by the Milli Mejlis[63] and enactments and resolutions adopted by the Cabinet of Ministers that regulate assistance and protection of refugees, asylum seekers and IDPs in

---

[59] A Ali, 'The Nagorno-Karrabakh Conflict: The Beginning of the Soviet End' https://www.researchgate.net/publication/339415817_The_Nagorno_Karabakh_Conflict_The_Beginning_of_the_Soviet_End the 25 January 2024

[60] Roughly 10% of the total population of the country

[61] United Nations Refugee Agency, 'Azerbaijan: Analysis of Gaps in the Protection of Internally Displaced Persons (IDPs)' October 2009.

[62] Eurostat: Manuals and Guidelines, 'Technical Report on Statistics of Internally Displaced Persons: Current Practice and Recommendations for Improvement' March 2018

[63]The Azerbaijani Legislature

Azerbaijan.[64] These government-issued policies and programs cover educational, health, employment, pension and material assistance; the establishment of key posts (e.g. Deputy Prime Minister – Chairman of the State Refugee Committee) to centralize matters related to IDPs, refugees and asylum seekers; the establishment of the Social Fund for the Development of IDPs (SFDI); and monthly food and kerosene allowances, unemployment benefits and exemptions from paying taxes and utilities.

4.1 Legislative Framework for Protecting the Rights of IDPs in Azerbaijan

The Republic of Azerbaijan is a signatory to the main international agreements defining fundamental human rights and freedoms.[65] Within the hierarchy of Azerbaijani legislative Acts, international law supersedes national legislation in cases of contradiction between international and national law. The only exception is the Constitution and acts adopted by referendum.[66] The Azerbaijani *corpus juris* includes a number of IDP-related laws and regulatory frameworks adopted by her Parliament. The key legislative documents in respect of the rights of IDPs in Azerbaijan are the Law of the Republic of Azerbaijan on the Status of Refugees and Forcibly Displaced Persons[67], the Law on Social Protection of Internally Displaced Persons and Persons Equated to them.[68]

4.1.1 Law on the Status of Refugees and Forcibly Displaced Persons

This law deals with both refugees and internally displaced persons without completely lumping both together. By its Article 1, Internally Displaced Person (IDP) applies to any person who has

[64] ibid
[65] ibid
[66] ibid
[67] Azerbaijani Law No. 668-1Q of 1999
[68] Azerbaijani Law No. 669-1Q of 1999

moved to another place within the territory of the Republic of Azerbaijan, having being forced to leave his/her permanent residence, in connection with military aggression, natural or man-made disaster. The law goes further to provide that in certain circumstances, as may be accessed by the appropriate executive authority of the state, IDP status can be granted to any citizen of the Republic who moves from another country or zone into his/her original country. This has in mind those trapped in the free zones or boundaries between Armenia and Azerbaijan.

By Article 6 of the Law, any person who has obtained either the status of a refugee or IDP shall be provided with the following guarantees in the established order, viz:

i. To live free-of-charge in special allocated places until acquiring the job or place of residence for a period of not more than 3 months.
ii. To come and transport the property form the temporary residence free of charge.
iii. To get free-of-charge medical assistance and day-to-day goods at the places of residences or hospitals by the elders, children, poor people, and the families without heads.
iv. To educate children in pre-school education institutions and in relevant higher educational institutions.
v. To purchase foodstuff and industrial goods in the settlements on the same basis with the permanent residents
vi. To obtain of one-time and other aid determined by the state
vii. To get the urgent allocations of single pensioners and invalids at the special institutions of social welfare;
viii. To acquire status of refugee or IDP within the term, established by present Law;
ix. To arise the question of payment of financial and other damage;
x. To apply to the Court for the defence of broken rights
xi. Right of movement to the previous place of residence.

These rights are all-encompassing and very reflective of the Azerbaijani obligations to the European Union which has provided her own handbook on the rights of IDPs.[69]

4.1.2 Law on Social Protection of IDPs and Persons Equated to Them

This law applies to the persons, who became an IDP since January 1st, 1988 till the effective date of the present Law and who have come to the Azerbaijan Republic due to the reasons, stipulated in a part 2 of Article 2 of this Law. Accommodation of the IDPs is carried out by the appropriate executive authorities in many respects. These include accommodation, administrative and subsidiary buildings as well as the other buildings which are habitable or can be made habitable and can be used for accommodation. In case if the accommodation of the IDPs in such buildings, is not possible due to the high density of the residence in the certain settlements, they are accommodated in the camps, specially organized for the IDPs. The camps should meet the requirements, necessary for residence.[70]

For agricultural cultivation the IDPs are provided with the temporary land plots from the account of state and municipal land fund, granted with preferential loans, as well as technical and other assistance as stipulated by the state program.[71] The employment of the IDPs is provided by the appropriate executive authority in conformity with the state program. State creates necessary conditions for independent employment of IDPs and for commercial and ownership activities. The provision of employment for the IDPs is carried out through determining quotas in state bodies, enterprises and organizations and by

---

[69]International Monetary Fund and International Development Association, 'Azerbaijan Republic Poverty Reduction Strategy Paper Progress Report' *Joint Staff Assessment* 12 August 2004.

[70] ibid, Art 5

[71] ibid, Art 6

establishing new posts, vacancies and realization of other measures.[72]

The provision of IDPs with one-time and regular financial aid of foodstuffs and industrial goods is carried out by the appropriate executive authority. The legal and physical persons, international organisations are free to render financial and other humanitarian assistance. The activity in rendering the humanitarian assistance to IDPs is coordinated by the appropriate executive authority.[73]

4.1.3 Executive Framework on IDPs' Rights in Azerbaijan

The July 2004 Decree of the President of the Azerbaijan Republic is of utmost importance in assessing the rights of IDPs in Azerbaijan. The Degree is regarding the approval of the "State Program for the Improvement of Living Standards and Generation of Employment for Refugees and IDPs". It, indubitably, establishes a broader and more encompassing programme for further improvement of the living conditions of IDPs.[74]

Furthermore, the State Programme for Poverty Reduction and Economic Development (SPPRED), covering a three-year period (2003-2005) has also been decreed, so to say and same has been updated as a 10 Year Programme for Economic Development and Poverty Reduction for the Period 2006-2015. As the foremost programme in the document, the improvement of the living conditions and opportunities of the refugee and IDP population reigns supreme as one of the six strategic aims of the SPPRED. Particularly speaking, the SPPRED identifies several directions for assistance, including the rehabilitation of the non-occupied areas near the ceasefire line, provision of improved housing for 5,000 families, upgrading infrastructure in IDP camps, addressing

[72] ibid, Art 7
[73] ibid, Art 9
[74] Decree of the President of the Azerbaijan Republic, July 2004.

employment issues for IDPs, education and health, and development of a new repatriation plan.[75]

5.0 Emergence of IDPs in Turkey

The major cause of internal displacement in Turkey according to the Internal Displacement Monitoring Centre[76] is the Turkish-Kurdish war in the 1990s.[77] It has been reported that from 1986 to 2005, roughly about 1.2 million people were internally displaced.[78] In 2006, Hacettepe University conducted a study, commissioned by the Government of Turkey which revealed that since 2005, further displacements have been triggered by security operations in 2015 and during the state of emergency which was declared following the attempted coup of 15 July 2016 and which lasted until July 2018.[79]

From all indications, Turkey does not have a specific legal regime to adequately answer the question of welfare of the Internally Displaced persons although there are some of the general provisions of its laws that could apply to IDPs. However, going by various efforts it has made to be more accountable to the principles of justice and fairness, all international obligations and court judgments remain binding on the state of turkey. This section shall make an attempt to give a brief overview of such

---

[75] A Hancioglu, 'Internal Displacement in Azerbaijan: Main Findings from the Azerbaijan Household Survey on Internally Displaced Persons, Refugees and the Resident Population' September 2002.

[76] International Displacement Monitoring Centre, 'Turkey Figure Analysis - Displacement Related to Conflict and Violence' *Rue de Varembé* 3, 1202 Geneva, Switzerland.

[77] Reuters, 'In Turkey's razing and redevelopment of battle-scarred Kurdish district, progress but also pain' 7 May 2018.

[78] OHCHR, 'Report on the human rights situation in South-East Turkey' February 2017

[79] European Commission, 'Turkey 2018 Report' 17 April 2018

attempts in line with the Global IDP Profile of Turkey, as released by the Norwegian Refugee Council/Global IDP Project[80]

5.1 Governmental Efforts in Turkey on the Rights of IDPs

Until 2002, Turkey's official position on displacement was one of denial: the government vehemently rejected the allegations of the international community that Kurdish civilians were displaced by the millions. All entreaties and attempts made by the former special representative of the UN secretary-general on internally displaced persons, to conduct a mission to Turkey to identify the conditions and needs of the displaced were rejected on the grounds that no displacement situation exists in Turkey.[81] The government's attitude changed considerably with the initiation of Turkey's EU accession process in 1999, however, after which it started to cooperate with the international community in addressing the human rights situation in the country.[82]

This cooperation culminated with the approval of Deng's fact-finding mission and the subsequent release of his 2002 report, which contained a number of recommendations to the government. Among these were the provision of compensation for the losses of the displaced; the identification of the number, current conditions, needs, and expectations of IDPs; the facilitation of their return, reintegration, or resettlement; the abolition of the village guard system; and the clearance of landmines. Noticeably absent in

[80] Norwegian Refugee Council/Global IDP Project, 'Profile of Internal Displacement: Turkey Compilation of the information available in the Global IDP Database of the Norwegian Refugee Council' (as of 5 April 2004)

[81] International Displacement Monitoring Centre and the Norwegian Refugee Council, 'Case Study on Education and Displacement in Turkey' August 2010.

[82] Norwegian Refugee Council/Global IDP Project, 'Profile of Internal Displacement: Turkey Compilation of the information available in the Global IDP Database of the Norwegian Refugee Council' (as of 5 April 2004)

Deng's report was a call for the Turkish government to develop a justice-based approach to displacement.[83]

Turkey's Compensation Law has been concluded, by many interpreters and social observers, to be adopted not with the purpose of developing a reparations program for the displaced, but out of a political necessity arising from international law and politics. Faced with the imminent prospect of having to pay millions of euros in the 1,500 cases pending at the time before the ECtHR as well as pressure from the EU to expeditiously address the needs of the displaced, the Turkish government was obliged to develop a "domestic legal remedy" as a viable alternative to litigation at the ECtHR.[84]

For all intents and purposes, the law was hastily adopted by Parliament in a late-night session, together with various other EU harmonization laws.[85] The government did not consult with the displaced or their representatives prior to the enactment or even during the implementation of the Compensation Law.[86] IDPs' hopes that the law would provide a forum to teil their stories and to set down the truth in official records were shattered due to the composition of the "damage assessment commissions" tasked with implementing the law. Six out of the seven members of these administrative commissions are public servants - representatives of the national government at the provincial level. This composition has intimidated the IDPs and deterred them from physically appearing before the commissions to speak about the abuses they suffered at the hands of security officers. Hence, the vast majority of IDPs filed their applications through legal counsel

---

[83] J Wyndham, "A Developing Trend: Laws and Policies on Internal Displacement in Turkey' *Human Rights Brief* (2006) 14(1) 7-12.

[84] ibid

[85] Passed by Parliament on 28 December 2005 and came into effect on 3 January 2006, published in Resmi Gazete, no 26042, 3 January 2006.

[86] ibid

rather than individually. The application process is not conducive to a truth-telling environment: the displaced routinely fill out identical petitions, are required to quantify their losses in numbers, and are unable to narrate their experiences of victimization. Rather than being treated as equal parties in negotiations, the displaced are expected to take or leave the compensation amounts set by the commissions. Consequently, IDPs view the administrative mechanism established under the law as an imposition against their will rather than a peaceful dispute-resolution mechanism, as the law explicitly states its purpose to be

Furthermore, the Compensation Law has not served a *catalyzing solidarity* function in Turkish society.[87] At one end of the spectrum, there is a high level of unawareness about the law among the general public. At the other, the displaced and the Kurdish political movement perceive the law as a government tactic to deceive the international community at worst, and a well-intentioned but poorly crafted and ultimately failed effort at best.[88] The rejection of 43 percent of the concluded applications, the rewarding of compensation to some of the perpetrators, as well as the difference in reparation amounts have created a hierarchy of victims and served a deeply divisive function among the Kurdish displaced population.[89]

[87]B Marco, and M Philip, 'Towards The "Europeanisation" Of Personal Injury Compensation: Contexts, Tools, Projects, Materials and Cases on Personal Injury Approximation in Europe' *Personal Injury Compensation in Europe*, 2003

[88] Kurdish Human Rights Project and Bar Human Rights Committee of England and Wales, 'The Status of Internally Displaced Kurds In Turkey: Return and Compensation Rights - An Update Fact Finding Mission Report' December 2006

[89]ibid

6.0 Emergence of IDPs in South Sudan

According to a United Nations Report,[90] it was revealed that on 15th December 2013, some violent conflicts broke out in Juba between the members of the Presidential Guard and the Sudan People's Liberation Army (SPLA).[91] This led to a subsequent splitting of forces loyal to the Government and to former Vice-President Riek Machar.[92] For so long after this loyalty gimmicks, the conflict spread to the States of Jonglei, Unity and Upper Nile. Since those times, the conflict has transcended into a major protection crisis and forced the migration or displacement of more than 2.27 million people.

It should be noted that according to the report, by the end of October 2015, conflicts and food insecurity have triggered significant internal displacement with 1.66 million Internally Displaced Persons and still counting.

6.1 Laws of South Sudan on the Rights of IDPs

South Sudan signed the Kampala Convention on 25th January, 2013. The Bill ratifying the Convention has been cleared by the Council of Ministers and was submitted to the National Legislative Assembly on 29th September, 2015. For all intents and purposes, the Kampala convention applies *mutatis mutandis* to South Sudan.

That notwithstanding, a national law[93] was conceived in 2018 to cater adequately for the peculiar circumstances of persons

---

[90] United Nations High Commissioner for Refugees, 'Universal Periodic Review' *2nd Cycle*, 26th Session, 3

[91] ibid

[92] ibid

[93] The Protection and Assistance to Internally Displaced Persons Act. See also, C Beyani, *et al*, 'The Potential of South Sudan's National Law on Protection and Assistance to IDPs' GP20: Lessons and Good Practice on Internal Displacement' November 2020.

internally displaced within South Sudan. Those who drafted the national law i.e. the Sudanese Ministry of Humanitarian Affairs and Disaster Management[94] took a participatory and all-inclusive approach in order to better identify the needs of IDPs and the challenges faced by the government to respond adequately to internal displacement.[95] It has been reported that the GP20 Plan of Action afforded significant coordination mechanisms for major stakeholders and for the participation of IDPs in order to directly assess their needs. Such consultative and participatory law-making process is necessary in order to make the law reflective truly of the peculiar circumstances only understood by the Internally Displaced Persons themselves.

It became evident during the consultations that women are likely to face challenges in reclaiming property left behind during displacement due to their lack of documentation and due to discriminatory cultural practices; as a result, appropriate protection for women's property rights was included in the draft law. However, effective access to and consultation with IDPs and host communities – vital if their perspectives and priorities are to influence the development and implementation of the law – proved extremely challenging in some areas due to conflict, while limited infrastructure and internet access made it difficult to carry out data collection.[96]

The draft national law adapts international protection benchmarks to suit local conditions by. For example,

---

[94] ibid

[95] Integrated Food Security Phase Classification (IPC), 'Republic of South Sudan - Full Report' August-September 2015, 2, http://reliefweb.int/sites/reliefweb.int/files/resources/IPC%20Report%20South%20Sudan%2020September%202015%20-Final.pdf accessed the 23 January 2024.

[96] ibid

establishing special protection measures to safeguard housing, land and property rights for women and children. The law also provides for pragmatic approaches such as area-based programming, transitional solutions, and the use of cash assistance to strengthen the resilience of communities. In parallel with the Guiding Principles, the legislation specifically focuses on solutions to internal displacement by providing options for return, integration in the location of displacement, or resettlement to another part of the country.[97]

Another way in which the draft law profoundly focuses on solutions is by incorporating the guidance of the IASC Framework on Durable Solutions, hence making it applicable in the country. The law also establishes a fund to support its implementation (provided through the allocation of 30% of national oil revenues), an approach that is new to the region and one that will ensure that humanitarian responses and strategies for long-term solutions are funded from the country's own resources rather than being dependent on external funding. The national legislation thus aligns with the spirit of the GCR and has potential to strengthen implementation of the R-ARCSS towards a lasting peace in South Sudan.[98]

6.2 South Sudanese Policy on Return, Resettlement and Reintegration

South Sudan had also adopted a National Framework on Return, Resettlement and Reintegration in 2017 to provide a framework for humanitarian assistance and reconstruction in

---

[97]C Beyani, *et al*, (n 93)
[98]ibid

South Sudan.[99] The government revised the Framework in October 2019. Although, the framework has been found to represent an important step towards the search for durable solutions, it unfortunately is lacking in the comprehensiveness typical of a legal framework as envisaged by the Guiding Principles and the Kampala Convention. This is an indication that it was hurriedly done without due regards to necessary and fundamental principles of policy making.

Since the Kampala Convention incorporates the 1998 Guiding Principles on Internal Displacement, domesticating it provides a legal normative basis for application of the Guiding Principles in addressing the situation of IDPs in South Sudan. The national legislation thus presents a unique opportunity to deal coherently with the need for IDP protection, based on both a whole-of-government and a whole-of-society approach.

7.0 Emergence of IDPs in Somalia

Two decades of armed conflict and severe recurring droughts and floods have forced a significant portion of the Somali population to leave their homes.[100] Before January 2016, more than 1.1 million people were reported as already living in protracted displacement, largely in the south and centre of the country.[101] This includes large numbers of people who left their homes during the 2011 drought and did not return.[102] Since January 2016, a

[99] ibid

[100] Oxfam International, *Droughts, Displacement and Livelihood in Somalia/Somaliland: Time for Gender Sensitive and Protection-focused approaches:* (Joint Agency Briefing Note June 2018) ISBN 978-1-78748-284-5 DOI: 10.21201/2018.2845

[101] ibid

[102] ibid

further 1.6 million people have left their homes primarily due to drought, peaking in March 2017.[103] Somalia has the seventh-largest internally displaced population in the world. It is the scene of one of the world's longest continuous humanitarian assistance operations, dating back to the late1980s.[104]

The Somalian Government has only signed but not ratified the Kampala Convention, 2009 which makes the convention not easily applicable in domestic circumstance. In the same vein, Somalia does not have a national law that adequately caters for the rights of internally displaced persons even when the numbers are reaching an alarming high in the country.

By the Somali Policy on IDPs, laws such as the Somali National Constitution, all other relevant laws, the National Development Plan and policies of Somalia; the 1951 Convention Relating to the Status of Refugees and its 1967 protocol; the 1969 OAU [Organization of African Unity] Convention Governing the Specific Aspects of Refugee Problems in Africa; the African Charter on Human and Peoples' Rights of 1981; the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa of 2009; the UN Guiding Principles on Internal Displacement of 1998 and such other international treaties must be respected and observed and most importantly, utilized in the understanding and enforcement of the Somalian IDP Policy.

However, the policy presents a battle over when the President of Somalia announced creation of a National Commissioner of Repatriation and Resettlement of Refugees and IDPs.[105] The position created had the mandate to report directly to the office of

---

[103] ibid

[104] D Jeff, 'Internal Displacement in Somalia' *Brooking-LSE Project on Internal Displacement* December 2014.

[105] ibid

the Prime Minister rather than to the Ministry of Interior.[106] This has produced optimism that the Federal Government of Somalia, at least at the technical staffing level, intends to give humanitarian programs the attention and expertise they deserve. The Ministry of Interior also employs humanitarian advisors – some with OCHA funding – as well as a senior advisor on internal displacement. Several of these humanitarian positions within the government are held by young, well-educated members of the Somali Diasporas who have repatriated from European asylum countries with a strong sense of idealism about rebuilding their homeland.

Given the inexperience and fragility of the country's national government, local government officials are equally key to the success or failure of humanitarian programs – perhaps more so. Historically, for example, many of Mogadishu's[107]neighbourhood District Commissioners were complicit in the extortion racket practiced by gatekeepers who steal relief distributions intended for IDPs in the city's hundreds of settlements.[108] After two decades of weak or non-existent national government, local powerbrokers such as District Commissioners do not automatically defer to policies handed down by the FGS. In recognition of that fact, authorities moved aggressively to install new District Commissioners with allegiances to the new federal government rather than to traditional warlords and clan leaders. While it is premature to judge the benefits of this political realignment at the local level, most observers welcomed the political risks taken to change the local status quo.[109]

8.0 IDPs' Rights under Shari'ah Jurisprudence

[106]ibid
[107]ibid
[108]ibid
[109]ibid

Various armed conflict were erroneously linked with Shari'ah jurisprudence.[110] Thus, this study examines the rights of IDPs under the legal regime. Shari'ah jurisprudence came to fore with the promulgation of Islamic law. Shari'ah refers to the universal legal system that binds all Muslims in the Islamic world.[111] It is divine, comprehensive and robust in nature.[112] It touches on every aspect of the lives of Muslims and in any condition they find themselves. Shari'ah finds solace in its primary sources which are the Qur'an and Sunnah as they dictates orders for guidance and implementations in Islamic world. The general notion of Shari'ah does not go beyond its divinity in form of legal rules and regulations from the Law Giver through His Messenger to the world over touching on every condition a Muslim could find himself.

Under Shari'ah jurisprudence, theory of non-discrimination is best implemented. The legal system frowns at discrimination on the basis of sec, race, colour, religion, circumstance etc.[113] It shuns the practice of favouritism in favour of the strong against the weak, in favor of the well-to-do against the less privilege and in favour of the free against the displaced.[114] Thus, the topical discourse of the rights of the weak and IDPs is of paramount concern under Shari'ah jurisprudence. It is not gainsaid that Shari'ah jurisprudence recognised the rights of the IDPs. The historical

---

110

111 AA Oba, 'Lawyers, Legal Education and Shari'ah Courts in Nigeria' *Journal of Legal Pluralism* (2004) 49 113-161

112 MT Ladan, 'The Development and Application of Shari'a in Northern Nigeria: Issues and Challenges' 1-33 https://library.fes.de/pdf-files/bueros/nigeria/50282.pdf accessed 12 November 2023.

113 J Ballou, 'Sooners vs. Shari'a: The Constitutional and Societal problems Raised by the Oklahoma State ban on Islamic Shari'a Law' *Law and Inequality* (2012) 30, 309-338

114 AA Bello, 'Favouritism and the Rule of Law: Exploring the Islamic Law Imperatives in Nigeria' https://ssrn.com/abstract=1397741 accessed on 12 April 2024.

events under development of Shari'ah jurisprudence lend credence to the foregoing.[115]

At the earliest period of Shari'ah propagation, the few Muslims who believed in the message of the Law Giver as brought by the Prophet Muhammad (PBUH) faced serious persecutions leading to their migration from their homeland Makkah to Madinah.[116] The instruction to vacate Makkah for Madinah was divine as the Muslims then reluctantly yielded to the instruction with the pain of leaving ones' homeland to a foreign land. They became displaced from their original homes with no access to their properties, wives, children and families.[117] What the Muslims faced at this period was a serious displacement requiring urgent protection in foreign land. Fortunately at Madinah, they were granted refugee status and were protected in their temporary abode till they were able to go back to their homeland peacefully.[118]

Thus, the *Hijrah* saga laid the foundation of IDPs rights and protection under the Shari'ah jurisprudence. With the personal experience of displacement as encountered by the Prophet, when he became the *Ameer* (Head of State) in Madinah, he came up with legal structure that favours the protection and implementation of the rights of the IDPs. He implemented Shari'ah jurisprudence to favour Muslims and non-Muslims who had suffered displacement from their place of origin to live with tranquillity under his leadership in Madinah. Of utmost importance were the

---

[115] Zaat, Kirsten. "The Protection of Forced Migrants in Islamic Law" *New Issues in Refugee Research* 146 https://www.unhcr.org/sites/default/legacy-pdf/476652cb2.pdf last accessed 12 April 2024

[116] N Akhter, 'The Compulsion upon Muslims to Migrate towards the Medina: (An Analytical Study of Objectives and causes from Historical perspective)' *Al-A'Jaz* (2020), 339-346

[117] ibid

[118] HA Acikgul, 'Rights of Migrants from Islamic and Humanitarian Rights Perspective' 105-150 https://dergipark.org.tr/en/download/article--file/2087249 last accessed 12 April 2024

people popularly called *Ahlu Dhimmi* (the displaced non-Muslim seeking protection in Madinah). The Prophet offered numerous rights and protections to the *Ahlu Dhimmi* within the Shari'ah theory of non-discrimination as the displaced persons enjoyed similar rights as the Muslims within the purview of Shari'ah principle of equality and fairness.[119]Some of the rights accorded to the *Ahlu Dhimmi* then include sanctity of life and property, protection of honour, sanctity and security of private life, security of personal freedom, freedom of expression, freedom religion and association, protection of religious sentiments, protection from arbitrary imprisonment, right to basic necessities of life, equality before the law, right to participate in the state affairs and decisions concerning their situations in life etc.

The cursory look at the rights granted *Ahlu Dhimmi* indicates Shari'ah jurisprudence does not levitise the situations of the IDPs within its scope. The rationale behind the rights formulation and protection is premised on the *MaqasidusShari'ah* which captures the overall objectives of Shari'ah legislation on earth and the great concern for the weak and the needy. It is thus safe to posit that Shari'ah jurisprudence has laid the foundation of the protection and enforcement of the rights of IDPs from historical and legislative perspective. This goes to show that any legislation that lags behind in the protection and enforcement of the rights of the weak especially the IDPs is not be reckoned with.

9.0 Conclusion

The study examined the rights of IDPs in the selected countries of Myanmar, Ukraine, Azerbaijan, Turkey, South Sudan and Somalia vis-a-vis Shari'ah jurisprudence. It is not debatable that the incidence of armed conflicts across the globe comes forth with the new normal regime and life for the IDPs. This is however

---

[119] F Bsoul, 'Non-Muslims (alh al-dhimmah) in Islam in the 3rd and 4th Century A.H.' 12th Annual international Conference on History & Archaeology: From Ancient to Modern, 28-31 July 2014, Athens, Greece.

worrisome but the world have to contend with the new incidence of IDPs with a view to finding better life for them.

The study reveals that Myanmar focuses on land acquisition as the major tool for addressing IDPs' issues in the country. In Ukraine, the principle of non-discrimination occupies the top most agenda in addressing the plights of the IDPs. Azerbijan focuses on poverty tackling and social right guaranteeing in their legal framework for the protection of the IDPs' rights in the country. Turkey as a country is also not left out. The country adopted compensation approach towards solving different problems confronting the IDPs. This approach is met with stiff criticism. Sudan strives to address the right issues faced by the IDPs through the principle of return, resettlement and reintegration in compliance with Kampala Convention. In the same vein, Somalia continues with the exploration of both national laws and international instruments with a view to solving numerous right issues being contended with by the IDPs.

The lapses discovered in the study of the rights of IDPs in the selected countries include inadequate implementation and periodic reviews of the framework with a view to meeting the present needs of the IDPs. It is important to note that the fundamental lapse remains lack of preventive measure. There is need for the world to come together to find a preventive lasting solution to the menace of incessant armed conflicts. This remains the root-approach problem solving mechanism towards addressing the IDPs' rights associated problems. It therefore recommended that the various legal framework in the selected countries in this study should be subjected to adequate implementation as well as periodic review to stand the test of time. The root cause of armed conflict should also be preventively addressed henceforth to give room for violent-free society.

It is important to note that the jurisprudence of Shari'ah holds the rights of IDPs in high esteem with the instrumentalities of the principles of non-discrimination, equality before the law and

justice to all without any preferential consideration with special interest on the weak and vulnerable members of the society including the refugee and IDPs.[120] The rationale for selecting Shari'ah jurisprudence as one of the variables for this study is the general misconception of Shari'ah legal system as violent-prone system of law.

[120] Qadri, Muhammed A., et al, "The Administration of Prophet Muhammad (PBUH) and its Impact on the Contemporary States" *Journal of Philosophy, Culture and Religion* 17, 2016, 30-24