Gendered Protection of Internal Displacement

Human Rights-Based Protection of Internal Displaced Persons in the African Continent

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Abstract

Globally, there is no binding legalisation promoting protection for 41.3 million people who are Internally Displaced Persons (IDP). Protection for IDPs is extracted from Human Rights Law, International Humanitarian Law, Refugee Law and non-legally binding recommendations from ‘The Guiding Principles on Internal Displacement’. However, in 2009 the African Union transformed soft law into hard law and adopt a legally binding instrument to providing assistance and protection for IDPs, the Kampala Convention.

The multi-disciplinary study will examine gender in internal displacement and protection of IDPs. Through a Human Right-Based Approach, it underlines the role of the state as a duty holder and IDPs as rights holders.

The thesis will discuss the role of IDPs within International Law and points out existing legal gaps in a legal analysis. According to feminist approach to International Law, there is a disproportionate emphasises in legal frameworks and policies for women, men, boys, and girls. The theory is applied to demonstrate the legal reforms that needs to be considered. Furthermore, the thesis identifies which specific rights that are lacking in gendered protection of IDP and discussed how they are addressed in the Kampala convention. The setting is contextualized through the current situation for IDPs in Ethiopia.

The findings describe how the Kampala Convention enhances right-based protection and awareness for IDP. However, it can be argued that the convention does not fulfil protection of gendered impacts of internal displacement holistically, particularly in term of economic, social, and cultural rights.
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<th>Full Form</th>
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<tr>
<td>AU</td>
<td>The African Union</td>
</tr>
<tr>
<td>CEDAW</td>
<td>Convention on Elimination of All Forms of Discrimination against Women</td>
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<tr>
<td>CP</td>
<td>Civil and Political Rights</td>
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<tr>
<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>CSO</td>
<td>Civil Society Organisation</td>
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<tr>
<td>DTM</td>
<td>Displacement Tracker Matric (IOM’s displacement monitoring tool)</td>
</tr>
<tr>
<td>ESC</td>
<td>Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>FHH</td>
<td>Female headed households</td>
</tr>
<tr>
<td>GBV</td>
<td>Gender-based Violence</td>
</tr>
<tr>
<td>GP</td>
<td>The Guiding Principles for Internal Displacement</td>
</tr>
<tr>
<td>HLP</td>
<td>Housing, Land and Property Rights</td>
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<tr>
<td>HNO</td>
<td>Humanitarian Needs Overview (UNOCHA’s annual country reports)</td>
</tr>
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<td>HRBA</td>
<td>Human Rights Based Approach</td>
</tr>
<tr>
<td>ICRC</td>
<td>The International Committee of the Red Cross</td>
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<td>IDMC</td>
<td>Internal Displacement Monitoring Centre</td>
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<td>IDP</td>
<td>Internally Displaced Person</td>
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<td>IHL</td>
<td>International Humanitarian Law</td>
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<td>IHRL</td>
<td>International Human Rights Law</td>
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<td>IOM</td>
<td>International Organisation for Migration</td>
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<tr>
<td>NGO</td>
<td>Non-Governmental Organisations</td>
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<td>NRC</td>
<td>Norwegian Refugee Council</td>
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<tr>
<td>ODI</td>
<td>Overseas Development Institute</td>
</tr>
<tr>
<td>PM</td>
<td>Prime Minister</td>
</tr>
<tr>
<td>SGSR</td>
<td>The United Nations Secretary-General’s Special Representative on Internally Displaced Persons</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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UN  United Nations
UNGA  United Nation General Assembly
UNHCR  United Nation High Commissioner for Refugees
UNOCHA  United Nations Office for the Coordination of Humanitarian Affairs

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1 INTRODUCTION

Today, fleeing from conflicts, climate disasters or persecution has become a frequent area of news coverage. These matters are not new, and humanitarians have been discussing protection of the displaced since the time of League of Nations and the Nansen Passport\(^1\). Previously, this was only considered as an external and international matter as refugees fled their homelands to seek asylum and protection in another state. Nevertheless, it is evident today that there is another group of people that flee from atrocities, persecution and human rights violations but stay within the border of their own homelands. These people are today referred to as Internally Displaced Persons (IDPs). It is estimated currently that 41.3 million people living as internally displaced\(^2\), where about 40 %\(^3\) of them are located in the African Continent.

In 1998, the Guiding Principles for Internal Displacement, hence referred to as GP, laid the following definition for IDPs:

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“persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.”
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Still today, GP’s definition is the one most used by scholars\(^5\). However, the GP does not, in contrary to the 1951 Convention Regarding Refugee Status, provide a legal definition but rather describes who may be considered as an IDP\(^6\).

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\(^1\) Fridtjof Nansen was appointed first High Commissioner for Refugees by the League of Nations in 1921. Nansen recognized that one of the main problems’ refugees faced was their lack of internationally recognized identification papers. He introduced the so-called “Nansen passport,” which was the first legal instrument used for the international protection of refugees.

\(^2\) The total number for forcibly displaced around the world, including refugees, IDPs and asylum seekers, is 70.8 million.

\(^3\) IDPs are the largest group.

\(^4\) Principle 2 in the Guiding Principle for Internal Displacement

\(^5\) Kalin, 2014, Mundt&Ferris, 2008,

\(^6\) Kalin, 2014:2
Unlike refugees, IDPs have not crossed an international border. From a legal perspective, being within the country of origin, IDPs are not entitled to protection the protection of refugees established by the 1951 Convention Regarding Refugee Status, merely because they are still in their country of origin. IDPs are considered as citizens of the state, therefore they are entitled to a standard of treatment. Therefore, will the thesis apply a Human Rights Based Approach (HRBA) to the protection of IDPs, thus emphasizing the role of the state as a duty holder of obligations and IDPs as rights holders.

In 2009, there was legal development in on a regional level. The African Union (AU) introduced the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, also called, and hence referred to as the Kampala Convention. The Kampala Convention is legally binding instrument formally adopted in 2012 when 15 African states ratified it.

Before the GP was introduced, the at-the- time United Nations Secretary-General’s Special Representative on Internally Displaced Persons (SGSR) Francis M Deng produced a legal analysis of the existing gap for Protection of IDPs. The aim of the thesis is to examine the development of protection of IDPs, discussed these existing gaps and investigate how the Kampala Convention specially addresses gendered impacts of internal displacement. As discussed in this paper, gender can affect all stages of displacement and have critical overlapping implications on internal displacement.

To contextualize gendered impact of internal displacement the thesis will, by using a HRBA, examine Ethiopia’s implementation of the Kampala Convention.

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7 Hathaway, 2008:358  
8 Hathaway, 2008:358  
9 Mooney, 1998  
10 Ethiopia has had a spike in internal displacement since 2015 and ratified the Kampala Convention recently in February 2020.
1.1 Method

The thesis will conduct a multi-disciplinary mixed method study, where it will be focusing on policy- and legal frameworks which applies to the practise of protection of IDPs. The legal analysis will be theoretically leaning on ‘feminist approaches to International Law’ and highlighting the disproportionate consideration between women and men in the constitution of international law. The thesis will focus on outlining the role of IDP within International Law and present the legal gaps for IDPs. Further, the thesis will narrow out the gendered impacts of displacement and investigate how the legal gaps are addresses in the Kampala Convention. As a method, the thesis will be applying a Human Right Based Approach towards Protection of IDPs and consider different segments of right based approaches.

The analysis will be based on qualitative data largely based on document analysis of reports and analysed data from sources such as the Internal Displacement Monitoring Centre (IDMC), displacement censuses from International Organisation for Migration (IOM), articles from legal scholars\(^\text{11}\) and practitioners from the UN\(^\text{12}\). This will be used for a qualitative content analysis. Furthermore, the thesis has conducted interviews with a selection of key informant from various stakeholder such as the UNHCR, AU and NGOs working with IDPs in Ethiopia. The informants are identified as practitioners of protection of IDPs and relevance and provide further insights to investigate further the process of state authorities to recognize and protect internally displaced person.

In the final sections of the thesis, an analysis will be conducted based on the data collected.

1.1.1 Research questions

**Main RQ:** In what way does the Kampala Convention provide rights-based protection for gendered impacts of internal displacement?

\(^\text{11}\) E.g. JP Cantor, James Hathaway and David Turton.

\(^\text{12}\) E.g. Adama Dieng, Walter Kälin, Roberta Cohen and Francis Deng
The main research question will investigate if the Kampala Convention addresses the gendered impact that is a consequence of by internal displacement. The paper will be conducted with a HRBA which emphasizes that that the right of the displaced will be recognized, and the state shall be considered as duty holder for providing protection is emphasized. Hence the sub-questions:

**RQ 1:** Which legal framework applies for IDPs?

**RQ 2:** Which gendered impacts of internal displacement can be identified in the Protection of IDP?

**RQ 3:** How are economic, social, and cultural rights considered within Kampala Convention?

To understand a right based protection of IDP, an understanding of which legal framework applies for IDP is required. This will be considered as an attempt to understand where IDPs protection is positioned within International Law.

Secondly, the thesis will discuss the relationship between internal displacement and gender and distinguish if protection of IDPs is proportionate to different needs of women, men, boys, and girls. Thus, identifying specific gendered impact of internal displacement. Finally, with HRBA in mind, the thesis will consider the role of economic, social, and cultural (ESC) right in protection of IDPs because of the strong linkage with gender equality.

### 1.1.2 Data Collection

The thesis has used several types of sources to understand the analysis. A part of literature data covers the current situation for IDPs. The thesis refers to scholars within the field of IDPs; Professor Walter Kälin\(^\text{13}\), James Hathaway\(^\text{14}\) and Roberta Cohen\(^\text{15}\).

The thesis refers to the legal analysis *Compilation and analysis of legal norms (1995)*\(^\text{16}\) produced by the scholar Dr Francis M Deng. Deng`s legal analysis which

\(^{13}\) former Representatives of the Secretary-General on human rights of internally displaced persons

\(^{14}\) Renown refugee law scholar at the University of Michigan Law School

\(^{15}\) Former senior fellow at the Brookings institute and co-founder on their specific project on internal displacement.

\(^{16}\) UN Doc: E/CN.4/1996/52/Add.2
lead to the formation of Guiding Principle of Internal Displacement. In the legal analysis Deng and his legal team identifies legal gaps for the protection of IDPs. Moreover, the thesis views data collection on IDPs by Internal Displacement Monitor Centre (IDMC), International Organisation for Migration (IOM) and United National Office for Coordination of Humanitarian Affairs (UNOCHA). IDMC, a research institution in Geneva that focuses and analyses internal displacement by use of data collection done of humanitarian actors in the field. During 2019-20 IDMC released three reports 2019 Global Report on Internal Displacement, 2019 Africa Report on Internal Displacement and Women and Girls in Internal Displacement (2020) that the thesis will focus on. IOM is recognized for their data collection through their Displacement Tracking Matrix (DTM). Their recent report dealing with displacement in Ethiopia namely, “Ethiopia National Displacement Report round 20”(07.02.2020). Finally, the thesis will use data from UNOCHA, the UN Agency responsible for coordination of humanitarian support. Every year they publish a Humanitarian Needs Overview (HNO) for the countries that they work. The report is used by the agency to advocate for humanitarian support. The thesis will use the 2020 HNO: Ethiopia.

1.1.3 Data on gender and displacement and gender-disaggregated data

Information on gender and displacement in Ethiopia presented in the thesis are mainly drawn from IOM’s DTM. The report is based on two types of assessments of IDPs - Firstly, its studies: ‘IDP Sites’. The named sites in the report are where IDPs seek protection during displacement. In the ‘Round 20 report’ from February 2020, IOM has registered 1199 different sites in nine different regions. The second assessment IOM conducted is a village assessment survey that targets villages with returning IDP households. In the second assessment of the ‘Round 20 Report’ from February 2020, IOM covered 1047 villages in 8 regions.

\[17\] IOM DTM, 2020:3
\[18\] IOM DTM, 2020:28
To capture how the current situation concerning gendered impacts are for IDPs in Ethiopia, the data needs to be gender-disaggregated, i.e. that the data is differentiated between sexes. On a general note, IDMC highlights that this is a challenge in many African Contexts. The lack of disaggregated data makes it problematic for humanitarian actors and governments to plan their inventions to support both men and women in internal displacement. As will be discussed in the thesis, the requirements of protection for women, men, boys and girls are different. If the data generally does not portray the situation fairly, the assistance from either the government or the international community could be disproportionate, and it could degenerate gender related inequalities even further.

The thesis will use the data available, data from the interviews and other data to make the analysis. However, it should be added that IDMC stresses that IOM has made progress in gender disaggregating data in some countries and highlights Ethiopia as one of these countries. IDMC argues that Ethiopia disaggregating IDPs’ sex, age and place of origin in Ethiopia, which helps humanitarians targets their interventions, including in places of potential return19.

1.1.4 Semi-structured interviews

The thesis conducted interviews with humanitarian practitioners in the field as a part of the methodology done in a semi structured manner20. The interviewees received a set of questions before the conversation and were informed that the questions will be open-ended, which gave the researcher the opportunity to follow up on topics that needed to be further addressed 21.

Considering that the interview required some pre-existing knowledge on the situation for IDPs in Africa and the Kampala convention, the thesis used a generic purposive sampling method22. The generic purposive sampling method localized interviewees from organisations involved in the process of implementing the Kampala Convention. The duration of the interview was 45 min and it was

19 IDMC, 2019b:51
20 Punch, 2005:169-170
21 The interview guide can be found in the Annex
22 Bryman, 2012:422
conducted through a video-communication tool named ZOOM. The ZOOM account used in the interview belongs to the University of Oslo\textsuperscript{23}.

The aim of thesis was to interview the following:

- **IDMC Researcher**; considering IDMC’s role on advocating the issues of internal displacement
- **UN Agency Protection Officer**; considering UN’s mandate to provide assistance and protection and heightened emphasis from the Kampala Convention of assistance from the International Community
- **AU Officer**; Considering AU Role as initiative-taker of the Kampala convention and role in supporting the implementation of the Kampala Convention
- **NGO or CSO representative**; Considering HRBA and focus on how NGO or CSOs working to uphold the rights of IDPs.

Considering the timing of the thesis and the current situation in the world, with the outbreak of COVID19, it affected the connection to potential interviewees\textsuperscript{24}. Therefore, only two of the four planned interviews took place. Firstly, an interview with an IDMC researcher in the end of April. The researcher has been involved in several of the latest reports and has specific focus on gender and displacement. Secondly, an interview with a Protection officer from a UN Agency based in Addis Ababa in May. The Protection Officer was particularly working on advocacy and the implementation process of the Kampala Convention\textsuperscript{25}

### 1.1.5 Data Protection

Data Protection and consent of the interviewees was governed by the Norwegian Centre for Research Data AS. An application was made by the researcher and an information letter was provided to the interviewees about their personal data rights\textsuperscript{26}. The information letter can be found in Annex 1. The information the

\textsuperscript{23} More information about ZOOM at University of Oslo [https://www.uio.no/english/services/it/phone-chat-videoconf/zoom/](https://www.uio.no/english/services/it/phone-chat-videoconf/zoom/)

\textsuperscript{24} Further explained in section 1.6.2

\textsuperscript{25} Overview of the interview can be found in the end of the bibliography

\textsuperscript{26} Information letter can be found the annex
interviewees provided were treated confidentially and anonymized. At the end of the process all notes, recordings and information provided through the interview will be deleted.

1.2 Definitions and approach

1.2.1 Feminist Approaches to International law

The legal analysis in the thesis will be based on the theory around ‘Feminist Approaches to International Law’ as explained by Dianne Otto\textsuperscript{27}. This theory emphasises how international legal norms and processes reflect the domination of men and argues for a reform of these norms and processes to take women in account. Otto argues that even though international law has made improvement including women, there are apparent blockages of feminist approaches\textsuperscript{29}. Otto highlights blockages such as failure to treat women as fully autonomous rights-bearing subjects and a lack of women’s participation in the international institutions that makes and applies the law\textsuperscript{30}.

Feminist approaches to International Law is usually used as a critical theory to the establishment of international law. It has been used to present male biases and masculine assumptions\textsuperscript{31}. However, Otto argues that the critical approach is not the path the feminist approach should take, she argues that feminist approach should be seen as a reform of international law. The role of Feminist Approaches to International law is to eliminate ‘sexual difference’ as a marker of women’s exclusion and/or inadequacy. She argues that by being seen as a critical theory, feminist approaches end up reproducing the sexual difference that it sets out to eliminate\textsuperscript{32}. Instead, to engage with international law on feminist terms, legal frameworks should be receptive to the concerns of women and/or overlooked feminized issues, and to increase its capacity to support social change in gendered

\textsuperscript{27} Otto, 2016

\textsuperscript{28} Dianne Otto is the Director of the Institute for International Law and the Humanities (IIILAH) and Co-Director of its International Human Rights Law Program at the University of Melbourne

\textsuperscript{29} Otto explains the term ‘feminist’ as the theory of and struggle for equality for women’ and their political, economic, and social inclusion

\textsuperscript{30} Otto, 2016:2

\textsuperscript{31} Otto, 2016: 5

\textsuperscript{32} Otto, 2016:8
relations of power. In practise for the protection of IDPs, this means that a bigger accountability of rights should be considered. A feminist approach to international law advocates a larger incorporation of ESC rights as they have a greater linkage to upholding gender equality in comparison with political and civil rights.

One of the strong argumentations of the theory is that it:

“[..]identifies violence against women as a ‘touchstone’ that illuminates the failure of universal human rights to problematize the structural relations of male domination.”

The theory argues that using violence as against women as a touchstone, it can reinterpret universal norms so that they are more inclusive for women. In this way, it can identify that severe domestic violence, and when the state does not do adequately enough to uphold it obligation to protect, it satisfies all the elements of torture. Thus, it can be considered to have attained jus cogens status. Feminist Approaches to International Law does therefore recognize ESC right as an answer to achieve gender equality, because of the several elements as the right to housing, land and property and right to education. Otto argues that human rights overall is need of reinterpretation to recognize ESC to be able to tackle a challenge like domestic violence.

1.2.2 Human Rights Based Approach
To holistically understand gendered impacts of internal displacement, the thesis will consider the research as a multi-disciplinary study with mixed methods. Partly, a legal analysis for the protection of IDPs will be presented in chapter three as discussed in the previous section. In Chapter five and six, the thesis will focus more on a practical approach through a human right based approach (HRBA) towards the protection of IDPs. There are several debates addressing the

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33 Otto, 2016:8
34 Otto, 2016:8
35 Otto, 2016:9
36 Primarily, Mooney’s article in 2005 and the critic by Hathaway in 2007
concern of IDPs. The debate touches upon if IDP should be considered as ‘a special category of concern’ and if a special legal framework should be developed. The debate touches upon IDPs position within existing human rights protection and other legal frameworks. Through a revisit to the debate, the thesis can compare IDPs role in International Human Rights Law (IHRL), International Humanitarian Law (IHL) and Refugee Law and their position in the international community. The thesis will use HRBA as a methodological approach, thus it allows the thesis to answer the sub-question 1 when investigating in what way IDPs gain protection from Human Right legislation.

HRBA highlights practices that include a participatory approach that targets vulnerable and excluded groups 37 and would in the case of IDPs refer to the rights of the displaced rather than the ‘needs’. A Human rights-based approach is the conceptual framework for the thesis to understand the relationship between the right-holders and the duty-bearers. The conceptual framework entails the following components:

- HRBA identifies the rights-holders and their rights to enjoy on the one side, while on the other, the duty-bearers holds the obligation to respect, protect, and fulfil those rights 38;
- A review of whether and what extent the rights are being respected, protected, and fulfilled.
- Establish an approach towards strengthening the capacity of rights-holders to enjoy and claim their rights- and human rights, and how the duty-bearers can meet their obligations.

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37 Nelson and Dorsey, 2017:99
38 Respect, protect and fulfil is a scheme of describing the obligations of states to respect Human Rights. UN doc: §38 in E/C.12/2000/13:
Respect: “The obligation to respect requires States to refrain from interfering with the enjoyment of economic, social and cultural rights (§6 in E/C.12/2000/13) States should respect the resources owned by the individual itself, e.g. that individuals should be free to use his/her knowledge and that the individual is given the freedom to find a job and take other necessary actions.
Protect: “The obligation to protect requires States to prevent violations of such rights by third parties”. (UN Doc. §6 in E/C.12/2000/13) State obligations should require active protection against other more assertive or aggressive subject, e.g. powerful economic interest such as protection against fraud, unethical behaviour in trade.
Fulfil: The obligation to fulfil requires States to take appropriate legislative, administrative, budgetary, judicial, and other measures towards the full realization of such rights. The final step of fulfilling incorporates both an obligation to facilitate and an obligation to provide and it requires states take positive measure to enable and assist individuals in providing the specific right.
• Ensures that the right principles and standards from international legal framework such as IHRL, IHL and Refugee law is integrated into the development and policy process.

The HRBA was codified in the “Stamford Agreement” in 2003 and the main point of the agreement was to emphasize that in a project or a policy, human right principles apply to all stages that are mentioned above.

1.2.3 HRBA and linkages to IHL and Refugee Law

International Human Rights principles imply that HRBA is applicable to any situation concerning eviction and displacement. HRBA is considered to be a multi-disciplinary approach since it covers multiple international legal frameworks such as IHRL, IHL and Refugee law but also the social and economic impact of eviction and displacement. As highlighted by Nelson and Dorsey:

“Human rights-based approaches do not mean, as some have argued, that practitioners must rely on law and litigation to drive social change. But the RBA [Right-Based Approach] does involve a strong appreciation of the power and importance of legal guarantees, the application of international standards, and a blending of community programming with “an overtly political approach”

To comprehend HRBA, is therefore vital to consider a multi-disciplinary approach to include political and social powers that drive change for vulnerable. Moreover, the thesis wants to view HRBA in the humanitarian sector and view humanitarianism as an overall consideration in order to find a link with the two.

39 Van der Ploeg and Vanclay, 2017:38
40 Dorsey and Nelson refer to Mitlin & Hickey, 2009; Wing, 2012; Grugel & Piper, 2009; Pruce, 2015 in their quote
41 Dorsey and Nelson, 2017:99
According to Høigilt, it was after the humanitarian failure of protecting civilians in the Balkans and Rwanda (1990s) that the humanitarian community started a process of binding together IHL and IHRL for addressing crises more efficiently\(^{42}\). It is argued that at the time, the issue was putting focus mainly on the role and responsibilities of NGOs and less on the social consequences of the beneficiaries and rights in everyday life. In short, the change to a rights-based approach offered humanitarian organisations a new and much needed source of legitimacy, grounded in human rights and a sense of moral and legal obligation.\(^{43}\) Moreover, Høigilt makes a comparing notion between IHL and IHRL and argues human rights is a normative framework that is coextensive with IHL on many basic rights, such as right to life\(^{44}\).

Finally, HRBA is useful in understanding refugee status according to refugee scholars and can be considered as a “legal orthodoxy” for refugee legalisation disputes. Fundamentally, HRBA can be useful in the definition of relevant harms, state responsibilities and grounds for protection\(^ {45}\).

### 1.2.4 Four types of Human right based approaches

In HRBA to Development, scholars have committed to outlining different types of right based action which can be applicable for humanitarian action as well. From the right based actions, the thesis pinpoints four of them\(^ {46}\).

The first type of HRBA action is referred to as a “Global Compliance approaches”. This action presses for ratification, reporting, and compliance as a human rights standard, in both legal and political accountability efforts. Thus, this is highly important for the thesis as the Kampala Convention through the AU is advocating for more ratification. This action also makes use of mechanisms like

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\(^{42}\) Høigilt, 2019:173  
\(^{43}\) Sandvik, 2010:140  
\(^{44}\) Høigilt, 2019:172  
\(^{45}\) Hathaway, 2007b: 388  
“Shadow reporting” by NGOs to UN human rights bodies, and “naming and shaming” methods encouraged by states.

The second action is a “Programming approach”. A programming approach emphasises projects and programs that expand the capacities of duty bearers and rights-holders and use analysis by human rights standards and principles. The Kampala convention advocates for more obligation on the state and this approach will be particularly applicable when analysing interviews from practitioners in the field.

The third action is the one that scholars have identified as a “Rights talk approach”. The action stresses on rhetoric, advocacy, and educational work to strengthen awareness of a group’s rights through social movements, as an example. This is notion that will be particularly highlighted in the theses as much of the work for practitioners are to make IDP aware of their right. There is a current need for IDP to be aware of their rights and the thesis aim to discuss further around this.

Final and fourth type of action is a “legal mobilization approach”. The action entails litigation before domestic courts to expand and strengthen legal basis when claiming rights can lead to substantive policy changes. The thesis will focus on policy and legal framework that are set out to protect IDPs and will there not address the litigation process as it has not reached that point. The thesis will however discuss the domestication process of IDP law as an important factor.

IDPs are protected under IHRL meaning that human right norms and values apply to all individuals without distinction and in almost all circumstances47. However, the challenges lie with applying IHRL and to ensure protection of people’s rights and tracking the ones who are on the move. HRBA has encountered critics and problems when applying the approach in practice. Arguments against HRBA

47 Dieng, 2017:206
argues that movements have been active and raising issues concerning rights before upraising of interest in rights-based work, and that rights can be used in to advocate some situations but not all\(^ {48} \). Furthermore, the role of advocacy has raised doubts of whether a HRBA might create tensions and restrictions on advocates’ ability to negotiate and arrive at solutions\(^ {49} \). Concerning “rights talk”, it was argued that it is useful in addressing some forms of abuses, but not particularly effective in addressing poverty reduction in general\(^ {50} \). It is reported that it has in some instances lead to a repression for other strategies and policies since European and UN development donors insist on rights-based strategies.\(^ {51} \). The thesis aims to take this critic into consideration in the analysis.

As discussed, HRBA is used as a methodological tool when examine the situation of IDPs in the thesis. This methodology is applicable for better understanding the duty and right perspective and applying the four actions of global compliance, programming, right talk, and legal mobilization.

### 1.2.5 Spotlight on the implementation of the Kampala Convention in Ethiopia

To examine how the Kampala Convention has on the gendered effects of displacement and consider it in relation to the existing legal frameworks, the thesis will view the on-going implementation process in Ethiopia as an illustration. In chapter six, where the thesis analyses the specific gaps in terms of rights, Ethiopia will be used as a ‘spotlight illustration’, to be able to contextualize the problematic further. The illustration can be described a minor case study, which is suitable when investigating the reason behind ‘the cause’ or ‘several causes’ to develop an understanding of what is being analysed. Thus, generally the aim of a case study is to create a greater understanding of the practical obstacles, in this situation for implementation of the Kampala Convention.

\(^ {48} \) Batliwala recited in Dorsey and Nelson: 2017:99


\(^ {50} \) Grugel and Piper (2009), recited in Dorsey and Nelson, 2017:99

Convention and understand the case in depth, in its natural setting, recognizing its complexity and context\textsuperscript{52}. The implementation of the Kampala Convention in Ethiopia will be briefly introduced in section 5.3 and then brought up in the ‘Spotlight’ sections in chapter 6.

1.3 Limitations

Bryman raises two concerns with qualitative data\textsuperscript{53}. Firstly, interpreting secondary data can be problematic because the research cannot assess the validity of the primary data. Interpreting secondary data can be seen as time consuming and does not always provide enough data to conclude that is true or false. Secondly, it is not completely clear on how qualitative data can be re-used to address a different question other than the one posed by the researcher. Bryman highlight that it might take considerable investment in the primary data, to truly understand it, what it consists of and what potentially can be re-used.

Bryman’s limitations were taken into consideration when the data was collected. The interviews were conducted in order provide some degree of triangulation therefore to tackle these two notes brought up by Bryman. The interview was used to confirm or reject the conclusions of the analysis.

1.3.1 Challenge with data of displacement

On a political note, reports on internal displacement can be sensitive for states it concerns. Internal displacement is a domestic affair for states and an increased amount of people displaced can signify a weakness for the government of that state. Organisations are therefore very careful with what is presented by them, and the data must be endorsed by state that it concerns. This became significant in the interview with the IDMC representative, when discussing the impact of IOM’s work with the DTM, the interviewee expressed the following:

\textsuperscript{52} Punch, 2005:144  
\textsuperscript{53} Bryman, 2012:586
“They [IOM] have to be working with the government and that is very good because it means that the data is supported and endorsed by the government, which is a sign of political commitment. On the other hand, it means that if there is a displacement situation somewhere where the government do not want to share the information on. It makes it difficult for us to have any information on it, but that is a given in any context.54”

Endorsed procedure shows political commitment in solving the issue of the internal displaced, however the access to data that the government does not approve is limited. In other words, the international community needs to trust that state is honest with the information provided.

1.3.2 Limitation due to the outbreak of COVID19

At the time of preparation for the thesis in January 2020, the researcher had planned to travel to Nairobi state and Addis Ababa state, in Africa to conduct the interviews personally. Due to the sudden outbreak of COVID19-Virus and the travel restrictions put in place later in March, the structure of the methodology for the thesis had to be re-organized. This affected offices in the field of protection of IDPs, as mention in section 1.4.2 about semi-structured interviews, making it challenging to arrange interviews with practitioners. Reports from humanitarian agencies where that there had been a re-organization in their offices and a major effort was put in to mobilizing a response plan to handle COVID19 outbreak in refugee and IDP camps. Responses from practitioners was often delayed and resulted in the lack of interviewee subjected as planned within the time frame given for the thesis.

54 Interview 1 in April 2020
2 INTERNAL DISPLACEMENT AS A HUMAN RIGHTS VIOLATION

In Chapter two, the thesis will present internal displacement from a HRBA perspective. The aim of the chapter is to produce an understanding of internal displacement, politics of internal displacement and its causes. With HRBA, it would be beneficial to lay out the general violations that forced displacement causes. Any type of expropriation or involuntary resettlement are conflicting with fundamental human rights such as the right to freedom of movement and choice of residence\textsuperscript{55}, the right to private life and family life\textsuperscript{56} and the right to property\textsuperscript{57,58}. It can also be highlighted that the right to self-determination should be considered, especially in cases of indigenous people and their connection to their traditional land which effects their livelihoods, personal and spiritual attachments. This is only considering the act of actual displacement. The causes of displacement and the human right violations that create forced displacement also need to be considered.

2.1 Causations of displacements and linkages to legal frameworks

In the GP and the definition of IDP\textsuperscript{59}, it mentions four causations of internal displacement 1) armed conflict 2) situations of generalized violence 3) violations of human rights 4) natural or human-made disasters. However, these causes are to be considered as examples of how internal displacement may be triggered. Kälin stresses in the GP Annotations that the definition does not provide a legal definition and the four causes mention can therefore only be considered as

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\textsuperscript{55} UDHR art 13 \textsuperscript{56} UDHR art 16 \textsuperscript{57} UDHR art 17
\textsuperscript{58} Terminsiki (2017), Morel (2014) and Penz (2011 et all) recited in Van der Ploeg and Vanclay, 2017:35
\textsuperscript{59} Principle 2 of GP
examples.\textsuperscript{60} By examining the GP, one may discover that the definition can be found in the ‘introductory section’ rather than the main body of the GP and Walter Kälin\textsuperscript{61} argues that this is due to that GP is constructed in the way to underline IDPs as citizen and habitual residents in a particular state and GP’s position is to “seek to highlight the descriptive and non-legal nature of the term of IDPs”\textsuperscript{62}

With this in mind and considering that the Kampala Convention will use the suggested causes, the thesis will examine the four causations of internal displacement put forward in the GP to explore their position within IHRL, IHL and Refugee Law.

‘Armed conflict’ is by principle governed by IHL but IHRL and Refugee Law also apply. IHL covers both international armed conflicts and non-international armed conflicts and is considered as a set of rules that are codified through treaties or recognized customary law. This limits the permissible behaviour of parties involved in a conflict. Refugee Law protects individuals that flee from conflict and cross an international border. IHRL also applies in armed conflict. A state cannot suspend or abandon non-derogable rights\textsuperscript{63} under conflict which are fundamental for vulnerable groups such as IDPs.

‘Situation of generalized violence’ is a term that mainly refers to refugee law. Scholars are arguing that it has its origin in the broader refugee definition in the Cartagena Declaration\textsuperscript{64}. The term, similarly, to the term of “indiscriminate violence”, implies that the violence is untargeted, widespread, random and is affecting all. The Cartagena Declaration is widely known for being more all-encompassing than the 1951 Refugee Convention, so by using the term of generalized violence, it managed to include a larger group of people.

\textsuperscript{60} Kalin, 2008:4
\textsuperscript{61} Walter Kälin is the previous Special Representative of the Secretary-General on the human rights of internally displaced persons (2004-2010). Mr. Kälin is a Swiss legal scholar and professor of constitutional and international law at the Faculty of Law of the University of Bern and has developed the Framework for Durable Solutions for Internally Displaced Persons and the Operational Guidelines on Human Rights and Natural Disasters.
\textsuperscript{62} Kalin, 2008:4-5
\textsuperscript{63} Such as right to life, the prohibition of torture and inhuman punishment or treatment etc.
\textsuperscript{64} Holzer, 2012:5
‘Violations of human rights’ are covered by IHRL through the International Bill of Human Rights\textsuperscript{65}. In terms of internal displacement, usually civil and political rights such as right to life and right to self-determination are mainly considered. However, this dissertation will also consider how internal displacement affects economic, social, and cultural (ESC) rights such as right to education and right to health.

The GP mentions ‘natural or human-made disasters’ and refers mainly to disaster and climate induced displacement. Legally, this is addressed through IHRL and environmental rights. Kälin outlined five relevant scenarios to how climate scenarios emerge\textsuperscript{66,67}. Moreover, Kälin highlights that climate displaced are generally able to return after relatively short periods in displacement. But there are also cases where, for instance, due to a lack of sufficient support for rebuilding destroyed houses and infrastructure, it results in people remaining in protracted displacement.\textsuperscript{68}

In addition to the four examples of causations mentioned in the GP, the Kampala Convention mentions a further cause. In art 10.1 under ‘Displacement induced by Projects’ it mentions:

\begin{quote}
\emph{“State Parties, as much as possible, shall prevent displacement caused by projects carried out by public or private actors”}\textsuperscript{69}
\end{quote}

Development projects do on a yearly basis lead to 10-15 million displaced people\textsuperscript{70}. Through UN’s fact sheet on forced eviction (2014), scholars Van der Ploeg and Vanclay outlined a framework when an exploration and involuntary resettlement can be justified through a human rights perspective\textsuperscript{71}

\begin{flushright}
\\\footnotesize
\hspace{1em}
\end{flushright}

\textsuperscript{65} Which includes the UDHR, and the two international covenants and the 9 International Human Rights Treaties
\textsuperscript{66} Flooding, droughts, rise of sea-level, high risk zone that is contaminated by emissions and conflict due to lack of resources
\textsuperscript{67} Kälin (2010) recited in Kälin 2018:3
\textsuperscript{68} Kälin, 2014:2
\textsuperscript{69} Art 10.1 in the Kampala Convention
\textsuperscript{70} Terminska, 2015 recited in Van der Ploeg and Vanclay
\textsuperscript{71} Van der Ploeg and Vanclay, 2017:35
Development induced displacement plays a particular role within the general IDP discussion as humanitarian actors such as IOM and UNHCR tends to focus on humanitarian displacements such conflict- or disasters-induced. However, since the Kampala Convention highlights the causation, this thesis will take it into consideration in the analysis.

2.2 Numbers of internal displacement

According to the IDMC 41.3 million people are estimated to be living in internal displacement\(^{72}\). These numbers are counted from 55 states. Three-quarters of the number, 30.9 million people, are situated within 10 states. It is noted that 16.8 million of these 41.3 million people is in the African Continent, which is 40% of the global total\(^{73}\).

IDMC has also gender disaggregated the data and estimated that more than of half of all IDPs, nearly 21 million, are women and girls\(^{74}\). Furthermore, IDMC have divided the women and girls into the following age groups:

<table>
<thead>
<tr>
<th>Age group</th>
<th>Amount of Internally displaced</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-5</td>
<td>2.6 million</td>
</tr>
<tr>
<td>5-14</td>
<td>4.6 million</td>
</tr>
<tr>
<td>15-24</td>
<td>3.9 million</td>
</tr>
<tr>
<td>25-59</td>
<td>7.9 million</td>
</tr>
<tr>
<td>60 and above</td>
<td>1.7 million</td>
</tr>
</tbody>
</table>

Table 1. Age disaggregated internally displaced women in the world

In 2018, IDMC estimates that there were around 28 million new displacements within the year\(^{75}\). IDMC splits the data down to two groups: climate and disaster induced displacement, which comprise 17.2 million people and conflict induced displacement which comprise 10.8 million people. Some of these displacements

\(^{72}\)IDMC, 2019:v
\(^{73}\)IDMC, 2019b:8
\(^{74}\)IDMC, 2020: 6
\(^{75}\)IDMC, 2019:6-7
were resolved and some of them remained displaced, adding them to the yearly count that IDMC produces every year. Moreover, IDMC statistics shows that climate induced displacement can be found in 144 countries while conflict induced displacement is divided between a smaller number of states: 55 states, and in particular three states (Ethiopia, DRC and Syria) accounts for approximately half of it – 5.4 million\(^{76}\).

Furthermore, what also should be noted is that there is lack of data on displacement caused by project-induced displacement. An estimation of 10-15 million people a year was mentioned above but clear data remains lacking.

### 2.3 Historical overview of internal displacement

In order to contextualize the potential achievements of the Kampala Convention and to investigate gendered protection of internal displacement, it is important to acknowledge the historical foundations of IDP protection. This will also be useful when the thesis outlines which legal framework that applies for IDP and investigates the challenges for gendered impact of internal displacement on the illustration of Ethiopia.

Internal Displacement became a concern of the international community at the end of the Cold War\(^ {77}\). In 1992 the UN Human Rights commission installed the first SGSR Francis M Deng. According to the four type of HRBA, the international community commenced with a ‘global compliance action’ and UN stressed on global level that human rights standards was not upheld for IDPs. In 1995 Deng submitted his ‘Compilation and Analysis of Legal Norms’ where he argued that international law sufficiently responds to most needs of IDPs. However, the study did highlight that relevant human rights and humanitarian law guarantees do not specifically address internal displacement and an identified lack of specific rights for IDPs that would ensure implementation of the general norm in areas of

\(^{76}\) IDMC, 2019: 6-7

\(^{77}\) Kälin, 2014: 6
The particular need to internally displaced persons. The Human Rights Commission proceeded with the report by recognizing that the protection of IDPs would be strengthened by identifying, reaffirmed, and consolidating specific rights for their protection. The became the start of the process to create the 30 Guiding Principles.

After 1998 when the GP was enforced, there was a debate within UN on how the UN agencies should respond to the upcoming emergencies of internal displacement. When the UN took its first step to tackle internal displacement in 1992 with the instalment of the first special representative for IDP, it was a complicated issue for the UN to handle since they had no explicit agency to handle the internal displacement. The UN High Commissioner for Refugees (UNHCR) was firstly given the mandate of protection of IDP. However, critics during these times raise the issue that there were structural issues with UNHCR’s given mandate for protection of IDPs from the beginning and how it derailed the agency’s original Refugee protection mandate. It was argued that it disorientated the refugee agenda as a matter of international concern and create a minor identity crisis for the UNHCR. This lead did overall lead to a change in the focus of forced migration in the end of the 1990s from the traditional focus on refugees through the 1951 Geneva Convention and ‘refugees status determination’ to focus more on other types of displacement such as internal through guidelines, the special rapporteurs and the modification of the agency mandate and agenda such as the UN cluster approach. Taken into consideration that the protection of IDPs is a combination of both the existing provision of International Human Rights Law (IHRL) and International Humanitarian Law (IHL) since the internal displacement do concern internal affair of the domain state. Further the

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78 Deng, 1995 recited in Kälin, 2014: 6
79 We will return to Deng’s Compilation and Analysis of Legal Norms below
80 Hathaway, 2007:357
81 Hathaway, 2007:357
82 The UN cluster approach was launched in 2005 and was meant to unite UN agencies in Humanitarian Emergencies. The cluster approach delegates different thematical tasks to UN agencies and UNOCHA is placed as the main coordinator role. For further information: https://www.humanitarianresponse.info/en/about-clusters/what-is-the-cluster-approach
combination was confirmed in the introduction of the GP, where it claims that the GPs are consistent with both IHL and IHRL

3 LEGAL PROTECTION OF IDPs

As highlighted above, the GP was an essential document in emphasising the necessity of protection for IDPs were needed. The GP can be argue to hold both a ‘programming’ and ‘right-talk’ action of HRBA as it emphasis to expand the capacity of duty bearers and right-holders, simultaneously as it stresses the rhetoric and advocacy that strengthens the IDPs themselves. In this chapter an overview of the document will be presented and academic discussion that arose afterwards examined. The debate on IDPs as a special category of concern will be looked at. Revisiting the debate will further elaborate on which legal framework applies to IDPs and how to apply a HRBA on the protection of IDPs. The thesis will provide a more in-depth discussion by utilizing the arguments already produced by the two opposing sides. Finally, there is discussion of the legal analysis ‘Compilation and analysis of legal norms’ by Francis M Deng that explores the legal gap of protection for IDPs within IHRL, IHL and Refugee Law.

3.1 Guiding Principles

The GP was firstly adopted by UN Human Rights Commission and followed by the United Nation General Assembly in Resolution 53/125. In annex w, the thesis presents a brief summary of the principles in the GP.

Orchard\textsuperscript{84} summarizes the GP by arguing that it introduces 3 norms with respect to practices towards internally displaced\textsuperscript{85}: the IDP definition, IDP’s legal

\textsuperscript{83} Guiding Principles introduction, paragraph 3.
\textsuperscript{84} Phil Orchard is Associate Professor at the University of Wollongong and published ‘Protection the Internally Displaced: Rhetoric and Reality’ (Routledge) in 2018
\textsuperscript{85} Orchard, 2018
entitlement and the relationship between national authorities and the international community.

The GP introduced an IDP definition as highlighted above\(^\text{86}\). The definition outlines a subject group that is defined by armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters and those who has not crossed an international border. Orchard highlights that several different IDP definitions were used prior to 1998, and that after the GP, international practice became more transparent. The GP establishes that IDPs are entitled to the same legal protections as other citizens within their own countries. Orchard primarily focused on principle 10-23 in this case. And finally, GP establishes the relationship between the national authorities and the international community. This is established through article 3, where the GP outlines the national authorities have the primary responsibility. At the same time through articles 24-26, the international community has an important role to have the right to offer their services. Orchard stresses that this norm reflects UN practice towards humanitarian assistance, and that the General Assembly Resolution 46/18225 established that all humanitarian efforts “must be provided in accordance with the principles of humanity, neutrality, and impartiality”. Orchard continues to argue that the resolution introduced a significant limitation in the form of assistance through the formulation “be provided with the consent of the affected country which give the affected State a primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory.”\(^\text{87}\)

Considering gendered impacts of internal displacement and feminist approaches to international law, it is argued that GP does not have provisions that are clearly directed towards internally displaced women. The GP does provide a gendered call for protection for two matters; Safeguarding women form gender-specific

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\(^{86}\) See introduction
\(^{87}\) Orchard, 2018
violence such as rape, forced prostitution and sexual exploitation. Secondly, it calls for protection through upholding their right to equal access to services and participation in assistance programs. Additionally, Groth highlights that despite the presence of the GP, abuses against internally displaced women remained widespread and the majority do not have adequate access to physical, legal, and social protection. The thesis will further discuss protection for internally displaced women and the impact of ESC rights.

To briefly clarify, IDPs are today considered as a special concern both in the humanitarian and development sector. IDP status as a specific category of concern is largely considered as an academic debate. States and organisations consider IDPs as a specific category of concern and there is no indication that it will change. The background of the indication is that the GP has established domestic laws in more than 20 countries who are affected by the internal displacement, which can be interpreted as the legal mobilization element of HRBA. The domestic law instruments are presented in varied forms. For instance, in Burundi and Liberia there are short references to declarations such as the GP. In Uganda, Georgia, Nepal, Sudan and Iraq, there has been developed a more detailed policies and strategies, however limited to specific causations of displacement. In Kenya there are specific laws covering all phases of displacement.

3.2 Revisiting the debate of IDPs as a special concern of protection

After the GP was introduced, a debate considering IDPs role in international law arose. There were many contributors to the debate, but it mainly consisted of

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88 Guiding Principle, 11.2A and 2B
89 Guiding Principle, 20.3
90 Groth, 2011:228
91 Kälin 2014:4
92 Kälin, 2014:10
Refugee Scholars James C. Hathaway\textsuperscript{93} and David Turton\textsuperscript{94} arguing that a special category of concern for IDPs is not needed. On the opposite side, argumentation for a special concern of Protection was raised from the scholars at the Brookings-Bern Project on Internal Displacement, such as Roberta Cohen and Erin Mooney\textsuperscript{95}.

Fundamentally, Hathaway raises the concern of why internal displacement is connected to Refugee Law and not directly to Human Rights Law instead. He argues that IDPs should not be elevated out of ranks of other internal human rights victims just because the fact that they are facing different forms of human rights abuses\textsuperscript{96}. In the view of Hathaway, the only shared symptom that Internally displaced and refugees have together is involuntary movement\textsuperscript{97}. In this sense there is an ongoing confusion on the IDPs role in International law. Hathaway is concerned for the impetus for governments in labelling IDPs. Hathaway argues that some powerful states might use the IDP label to avoid refugee flows. Governments on the outside may be able to deal with people ‘on the move’ before the cross international borders and therefore avoid legal obligations\textsuperscript{98}.

From the organisation's side, there was some criticism raised from The International Committee of the Red Cross (ICRC) and the Oversea Development Institute (ODI). ICRC maintained in a report from 2009 that ‘ICRC does not believe that someone displaced is automatically more vulnerable than someone who is not’ and argues that labelling people and cataloguing humanitarian aid has introduced danger to some groups and a great risk of neglect\textsuperscript{99}. Also, in 2009, a study from the Oversea Development Institute stressed that identifying IDPs as a distinct category has not improved their situation\textsuperscript{100}.

\textsuperscript{93} Professor from the University of Michigan Law School and highly recited in refugee studies due to his book ‘The Law of Refugee Studies’ and ‘The right of the refugee in International Law’
\textsuperscript{94} The former Director of the Refugee Studies Centre at University of Oxford
\textsuperscript{95} Additionally both are Senior UN Protection Advisers
\textsuperscript{96} Hathaway, 2007:361
\textsuperscript{97} Hathaway, 2007:359
\textsuperscript{98} Hathaway, 2007b, 386
\textsuperscript{99} ICRC, 2009:21
\textsuperscript{100} ODI 2009: 53
To rationalize further on the legalisation for protection of IDPs, Turton discussed why IDPs could not be called “internal refugees” even though it has two conceptual advantages as he argues. Firstly, it would reflect the refugee-like situation of the internal displaced and put the emphasis on the need of international protection. Secondly, it would throw wide open the description of IDPs for all types of displacement and not only the criteria that are mentioned in the GP. Nonetheless, he continued, these conceptual advantages are not enough as it would undermine the protection available to refugees in international law. By aligning the two conceptional framework, it would damage the unprotected people outside their own country and there would be less existing obligation to “external” refugees under internal law and weakening the existing institution of asylum.

The non-displaced victims could choose to stay or could be too disabled or too old to flee, in this case they would remain in the line of attack or persecution with a clear risk to life. Hathaway asks if since IDPs face different abuses, are they to be given prioritized attention? Furthermore, Hathaway suggest that the strings should be tightened between IDP law and International human rights Law so the international community should address all human rights victims, displaced or not.

On housing, land and property, Hathaway argues that it is moreover true that loss of home and other property is a fact that often unites refugees and IDPs, and that generic international human rights law provides no guarantee of property rights as such.

Turton raised the concern that the GP’s definition of IDPs place to much focus on the state to provide protection to its citizens, “in particular by armed conflict, generalised violence, human rights violations and “natural or human-made disasters.”

101 Turton, 2011:7
102 Hathaway: 2008:367
103 Hathaway: 2008: 362
disasters.”. Turton argues that this proves that the emphasis of the GP is not so much on displacement or on the physical location of the displaced person per se but rather on an assurance that the formal protection should be provided by the state that the person is a citizen of\textsuperscript{105}. For example, Turton questions if this is the reason why the largest category of IDPs, the forced resettlers or those displaced by developing projects are not listed among those whom the GP “particularly” refers to. Therefore, the GP allows Government to move people for the benefit of the wider community and relies on the current domestic law with the domain country to provide the protection needed. Depending on the government, this can have an impact on the ethnicities within the country. The political ideas of the government determine the tools and opportunity for discrimination against certain ethnicities within the state, all while benefiting other citizens.

Lastly, Hathaway’s criticism is based on the concern that the label of ‘forced migration’, which includes refugees, IDPs and to some extent migrants, will consume the established protection of refugees from the 1951 Geneva Convention. By giving IDP’s a specific category of concern, it would privilege the IDPs in front of “non-displaced persons” who also experience human rights violations. However, in a one of the responses to Hathaway from DeWind, it is recommended to rather than to focus on the potential dilution of protection of refugees, the international community should focus on how a HRBA could instead broaden the definition for both refugees and other forced migrants\textsuperscript{106}. Hathaway concurred on this notion at a later stage\textsuperscript{107}.

3.3 The reasons why IDP should be considered a specific category of concern

In a response to Hathaway, Cohen dismissed Hathaway's critique by arguing that Hathaway was traditionalist in his argumentation and excessively shielding

\textsuperscript{105} Turton 2011:6
\textsuperscript{106} DeWind, 2007:383
\textsuperscript{107} Hathaway, 2007b:388
refugee law as a distinct branch of international law and refugee’s distinct international legal status. 108 She suggests that in reality there is little de facto difference.109 Cohen dismissed Hathaway’s statement that the only shared symptom that IDPs and Refugees have is the involuntary movement. For Cohen, IDP and refugee have more in common such as the same types of persecution and discrimination.

A recent book110 based on the debate on the role of IDPs concluded on three reasons why IDPs should be treated as a distinct category. Firstly, national authorities’ responsibilities to provide protection and Humanitarian assistance to IDPs often remains unfulfilled. States have frequently prevented access to IDP populations on sovereignty grounds, or even simply deny that they have IDPs at all. Orchard brings the extreme examples of the case of Darfur when Sudanese Government put constraints on the humanitarian space and access. In addition, he highlights how the Syrian Arab republic in 2013 positioned themselves stating that they did not have any internally displaced persons and exposed to terrorist attacks by armed outlaws and people being assisted were referred to people who left their home due to the terrorist attacks.111 Secondly, IDP should be considered as a special category as they face the significant trauma of flight and protracted camp situations. Through their vulnerable situation many IDPs have lost access to livelihood, education and health care and may also lack identification and access to service. Due to the vulnerable state, IDPs are also at higher risk to become victims of gender-based violence and directly target other types of violence.

Thirdly, due to the lack of recognition and the vulnerable state that IDPs face, Housing, Land and Property (HLP) is a notable issue for IDPs. Noteworthy is that this seems like this could be a point that both sides of the debate agree on.

108 Cohen, 2007:371
109 Cohen, 2007:371
110 Phil Orchard is Associate Professor at the University of Wollongong and published ‘Protection the Internally Displaced: Rhetoric and Reality’ (Routledge) in 2018
111 UNGA UN doc: A/67/931 recited in Orchard, 2018
In sum, HLP rights are about having a home, free from the fear of forced eviction. What ‘IDP as a special category of concern -advocates’ are arguing here is that HLP rights are human rights, particularly the right to adequate housing, that get highly jeopardized during internal displacement. IDPs belong to the poorest and least addressed and most neglected aspects of humanitarian response and shelter becomes a particular issue. Orchard also raised the issue of lack of IDP camps and that IDP are forced to live with host families, or in private or makeshift lodgings.\textsuperscript{112}

Moreover, Cohen rejected Hathaway’s concern that IDP is already covered by IHRL. She stresses the importance of the legal analysis \textit{Compilation and analysis of legal norms} done in the pre-work to the GP where 17 areas of insufficient protection for IDPs and eight areas of clear gaps in IHRL and IHL were identified as insufficient protection for IDPs. The GP does in that way provide a framework for specific protection needs of IDPs and provided much needed guidance to governments and international organisation and other actions on how to engage with displaced populations\textsuperscript{113}.

Moreover, Dieng raises the issue of the correlation of sovereign rights and the responsibility of states to protect citizens within their border as another gap in the protection of IDPs\textsuperscript{114}. He argues that even though states and governments may be in power over the whole territory, due to political instabilities and even due to other power groups within the territory, states are incapable to provide protection to all. However, there has also been an argument that providing an international treaty to address the gaps in IDP protection, would be an intrusion on state sovereignty, where more powerful states would have a justification to interfere in domestic affairs of a state.\textsuperscript{115} This is why the protection of IDP is such a delicate matter that needs to be precisely balanced. Further, through IHL, IHRL and
Refugee law, States have reaffirmed certain obligations of protection and cannot use the right to sovereignty as a sweeping reason to treat their population as they like.

In a more recent analysis, David Cantor\textsuperscript{116} reaches three conclusions on the role of IDPs in International law and the relationship between IDP, Human Rights Law and Refugee Law\textsuperscript{117}. Firstly, IDP law can be considered as an emerging legal field and generates new questions about its distinct nature as compared to other legal fields. Secondly, it points to a more complex relationship between IDP protection standards and wider human rights law than has thus far been acknowledged. Thirdly, Cantor suggests that the legal distinction between IDPs and refugees may not be as sharply drawn as is sometimes assumed, such that a more nuanced understanding might now be introduced into the original legal debate on this relationship\textsuperscript{118}

### 3.4 The identified legal gaps in the protection of IDPs

The United Nations Secretary-General’s Special Representative on Internally Displaced Persons Francis Deng’s report \textit{Compilation and analysis of legal norms}\textsuperscript{119} (1995), covers three legal frameworks IHRL, IHL and Refugee law\textsuperscript{120}. In the analysis, the legal team investigate potential legal gaps for IDPs where the following three situations are being presented\textsuperscript{121}:

1) situations of tensions and disturbances, or disasters where human rights law is applicable.
2) situations of non-international armed conflicts (NIAC in IHL). It is mainly governed by most central principles of IHL but contains also many IHRL guarantees.

\textsuperscript{116} Professor David Cantor is founder and Director of the Refugee Law Initiative, School of Advanced Study, University of London
\textsuperscript{117} Cantor, 2018:192
\textsuperscript{118} Cantor, 2018:217
\textsuperscript{119} UN document: E/CN.4/1996/52/Add.2
\textsuperscript{120} See Paragraph 13-26 in E/CN.4/1996/52/Add.2
\textsuperscript{121} See Paragraph 27-46 in E/CN.4/1996/52/Add.2
3) situations of International Armed Conflict (IAC) where IHL is the primary operative framework but where also many important IHRL guarantees are applicable.

The findings of the analysis reports 25 both sufficient and clear gaps, they are stated in Annex 2. The thesis highlights four of the ‘insufficient protection gaps’ and two of ‘the clear gap’ that can be connected to gendered impacts of displacement. Deng and his legal team argue that gender equality is fully or partly affected by these gaps of protection. The report stresses a disproportionate assistance in protection and support between women, men, girls and boys. To understand gendered impacts of internal displacement, the thesis will in chapter four investigate the linkage between Gender and Internal Displacement further.

Conclusively, this chapter discussed which legal framework applies to IDPs beyond the existing legal frameworks of IHRL, IHL and Refugee law. By revisiting the debate around IDPs as a special category of concern, it materializes an understanding of the advantages and disadvantages of specific provisions of protection for IDPs. Hathaway et al demonstrated how IHRL should provide legal protection for IDPs and how it might dilute the traditional protection of Refugee from Refugee law. The opposing side of Cohen et al argues that it instead highlights the vulnerability of IDPs. To narrow it down, the discussion led to the original legal analysis ‘Compilation and analysis of legal norms’ produced by Francis M Deng. In this analysis, the thesis highlights four of the ‘insufficient protection gaps’ and two of ‘the clear gap’ that can be connected to gendered impacts of displacement.

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122 Right for protection against Gender-specific violence; Right to Medical care and special needs for women in reproductive rights and psychological health as well as for disabled persons in camps; Right Family related needs and reunification and the Right to Work and the special needs of internally displaced women and of internally displaced persons in general to seek equal opportunity for employment.

123 Right to personal identification, documentation and registration and Protection of property-related needs and the right to restitution of property lost.

124 Noticeably, gender impact can be traced in many of these gaps such as right to education, political participation and right to subsistence needs such as food, water, clothing.
4 GENDERED IMPACTS OF INTERNAL DISPLACEMENT

For around 50 years now, gender has been a growing matter that needs to be taken into consideration all sectors of international cooperation and aid - emergency/humanitarian, development and peace. Gender has formed a legislative base through human right legislation in the UN Charter Articles 1 (3), 13 (1) (b), 55 (c), and 76 (c), the 1979 Convention on Elimination of All Forms of Discrimination against Women (CEDAW), the Universal Declaration of Human Rights (UDHR) articles such as Art 2, 7 and 23 and the International Covenant on Civil and Political rights articles 3, 23 and 26. As highlighted above, Feminist approaches to International Law argues the key to gender is through recognizing ESC rights. We will therefore focus on fours sectors below, livelihood, security/protection, health and education which all of them are highly connected to upholds an ESC rights regime.

In the international cooperation and aid, there has been many calls for action for gender equality such as the 1995 Beijing Platform for Action that established an overarching roadmap of priority areas of work in order to achieve gender equality worldwide, as well as various international documents dedicated to specific urgent issues like Gender-Based Violence (GBV) and access to reproductive rights for women and girls. However, despite the undeniable advancement of access to fundamental rights for women, research shows that humanitarian policies and practises tend to take women to be understood as uniformly vulnerable and usually also group them in the same vulnerability group as children. By failing to unpack a universal category like women, denies further aspects of diversity like class, ethnicity, origin, and age. This will fundamentally affect women’s access to basic right and in the extent also equalize the specific needs of other vulnerable groups like children or

125 Understood as relations between men and women, both perceptual and material
126 Art 2 Ban on Discrimination, Art 7 Equality before the law and Art 23 Right to Work
127 Art 3: The right to equality between men and women in the enjoyment of their civil and political rights, Art 23: The right to marry and found a family and Art 26: The right to equality before the law and equal protection
elderly. A “universal rights” approach tackled the challenges that previous generations faced towards gender equality, like the acknowledgement that the needs of both sexes are equally important, but failed to recognize that those needs are fundamentally different and without effective policy frameworks and tools that cater for those different needs, these differences will persist. Pittaway and Bartolomeu argue that there is a male bias in refugee policy, a supposition that women’s needs will be automatically covered by addressing needs articulated for and by men.\textsuperscript{128} Moreover, research shows that the dominant representation of women as helpless, infantilised victims is a global image that challenges women’s agency and does little to address the real concern in crisis\textsuperscript{129}. Women are either equated with vulnerability, victimhood or portrayed as capable of remarkable resilience and agency which therefore leaving little room for complexity or the multiple factors that condition their lives\textsuperscript{130}. This is one of the main reasons why is highly important to address gender-disaggregated data, to truly understand the inter-sectionally of internally displaced women\textsuperscript{131}. Furthermore, Pittaway and Bartolomei emphasizes that gender inequality considerations affect every step of displacement from reception to durable solutions\textsuperscript{132}.

In an Overseas Development Institute article written by Holloway, Stavropoulou and Daigle\textsuperscript{133}, they highlight how important it is to consider rejecting gender essentialism in gender and displacement. Gender essentialism refers to an acknowledgement of an innate set of shared characteristics that are connected to a person through their biological, psychosocial, or social characteristics. By rejecting this, they open a recognition of other experiences of displacement among minorities that do not fit in heteronormative or binary standards\textsuperscript{134}. Overall, this thesis will consider gendered impacts on displacement, understood not only as

\textsuperscript{128} Pittaway and Bartolomei, 2018:2  
\textsuperscript{129} Pittaway and Bartolomei. 2018:6-7  
\textsuperscript{130} Holloway, Stavropoulou and Daigle, 2019:9  
\textsuperscript{131} Furthermore, a reason for why data should be disaggregated not only by gender and sexuality but by age, disability, ethnicity, racialisation, caste and socioeconomic class  
\textsuperscript{132} Pittaway and Bartolomei, 2018:2  
\textsuperscript{133} Holloway, Stavropoulou and Daigle, 2019:9  
\textsuperscript{134} The article refers to previous work done by Myrtilin and Daigle in their article “When merely existing is a risk: Sexual and gender minorities in conflict, displacement and peacebuilding” (2017)
how displacement affects women and girls, but including the specific impacts to men and boys caused by the societal expectation (by themselves or others), to act as “men”. Holloway, Stavropoulou and Daigle highlight that that many humanitarian actors claim to adopt a gender lens, however many of these reports primarily focus on women and play less attention to masculinities and diverse gender identities, which research has proved produce specific impacts in displacement. This is particularly true in sectors such as security, gender-based violence, prevention of sexual exploitation and abuse, and in health where psychosocial support should be available for men as well.

To truly apply a HRBA on gendered impact, it is important to emphasis equal participation in community structures. A step towards tackling gender-based displacement is to empower equal civil and political rights. In the case of women’s empowerment, there are multiple examples of how in displacement, women have started informal groups to support each other in the process of improving their power in decision-making\textsuperscript{135}.

When gender inequality persists in a society, it makes women more vulnerable to crisis already. For instance, women mostly do not have land property or occupy plots to work the field for their husband/families, women lack higher education hence they cannot access the remunerated jobs which leads to lower income. The crisis enhances previous discrimination and make it worse as women would have less resources to face them, confirmed by interview informant:

\begin{quote}
“Internal Displacement effect women and girls more in the sense that they are already more vulnerable, marginalized and fragile in different context so when internal displacement hit, it makes it harder for them to recover”\textsuperscript{136}
\end{quote}

If you tend to include cultural restriction for women as well, inequality becomes even more evident. When discussing access to IDP registration for women, the IDMC researcher further argued:

\textsuperscript{135}\textsuperscript{Bouta, 2015 and Ritchie, 2018 recited in Holloway, Stavropoulou and Daigle, 2019:15}

\textsuperscript{136}\textsuperscript{Interview 1 in April 2020}
“Regarding IDP registration, legally, there should not be any difference. Displaced women have the same right as the displaced man to register as an IDP. [...]. But what would apply differently is that in some cultural context, women may not be allowed or not acceptable for them to go without their husband or father to see a state authority or meet a NGO [Non-governmental Organisation] representative on their own”\textsuperscript{137}

The interview pinpointed that Cultural restrictions need to be consider when discussing gendered impacts of internal displacement.

### 4.1 Livelihood

Livelihood is often experienced as a deterioration of living standards as internal displacement leads to losing property, assets, capital, and income. Women are particularly exposed as IDMC highlights example of where internal displacement has in a higher degree lead to women losing their employment in comparison with men\textsuperscript{138}. IDMC also reports that due to separation or loss of male family members, it can leave displaced women as head of household, which puts the household under financial constrains as the household will have a single income if the women is working. It can also have big consequences if following conservative practices, the man was listed as head of the household hence the sole entitled recipient of humanitarian assistance\textsuperscript{139}.

In general, crisis as displacement may lead to a reversal of traditional economic roles with women taking on more economic responsibility, including livelihood programmes that target women as vulnerable groups, or the increase of registered female headed households (FHHs). Evidently, this places heavy pressure on traditional gender roles within households in patriarchal communities. However, Holloway, Stavropoulou and Daigle highlight that we should be careful with the term FHH as it creates a binary perception of headship and households. They

\textsuperscript{137} Interview 1 in April 2020
\textsuperscript{138} IDMC, 2020:12-13
\textsuperscript{139} IDMC, 2020:13
highlight that the term of headship has been criticized as a western heteropatriarchal construction that reduces households down to economic units and does not take into account diverse family structure across different cultural and social context. Data from Syrian Refugees in Jordan shows that female principal applicant households were not likely to be poorer than male applicants but there were different poverty rates depending on the structures of the household.\textsuperscript{140}

Additionally, in discussion of livelihood and gender, the right to housing, land and property (HLP) needs to be discussed in terms of gender. In many circumstances, displaced women already lack equal rights to owning and registering property under their names, as well as discriminatory regulations in relation to property inheritance rights, which worsen the situation. This is noticeable in the phase of returning when the right to restitution for lost property is commonly discussed. The situation is even more problematic for women as laws and customary practices tend to be gender discriminatory and impede women (in particularly elderly women or widows claiming their late husbands’ land) to regain their property or possession.\textsuperscript{141}

On an encouraging note, forced displacement can also lead to changes in gender norms when communities are able to relax gender stereotypes given the need for survival. In Yemen, it was reported that displaced women had started working as butchers, barbers, and poultry sellers, which usually would be consider culturally shameful\textsuperscript{142}. Moreover, displacement may lead empowerment for women as it creates greater self-esteem, increased autonomy and enhanced voice in the household and community.\textsuperscript{143}

\textsuperscript{140} Holloway, Stavropoulou and Daigle, 2019:10
\textsuperscript{141} Holloway, Stavropoulou and Daigle, 2019:21
\textsuperscript{142} Gressman, 2016 recited in Holloway, Stavropoulou and Daigle, 2019:10
\textsuperscript{143} Holloway, Stavropoulou and Daigle, 2019:10
4.2 Security and Protection

Security and protection need to be considered when discussing gendered impacts of displacement. If gender norms underline a subordination of femininity and normalise masculine aggression, dominance, and control, it could lead to justification of the use of force and violence to enforce power relations. This is demonstrated through an indicated increase of gender-based violence in all regions during displacement and conflict. In a quantitative research, it was shown that one out of 5 refugee or displaced women has experienced sexual violence. Ample sources among specialized organizations highlight that this number is probably higher due to under-reporting due to the social stigma, fear, and retaliation. As a matter of a fact, in a report from 2019 the UN Security General did argue that sexual violence is a both a driver and a result of forced displacement. To truly contain all full protection against gendered impacts, violence such as material rape and domestic violence should be considered. For a complete protection of all gendered impacts of displacement it is important with an expanded conceptualization of violence. As a correlation with the loss of livelihood, it creates additional insecurity for women and girls. It may force women and girls to engage in negative coping mechanisms as transactional sex, sex work, or increase practices like child marriage, with heightened risk for violence and abuse. The increased insecurity might also force girls to stay home instead of going to school, which in the long haul decreases their chance of achieving an adequate livelihood in the future.

4.3 Health and access to health

Displacement effects health and the access to health facilities. Overall, IDMC conducted a comparative survey of perceptions of access to health services among displaced men and women in urban or rural areas. Those who were displaced to

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144 Stark and Ager, 2019 recited in Holloway, Stavropoulou and Daigle, 2019:16
145 Vu et al, 2014 recited in Holloway, Stavropoulou and Daigle, 2019:17
146 UN, 2019, Paragraph 15 in UN Doc S/2019/280
147 IDMC, 2020:15
urban areas experienced an improvement in the access to health facilities\textsuperscript{148}. However, displacement to rural areas lead to a perception of worsen health access\textsuperscript{149}. Concerning maternal health, displacement increases the difficulty of women to afford contraception or access age-sensitive reproductive health counselling, stigma surrounding sexual and reproductive health and other factors can lead to unintended pregnancies. Equally, displacement leads pregnant women and girls to receive less prenatal care and external health risks which can affect the pregnancy\textsuperscript{150}. 52 per cent of households living in internal displacement settlements in Somalia and 34 per cent of internally displaced households in Afghanistan said pregnant women gave birth outside a healthcare facility. In terms of mental health, IDMC also highlight that displaced and returnee women and girls suffer more from post-traumatic stress disorder, depression and anxiety than displaced men and non-displaced women\textsuperscript{151}.

4.4 Education

It is quite clear that forced displacement impacts education. For instance, UNHCR reports that on global level in secondary level there are only about seven refugee girls for every 10 refugee boys enrolled\textsuperscript{152}. A gender gap is also discovered among teachers working with refugees. In Chad, for example, 98 % of the teachers in pre-primary are female but in secondary school, only 7% of the teachers are female\textsuperscript{153}. This may become a barrier for access to school of adolescent girls in traditional communities that disapprove of girls mingling with adult men.

IDMC reports that in case study of displaced girls in Banadir, Somalia it was clear that displacement lead to less girls attending school\textsuperscript{154}.

\textsuperscript{148} Case study of Somalia in IDMC 2020:15
\textsuperscript{149} Case study of Ethiopia in IDMC 2020:15
\textsuperscript{150} IDMC, 2020: 15
\textsuperscript{151} IDMC, 2020:15
\textsuperscript{152} UNHCR, 2019:26
\textsuperscript{153} UNHCR, 2019:27
\textsuperscript{154} IDMC: 2020:16
On an encouraging note, Holloway, Stavropoulou and Daigle highlight that from IDPs in Pakistan and Iraq, it was seen that schooling in displacement lead to improved marriage prospects and girls were exposed to new ideas that lead them to learn more about their rights, achieve greater mobility and more control of their life and choices.

### 4.5 Conclusion: Chapter Four

The thesis has in this chapter outlined the relationship between internal displacement and gender. It emphasises that gender does play a role in all the steps of displacement. Through feminist approach to international law, it is possible to identify all the potential layers of disproportionate weight given to internally displaced women, men, boys, and girls. The chapter also highlights the need to recognise ESC rights in order to tackle the gendered impacts of internal displacement.

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155 IDMC 2020:16

156 Holloway, Stavropoulou and Daigle, 2019:16
5 REGIONAL PROTECTION OF IDPS IN THE AFRICAN CONTINENT

The background and context of the Kampala convention treaty will be described. The Kampala Convention is in many ways similar to the GP which the chapter will look into. The thesis will highlight five developments that the Kampala Convention has added to the protection of IDPs. Finally, the chapter will apply the seven gaps of gendered impacts on displacement and add them in a context of the Kampala Convention and in African context.

5.1 The background to the Kampala Convention

Displacement have for a long time been prevalent in the Africa continent. The African continent has been through natural disasters, conflict and development projects, that has led to people being driven to displacement. During the past decade, the African continent is the region with most experienced conflicts and violence globally. In 2018, 7.5 million new displacements were caused by conflict on the African Continent alone. Natural disasters are also a driver for displacements for the past decade. During 2018, 2.6 million people were displaced due to floods, drought, storms to mention a few.

As a political background, it is worth mentioning the provisions of the 1969 Organisation of African Unity’s (OAU) convention highlights that member states should be prevented from interfering in domestic affairs of other members states. Despite this the OAU and its successor to the African Union started in the early 1990 to address the protection and assistance challenges IDPs are facing in Africa. The African Commission on Human and People’s Rights (ACHPR) arranged in 1994, a seminar on the protection of African Refugees and IDPs in Harare, Zimbabwe. The outcome of the seminar was a recognition of the challenge that forced displacement interfered with peace and development on the

\[\text{\cite{IDMC, 2019:13, Dieng, 2017:270}}\]
African continent and how the African countries were responsible of addressing the challenge.\(^{159}\)

To support the outcome of the Harare Seminar in 1994, the ACHPR appointed Bahame Nyanduga to be Special Rapporteur for Refugees, Asylum seekers and IDPs in Africa. Nyanduga’s initiative was to draft an appropriate legal framework that would guarantee IDPs adequate protection and assistance. The framework led to creation of a commission that reaffirmed the political will and commitment of African countries to negotiate and adopt specific instruments to address the challenge of displacement in Africa.\(^ {160}\) The outcome of the commission was the rise of the Kampala convention.

Dieng\(^ {161}\) pinpoints that the adoption of a fully-fledged African instrument for the protection of IDPs, creates unexpected challenges. The major challenge among them was the reluctance of some States to adopt an instrument which they considered unnecessary. These states felt that the IDP challenge was an internal issue and that any attempt to adopt legislation to provide for the protection of IDPs would violate the sovereign right of non-interference in domestic affairs.\(^ {162}\) However, the ACHPR and the newly formed commission managed to recognize that international cooperation would be crucial in addressing the IDP challenge, and this contributed to their willingness to participate in multilateral efforts to resolve the matter. It is interesting to compare this process with the formulation of the GP. When the GP was formulated it was decided not to pursue a legally binding document because they feared it would clash with the strong notion of state sovereignty. As mentioned above in the chapter 3, the protection of IDP is such a delicate matter that needs to be precisely balanced between domestic and international affairs. In addition, they feared that a legally binding treaty for protection of IDPs would water down other bodies of law that provides protection.\(^ {163}\) AU’s action to go ahead with the legally binding nature of the

\(^{159}\) Dieng 2017:270

\(^{160}\) See also the Great Lakes Pact and Protocols, a binding regional instrument for IDP protection (Groth, 2011:229).

\(^{161}\) Adama Dieng is the UN Secretary-General’s Special Adviser for the Prevention of Genocide and wrote the article: Protecting internally displaced persons: The value of the Kampala Convention as a regional example for ICRC in 2017

\(^{162}\) Dieng, 2017:272

\(^{163}\) Kälin, 2001 recited in Groth, 2011:228
Kampala Convention is therefore particularly noticeable and it shows a political and economic will to support the protection of IDPs.

5.2 The treaty

By the end of 2019, 40 of AU’s 55 member states has signed the treaty\textsuperscript{164} and 31 ratified it, with Ethiopia the latest one\textsuperscript{165}. However, IDMC highlight that only Niger have domesticated the treaty\textsuperscript{166}. Moreover, it is argued that the convention has been a vital factor for enhanced responsibility and accountability for internal displacement, which we will touch upon in the following section. Since adaptation of the treaty, states such as Burundi, Ethiopia, DRC, Niger, Mali, Somalia, South Sudan, Sudan and Zambia have developed related laws or policies to govern internal displacement.

The convention bears many similarities with the GP. Comparably, it does not provide a legal status to IDP but a mere description of an IDP. The convention uses the same language when it describes an IDP\textsuperscript{167}. However, it has been argued that the drafting of the convention was an effort to transform the GP into a binding instrument that is applicable to the African continent\textsuperscript{168}.

The Convention provides four conditions to merit an individual as an IDP. The person must be fleeing to avoid the effects of 1) armed conflict 2) situations of generalized violence 3) violations of human rights, and/or 4) natural or human-made disasters.

However, as causation the Kampala convention goes further and recognizes causes such as climate change and project-induced projects\textsuperscript{169}. Dieng argues that this aspect is noteworthy as it can be seen as a recognition of the growing quest

\textsuperscript{164} Status list of the Kampala Convention, updated 29 October 2019
\textsuperscript{165} UNHCR Press release on 14 February 2020, ‘UNHCR welcomes Ethiopia’s ratification of the Kampala Convention’
\textsuperscript{166} IDMC, 2019:26
\textsuperscript{167} See above in the introduction and see Kampala Convention Art 1(k)
\textsuperscript{168} Abebe, 2010:42
\textsuperscript{169} Kampala Convention Art 5(4) and 10
for economic and social development as some countries have been willing to
displace their people in favour of a project by multinational corporations or the
local government\textsuperscript{170}. It is also noteworthy, as it essentially makes the convention
more applicable for the development sector instead of only for the humanitarian
sector.

On another note, it should be highlighted that the Kampala Convention does not
have a \textit{Travaux Préparatoires} which makes it difficult to ascertain the full scope
of the stakeholder discussion behind the treaty. Groth highlights that especially
considering the discussion around gender-inclusivity is difficult to track because
usually it is, in the construction of treaties, within these documents that you may
find on which how the stakeholders have consider gendered impacts\textsuperscript{171}

\section*{5.3 Spotlight illustration: Ethiopia}

As discussed in the method section, the thesis will use Ethiopia as spotlight
illustration to contextualize the implementation of the Kampala Convention.
Internal displacement has for a long while been a dilemma for Ethiopia.
According to IDMC, Ethiopia is the state with third most new displacements in
the world, with 3.191 million new displacements in 2018\textsuperscript{172,173}. However, it is the
state in the world with most new internal displacements caused by conflict, 2.895
million people were displaced by conflict which is four times the amount of
internally displaced in 2017\textsuperscript{174}.

According to Refugee International, IDMC and IOM, a new wave of displacement
has it origin from 2015-16, when the country was hit by the worst drought the
country had witnessed in 50 year and this was followed by a below-average
rainfall in 2017 which aggravated the situation\textsuperscript{175}. This led to an overall need for

\textsuperscript{170} Dieng, 2017:274
\textsuperscript{171} Groth, 2011:233
\textsuperscript{172} Displacements caused by Conflict and Disasters
\textsuperscript{173} IDMC, 2019:118
\textsuperscript{174} IDMC, 2019:14
\textsuperscript{175} Refugee international, 2018:7
humanitarian support and assistance. It may be argued that this wave of climate change triggered a new wave of conflict and intercommunal violence.

Simultaneously, the country saw a change of political power. In April 2018 the new Prime Minister (PM) Abiy Ahmed came to power.\(^{176}\) Refugee International highlights that while the new Prime minister gained a lot of positive media, especially due to the forged a peace deal with neighbouring Eritrea, the governments stands in front of a major humanitarian challenge\(^{177}\). Since the political change in 2018, the fighting began again. Armed mobs and youth groups attacked villages and forced around 300 000 people to flee their homes. Later in June, the same year, fighting abruptly again which lead an additional 800,000 people to flee\(^{178}\).

Ethiopia ratified they the Kampala convention on the 14 February 2020.\(^{179}\) In the Refugee International, it is highlighted that PM Abiy’ss administration deserves credit for collaborating openly with UN agencies and other humanitarian organisation for mobilizing and coordinating support to respond to the displacement that erupted in 2018\(^{180}\). This state was also confirmed by UN Protection officer interviewed:

“[…] Recognition of Internal displacement by conflict prior to PM Abiy, who came to power in April 2018, was difficult. Prior, you couldn't really talk about protection in Ethiopia. There was a protection cluster [The UN Humanitarian Cluster System] and you could talk about displacement due to climate change as flooding or drought. It was not possible to really discuss conflict induced displacement easily. It was controversial and Ethiopia was very image conscious”\(^{181}\)

\(^{176}\) IDMC, 2019: 14, IOM, 2019: introduction, Refugee international, 2018: 7
\(^{177}\) Refugee International, 2018: 7
\(^{178}\) Reuters, 4 July 2018
\(^{179}\) UNHCR Press release on 14 February 2020, ‘UNHCR welcomes Ethiopia’s ratification of the Kampala Convention’
\(^{180}\) Refugee international, 2018: 8
\(^{181}\) Interview 2 in May 2020
The interviewee highlights that the new government has acknowledged the presence of internal displacement more than the previous which has led to “opening doors” to assist IDPs. The interviewee stressed that should be interpreted as a sign of political will from the government which can also mirror the decision to ratify the Kampala Convention in February 2020. The IDMC interview confirmed the same opinion\textsuperscript{182}

When the UN Protection Officer was asked about the situation for internally displaced women in Ethiopia, the officer stated:

\begin{quote}
Women are obviously at more risk in this country, because of existing issue such female genital mutilation is quite common here and domestic violence in general. These are an issue in this country that is already pre-existing issues and if they get in a sense and get displaced, the environment they're in is going to be magnified they're going to be worse”\textsuperscript{183}
\end{quote}

The situation for gender inequality is already in a challenged position so when displacement occurs, it magnifies the situation. The officer goes ahead and particularly highlights the right to education\textsuperscript{184} and an overall lack of awareness of IDPs rights\textsuperscript{185}.

\section*{5.4 Impacts created by the Kampala convention}

\subsection*{5.4.1 Transfer soft law into hard law}

The Kampala convention has managed to transform soft law from GP into hard law, through a legally binding treaty. This clearly strengthens the rights of the right holders and obligations for duty bearers\textsuperscript{186}. The transfer from soft law to hard law was articulated by Kälin already in 2001, when he argued that the GP is

\begin{footnotesize}
\begin{itemize}
\item Interview 1 in April 2020
\item Interview 2 in May 2020
\item The right to education and its connection to gender-based displacement was discussed above in the chapter 4.
\item Interview 2 in May 2020
\item Dieng, 2017:273
\end{itemize}
\end{footnotesize}
well-grounded in international law already and that it would be possible to cite multitudes of existing legal provisions for almost every principle\textsuperscript{187}

However, Dieng highlights that the Kampala Convention encapsulates a rights approach more than the GP. He argues that the convention approaches all the problems from a state perspective and convention is intended as a tool for duty bearers and endorses the central role of state to tackle IDP challenges\textsuperscript{188}.

5.4.2 Importance of humanitarian assistance

The Convention also encapsulates a HRBA and ‘global compliance’ action when it confirms that states have the primary duty and responsibility to provide protection and humanitarian assistance to IDPs\textsuperscript{189}. However, Dieng highlights that is quite extraordinary that the convention also can invoke cooperation and solidarity among States through the request of the concerned State Party or the Conference of States Parties in Art 5(2) in the convention\textsuperscript{190}. Furthermore, the convention reaffirms the principle of humanitarian assistance and the principles of humanity, neutrality, impartiality and independence. This can be interpreted as an attempt to make states refrain from politicizing humanitarian assistance\textsuperscript{191}.

5.4.3 Fills the gap on arbitrary displacement and considers harmful practices

On a particular issue, Kälin discussed that there is a legal gap in protection for arbitrary displacement\textsuperscript{192}. Arbitrary in the sense that no direct reason behind the displacement other than pure discrimination. It can be linked to the term of generalized violence that was highlighted under the causation paragraph above. Dieng stresses that this is one of the gaps that the Kampala convention significantly covers through article 4(4). Moreover, the convention goes to the

\textsuperscript{187} Kälin, 2001:6
\textsuperscript{188} Dieng, 2017:275
\textsuperscript{189} Kampala Convention Art 5(1)
\textsuperscript{190} Dieng, 2017:276-277
\textsuperscript{191} Dieng, 2017:277
\textsuperscript{192} Kälin, 2001:6
extent to consider displacement to be a method of warfare because of its uses of generalized violence and arbitrary displacement. Dieng continues and explores that perhaps it could be interpreted in the following way:

“In what may be viewed as the desire of the negotiators to enrich the Convention with specific cultures and customs practiced on the continent, it recognizes displacement which may occur as a result of “harmful practices” This refers to practices such as forced circumcision, female genital mutilation and forced marriages, leading individuals fleeing such practices to be recognized as internally displaced and hence in a position to avail themselves of protection and assistance under the Convention”.

Considering gendered impacts of displacement, it is highly welcomed that the Kampala Convention recognizes ‘harmful practices’ as displacement cause. According to feminist approaches to International Law, protecting from harmful practices would led increasing the law’s capacity to support social change in gendered relations of power and establish a bigger accountability of rights.

5.4.4 Obligates states to prevent exclusion and marginalization

The convention obliges states to prevent political, social, cultural, and economic violation through Art 3(1)(b) which states the following:

Prevent political, social, cultural and economic exclusion and marginalisation, that are likely to cause displacement of populations or person by virtue of their social identity, religion or political opinion

\[193\] Here Dieng refers to Art 1(J) of the Kampala convention and argues that it may also be argued that the term “harmful practices” mirrors the definition in Article 1 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa and expands it to cover “all persons” – therefore representing a positive development.

\[194\] Art 3(1)(b) in the Kampala Convention
The implication of this provision creates recognition for states that displacement does not only affect failed states and a breakdown of law. Displacement does also occur due to other forms of harassment and discrimination. In terms of gendered impacts of displacement, this can be connected to harmful practices in similar manner as above mentioned. The provision strengthens the argumentation that displacement can be cause by ESC reasons and which is highlighted above would great support to protection for gendered impacts\textsuperscript{195}.

5.4.5 Special provisions for protection and assistance of vulnerable groups

As identified by Deng above as legal gaps for IDPs, there are certain needs of specific groups within IDPs that are lacking protection and assistance. This includes matters such as protection against gender-based violence, right to work and right to property. The Kampala convention answers this by including special provisions for protection and assistance for vulnerable groups. It states the following:

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“Provide special protection for and assistance to Internally Displaced Persons with special needs, including separated and unaccompanied children, female heads of households, expectant mothers, mothers with young children, the elderly, and persons with disabilities or with communicable diseases”\textsuperscript{196}
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Additionally, the convention puts obligations on states to consult IDPs and allow them to participate in decision-making. It assures that IDPs should be fully involved and exercise their civil and political rights\textsuperscript{197}.

On a critical note, the thesis would like to voice the critique of Pittaway and Bartolemei in challenging women’s agency by representing them all in the same vulnerable group. The Kampala Convention places women and children as the

\textsuperscript{195} Dieng, 2017: 276
\textsuperscript{196} Kampala Art 9.2(c)
\textsuperscript{197} Dieng, 2017:277-278
same vulnerable group, for instance in argumentation of special protection for people with special needs\textsuperscript{198}\textsuperscript{199}. According the feminist approaches to international law, it problematizes women as fully autonomous rights-bearing subject and equalizing women and children in one “vulnerable” category. It denies the agency that women, as adults, may and should have to take decisions in crisis that affect them, and their right to be consulted and decide freely what is best for them.

Conclusively, with the background of the Kampala convention, Ethiopia’s implementation and the analysed impacts of the convention in mind, the thesis has established a foundation for the discussion in chapter six.

6 ADDRESSING GENDERED PROTECTION OF IDPS IN THE KAMPALA CONVENTION

The following will in detail discuss and examine the six legal gaps of gendered impacts of Internal Displacement identified in SGSR Francis M Deng’s analysis and compare it with the legalisation provided from the Kampala Convention. The chapter will include an illustration of the implementation of the Convention in Ethiopia to contextualize the gaps. The legal gaps will be articulated from a HRBA and with a focus on ‘right talks’ action as discussed in section 1.3.2. In the final section of the chapter, the thesis will present the findings of where the Kampala Convention to an extends fails to holistically address the gendered impacts of internal displacement.

6.1 Rights for protection against Gender-specific violence

According to Deng gender-specific violence affects men and women in a disproportionate way. The analysis emphasizes that the provision should cover violence committed by the state, by the community and by family members, which indicates the need to put the duty of protection on several stakeholders\textsuperscript{200}. Such a multi-duty holder approach is accurate in cases where a displaced woman

\textsuperscript{198} Pittaway and Bartolemei. 2018:6-7
\textsuperscript{199} See Art 9.2(c) above
\textsuperscript{200} §125-126 in E/CN.4/1996/52/Add.2
loses her livelihood as it exposes her to protection risks as highlighted in the previous security section mentioned in chapter four. Moreover, Deng mentions the normality of rape and sexual exploration, specifically common in conflict situations of the displaced in return for essential food, shelter, security.

In chapter four, women's exposure to gender specific violence was stressed; stating that traditional gender norms authorize women's subordination, normalize masculine aggression and use of force. In addition, the chapter noted that one of every five women has been exposed to sexual violence and/or other types violence towards them because they were women.

In the Kampala convention, sexual and gender-based violence is addressed in article 9.1D. The article states the obligation towards the convention to addresses several types of gender violence such as “notably rape, enforced prostitution, sexual exploration and harmful practises, slavery, recruitment of children and their use in hostilities, forced labour and human trafficking and smuggling”. It addresses violence both as a driver for displacement and a protection need during displacement. With this said, the Kampala convention provides protection during three phases of displacement; from displacement, during and after, through use of durable solution, in which is considered as an improvement in comparison to GP. However, the thesis stresses that the forms of violence mentioned in Kampala Convention are limited, particularly considering domestic violence. It is reported that in African continent, there are less-recognizable forms of gender violence such as abandonment, marital rape and domestic violence, that are considered to be of a private matter where legal interventions are not applicable. Criticism can be raised towards the Kampala Convention for not providing provisions to prohibit gender violence in all its form.

\footnotesize
\begin{itemize}
\item §132 in E/CN.4/1996/52/Add.2
\item Kampala Convention Art 9 and 9.1D
\item Groth, 2011:235
\item Lewis, 2005, recited in Groth, 2011:234
\item However, Groth highlight that even though the Kampala Convention might fail to address expanded type of violence in internal displacement through other human rights protection mechanisms that AU provides such as the AU Protocol on the rights of Women in Africa
\end{itemize}
6.1.1 Spotlight: Gender violence in Ethiopia

In Ethiopian IDP sites\textsuperscript{206} gender-based violence against women was common in 79\% of all the sites\textsuperscript{207}. Gender violence was ranked as the biggest security threat ahead of theft/robbery and physical assault. The DTM disaggregated the types of violence increased the most in the camps and stresses that emotional violence is the most common which was spotted in 114 sites, followed by economic violence, intimate partner violence and early marriage violence. From a feminist approach to International Law, it is welcoming to see that DTM applies to an expanded violence approach which highlights the right to protection from gender-specific violence.

In the village assessment of the DTM, gender-based violence had significantly dropped to only being reported in 55 villages out of 1047\textsuperscript{208}. What should be noted is that in 308 villages the reason for violence was ‘unknown’ and in 127 villages there was an increase in alcohol/drug related disturbances. Alcohol and drug related disturbances are typically connected to family and domestic violence and should be investigated further. The thesis would like to highlight that the DTM advocates GBV with a wide accountability of types of violence. It will be essential during Ethiopia implementation process to address the issue with a wide accountability even though the support might be lacking in the Kampala convention

6.2 Right to Medical care for women and for disabled persons in camps

Deng notes that a range of human rights involve aspects of the right to health care for women. Art 12 in CEDAW require that states take appropriate measure for equal access for both men and women to health care and that women are ensured appropriate service in relation with pregnancy, confinement, and the postnatal

\textsuperscript{206} For explanations on ‘IDP sites’ and ‘Village assessment’ see section 1.5.1
\textsuperscript{207} IOM DTM, 2020:24
\textsuperscript{208} IOM DTM, 2020:45-46
period\textsuperscript{209}. However, Deng argues that there is a lack of right to both preventive care and reproductive health care. This can be correlated with IDMC’s data on displacement leading to women’s lack of access to contraceptives and reproductive health care.

In the Kampala convention, special measures to protect and provide for reproductive and sexual health care is addressed through Article 9.2D. In the health section, \textbf{Error! Reference source not found.} maternal health is crucial in order for women to maintain protection from displacement but also during displacement. Onwards, the effective norm for changing actions are fighting stigma around sexual health and contraceptive rights. Therefore, the Kampala convention’s recognition of the need for physical and emotional support for displaced women is positive. This includes the use of psycho-social support for victims of abuse

\section*{6.2.1 Right to Medical care for women and for disabled persons in camps in Ethiopia}
Access to health facilities in IDP sites are in overall good according to IOM’s reports, 89\% of the IDP sites have reported that they have access\textsuperscript{210}. On the other hand, studying what prevents IDPs from accessing health facilities, 901 of 1199 IDP sites reported that low cash flow would indicate that the livelihood is not sustainable nor providing income to the households. It is also reported that in 91 IDP sites prevention of health service exists due to discrimination. However, the type of discrimination to access the health facilities in the camps are unclear but the likeliness for it being gender-related are high. Correspondingly, 275 IDP sites have reported that there is a lack of right for identification and documentation, which has led to IDP’s being denied access to health care.

In village assessments in the DTM, it was clearly stated that there is a lack of health facilities. In 74\% of the villages, there was no access to health facilities\textsuperscript{211}.

\textsuperscript{209}§198 in E/CN.4/1996/52/Add.2
\textsuperscript{210}IOM DTM, 2020:22
\textsuperscript{211}IOM DTM, 2020:40
This is highly problematic and shows that access to health care needs to be prioritized in order to uphold a durable solution.

### 6.3 Right to family and reunification

In the situation of displacement, family creates a unit for protection and security, which is also declared in many IHRL provisions, according to Deng. The analysis highlights that IHRL treaties guarantees protection of interference against a person’s privacy, family, home, and correspondence\(^\text{212}\). Moreover, Deng specifies that it is in the Convention on the Rights for the Child (CRC) addresses family and family relations and notes that the paragraph relating to family unification the provisions limited to family reunification across international borders creates a gap for IDPs in need of family reunification\(^\text{213}\).

In the Kampala convention, the issue of reunification is addressed in Art 9.1H regarding establishment of specialized mechanisms, to trace and reunify families separated during displacement. The right to family life is recognized as a major protection provision during displacement. A divided family during displacement may expose members to crucial security issues as example. Example given; the female of the house is forced to flee with the children while the male stay to protect their property. Family separation constitutes therefore a specific risk for the family and by advocating the right to family life, it could protect the family as a whole. It is encouraging how the Kampala convention advocates for the right to family reunification and establishing a specialized mechanism\(^\text{214}\).

#### 6.3.1 Spotlight: Family related needs in Ethiopia

IOM’s data set lacks the study of family related needs. Family tracing services are present in 11% of the displacement sites, which can be interpreted as low\(^\text{215}\). UNOCHA highlight that family separation particularly a security risk for children.

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\(^{212}\) § 287-288 in E/CN.4/1996/52/Add.2  
\(^{213}\) § 291 in E/CN.4/1996/52/Add.2  
\(^{214}\) Kampala Convention Art 9.2(h)  
\(^{215}\) IOM DTM, 2020:24
Family separation leads to orphaned and unaccompanied children. In 2019 there was 7600 orphaned and unaccompanied boys and girls in Ethiopia\textsuperscript{216}.

6.4 **Right to Work and equal opportunity for employment**

Equal right for employment is enabled through art 11 and 13 in CEDAW. Deng argues that in the vulnerable situation of internal displacement, when economic activity and livelihood is crucial for protection and security, advocacy for a right to work is needed. Particularly, Deng highlights women would gain from a right of equal opportunity for employment\textsuperscript{217}.

In comparison with article 11 and 13, the Kampala Convention does not consider IDPs and internally displaced women’s provision for the rights to work. With such a provision it would increase women’s agency to stopping the cycle of poverty and the plagues of conflict\textsuperscript{218}. The thesis stresses that the right to work together with the right for family life, and a pattern of neglect in regards to the ESC rights is beginning to take form. According to feminist approaches to International Law, in to achieve gender equality legality, ESC right has to be taken into consideration.

6.4.1 **Spotlight: Right to work in Ethiopia**

IDMC highlights that in the Oramia region in Ethiopia, it is reported that due to displacement 35% of the women lost their employment in comparison with 30% of the men, it was also proven harder for the women to regain employment as 40% of the jobless remained unemployed and 20% of the men remained unemployed\textsuperscript{219}.

In IOM data set, occupations of IDPs are divided in regional areas. The division is based on the landscape and environmental opportunities given and vary from area to area in Ethiopia\textsuperscript{220}.

\textsuperscript{216} UN OCHA HNO 2020:64
\textsuperscript{217} §332 in E/CN.4/1996/52/Add.2
\textsuperscript{218} As highlighted in the livelihood section in 4.1
\textsuperscript{219} IDMC. 2020:12-13
\textsuperscript{220} IOM DTM, 2020:20
IDPs in pastoralist livelihood structures are commonly found in IDP sites, particularly in the region of Somali and Afar with a total number of 297 sites being pastoralist. In the Tigray region, 223 displaced sites have a majority of people working as daily labourers. By investigating the village assessment, there is a shift towards farming to be the main occupation. In IOM’s data set it is no mention that occupation is gender disaggregated and if women are employed or not. Similarly, as the analysis finds lack of provision in the Kampala Convention, it can be argued to be neglected by the humanitarian community to have any impact on displacement, which is contradicting Deng’s findings.

6.5 Right to personal identification, documentation, and registration

The lack to identification and documentation harms particularly the gendered impacts of displacement. Deng notes how the 1951 Refugee Convention provides protection to the right for IDPs pre-displacement situation but none for the rights during and after an internal displacement.

Deng refers to CEDAW article 16 for internally displaced women, and argues that internally displaced women are more exposed as women right to documentation is embedded in the rights related to marriage and constitution of a family, for example. In addition, he notes that there is a lack of equal access to register for certificates and individual identification in their own names. Additionally, issues with family passport where the wife and children were registered under the husband’s passport.

Moreover, the refugee convention requires states the contracting state to provide administrative service, which becomes problematic in the situation of IDP. A legal

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221 IOM DTM, 2020:20
222 IOM DTM, 2020:38
223 Art 12 in the Refugee Convention
224 The art states that women have equal rights with men within marriage including family planning, property ownership and occupation
225 § 264 in E/CN.4/1996/52/Add.2
framework to support IDPs in the process for administrative services, is needed. Evidently, women obtaining the right to legal personhood through the right to marriage can be criticized from a feminist approach to international law as it truly limits women’s agency. Women above 18-years-old, as men, should have the right to a legal personhood regardless if they are married or not to achieve gender equality.

In the Kampala Convention, the right to personal documentation and registration is declared through article with four paragraphs dedicated for the topic. From Art 13.4 women, men, boys and girls shall have the equal rights. The thesis is positive to the Kampala Convention’s firm stand on this issue in comparison to how it the issue is handled within states

6.5.1 Spotlight: Right to identification in Ethiopia

Identification and personal documentation are mentioned in IOM’s data set. In 502 displaced sites (42% of all sites) IDPs do not carry ID cards or form of personal documentation. Additionally, there is no data explaining how the division of women and men are affected differently by the lack of identification.\textsuperscript{226}

When investigating villages assessment, documentation is mentioned with tenure. Here it is highlighted that in 126 of 1047 villages, it was reported that they had no access to tenure documents.\textsuperscript{227}

UNOCHA refers to a Norwegian Refugee Council (NRC) study (2018) done of IDPs in the Somali Region of Ethiopia where 22.4% of women indicated holding an identity card while the number of men carrying it was 38.6%.\textsuperscript{228} It should be noted that this is a low number overall for all IDP, but particularly an issue for internally displaced women.

\textsuperscript{226} IOM DTM, 2020:24
\textsuperscript{227} IOM DTM, 2020:45
\textsuperscript{228} UNOCHA HNO, 2020:23
6.6 Protection of property-related needs

As the right for property is mainly protected by IHRL and IHL, the biggest issue lies within the right of restitution of property lost when displaced²²⁹.

Access to HLP rights are limited in many cases for women. Women must have equal right to owning, acquiring, managing, administering, enjoying, and disposing of property as stated in Art 16 of CEDAW. However, Deng proves that lack of protection of property, especially in the right to restitution of property as a consequence of internal displacement²³⁰²³¹. The NRC²³² reported (2015) that they had examples of harmful practices for women being denied from their right to HLP; eviction of widows, denial of marital property rights, particularly in divorce, exclusion from inheritance, omission from title deeds and lease agreements and the inability to access justice for violations of housing, land and property²³³. The relation between HLP and GBV is identified in UNOCHA’s reporting, as it argues that women tend to get increasingly exposed to violence which also leads to increased vulnerability for FHH’s right to land and house evictions²³⁴. HLP has a link to the right of documentation as discussed above. Displaced women, as the same extent as men, needs to be able to access justice and potential remedies for the consequences of internal displacement. NRC points out barriers for women to seek justice as given the example of lack of education²³⁵, discrimination due to customs and cultural tradition, cost and fees of accessing legal support²³⁶. In this case of HLP rights, the UN Pinheiro Principles²³⁷ enforces the right for compensation for displaced people. The Principles does emphasise that states implementing restitution programs should likewise implement a gender

²²⁹ §284 in E/CN.4/1996/52/Add.2
²³⁰ § 284 in E/CN.4/1996/52/Add.2
²³¹ Furthemore, this is stresses in chapter three, where critics and advocates of “IDPs as a special category of concern” agreed that HLP rights are with least protection for IDPs.
²³² It can be noted as that NRC is considered as an expert within HLP and leading the HLP Area of Responsibility within the Global Protection Cluster, which is network of nongovernmental organizations NGOs, UN agencies, engaged in protection work. See more: https://www.globalprotectioncluster.org/themes/housing-land-and-property/
²³³ NRC-2015:8
²³⁴ UNOCHA HNO, 2020:23
²³⁵ Also discussed previously in chapter four in this thesis
²³⁶ NRC, 2015:11
²³⁷ Pinheiro Principles stands short for ‘Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons’. The principle is considered as legal guidance for HLP rights and was approved by the UN Sub-Commission on the Protection and Promotion of Human Rights in August 2005.
strategy, to prevent discriminates against women’s right to ownership, either in law or practice\textsuperscript{238}

In the Kampala convention, the right to HLP for internally displaced are mainly mentioned in Art 9.2I and 11.4. Considering equal legal access to HLP (art 13.4) can be underlined again as it encourages men and women to have equal right to documentation. Additionally, Art 12.2 can be highlighted as it stresses that state parties should establish a just an effective legal framework for just and fair compensation reparations.

\textbf{6.6.1 Spotlight: right to HLP in Ethiopia}

IOM’s village assessment reports 378 of 1047 villages not accessing the land they owned prior to the displacement. The main obstacle hindering the return to their land due to damaged and destructed properties (730 villages), but in 137 villages the IDP had issues to return because of a Secondary Occupation\textsuperscript{239}. Moreover, IOM’s data set lacks explanations on how these obstacles effect women, men, boys, and girls differently.

UNOCHA stresses that women’s unequal positioning in Ethiopian society is making it difficult for them to claim HLP rights. They argue that there have been improvements towards increase tenure security and strengthen women’s right to land through federal and regional land legislation, but it is, however, being constantly being challenged by traditions and cultural norms\textsuperscript{240}.

\textbf{6.7 Final remarks}

The previous addressed how the six legal gaps of gendered impacts by Deng are understood in the Kampala Convention. To summarize, most of the gaps in terms of gendered impacts are covered, however some of them were not addressed as adequately. For instance, the gap regarding conceptualization of GBV, it is lacking aspects of how to handle domestic violence, which limits the coverage of

\textsuperscript{238} Principle 4 in the Pinheiro Principles
\textsuperscript{239} IOM DTM, 2020:45
\textsuperscript{240} UNOCHA HNO, 2020:11
cases. However, the spotlight identifies that violence in Ethiopia is seen with a wider accountability. Emotional- and marriage violence was some of the main types of violence experienced in IDP camps. The argument falls well in hand with a feminist approach to International Law, as it identifies domestic violence to be a “touchstone” for more gender equal legislation within international law.

When portraying women in one ‘vulnerability group’ it underlines a barrier created for the Kampala Convention when addressing gendered impacts of displacement. According to feminist approaches to international law, women have to be addressed for their difference in terms of needs. When categorised in some group, it can actually increase inequality instead of providing opportunity to achieve equality. Furthermore, if the ‘one vulnerability group’- approach get connected with general lack of disaggregated data, the situation gets problematic.

Due to the lack of gender-disaggregated data in IOM and UNOCHA’s reports regarding Ethiopia, it was evident that the thesis was not able to cover all aspect of gendered impacts of internal displacement that the thesis had set out to cover. The reports is gender disaggregated in the the overall count of all IDPs, but when the impacts of displacement in different sectors, such as health, education and HLP are being presented, it is difficult to investigate further how the sectors are tackling gendered impacts. To gain a holistic interpretation, further research studying households in camps and gathering qualitative interview data to analyse is required.

Another example of a gap that lacks further interpretation in the Kampala convention is equal right to work for men and women. The Kampala convention falls short in this respect of any sort of provision. The thesis argues that the Kampala Convention has a protection related approach rather than on assistance. Meaning it does not emphasise the relation between a safe livelihood and the protection of IDPs. Thus, preventing ESC violations is managed in Art 3(1)(b), the Kampala Convention is argued to be unsatisfactory in the emphasis on ESC.

\[241\]

See Art 9.2(c) above
right. There is a risk that this will lead to disproportionate suffering since, internally displaced women benefit inherently more from ESC rights than men.

Firstly, the Kampala Convention fails, so some extent, in address the setting for women in the context of internal displacement and how ESC rights should be regulated. The convention makes specific accommodations women only once, providing that special measures shall be provided to protect the reproductive and sexual health of internally displaced women, including providing psycho-social support to victims of sexual abuse. The Kampala Convention does not make effort in extending the support to discuss and addresses the linkage between ESC rights and internally displaced women’s circumstances. Additionally, the Kampala Convention fails address rights such as the right to work, the right to education and the right to an adequate standard of living are given their importance in ending the cycle of poverty and violence which plagues women in times of conflict and displacement.

On a final note, both interviewees argue it was a success to ratify the Kampala convention in Ethiopia, and UN Protection Officer stresses the human rights perspective:

“(...) IDPs and IDP returnees and anyone who ends up being relocated be aware of their rights and according to our consultation on the GP and the Kampala Convention, no one has discussed their rights with them. There is always a focus on assessing the needs, but they need to be aware of their rights. How do you build awareness with IDPs and especially with leaders? How will this change with the Kampala convention? I think, it going to create an environment as a human rights convention. More properly enforcing a human right perspective here on a legal basis.”

242 Kampala Convention art 9.2D
243 Interview 2 in the end of May
Shifting perspective from assessing needs to encourage IDPs of being aware of their rights. The Protection officer stresses the importance of a ‘right talk’ action of HRBA and argues it to have a major impact. The Protection officer assures that this is at least, rights talk will lead to an impact in Ethiopia through the Kampala Convention, resulting in IDPs more aware of their rights and find legal support in their claims. However, in order to do so, the Ethiopian state must domesticate the convention, which would the next step in a HRBA, a legal mobilization action.
7 CONCLUSION

The thesis aimed to answer the research question: *In what way does the Kampala Convention provide rights-based protection for gendered impacts of internal displacement?*

In answering the main research question, the thesis has set out three sub-questions that it will go through in a chronological order. Firstly, the thesis discussed which legal framework applies for IDPs. As discussed in chapter three, protection for IDPs overall incorporates a human rights perspective. The thesis revisited the debate of ‘IDP as a specific category of concern’ and Francis M Deng’s report *Compilation and analysis of legal norms*.

Secondly, the thesis chose to highlight six gaps (four ‘insufficient gaps’ and two ‘clear gaps’) that have clear gender related impacts, hence sub-question 2. To fundamentally understand gendered impacts of internal displacement, the thesis conducted a gender analysis of internal displacement in chapter four.

Thirdly, chapter four present several findings, but it became clear that ESC right performs a vital role in order to tackle many types of gendered impacts. The thesis elaborated on this finding in chapter five and six, where the thesis discussed the development and features of the Kampala Convention and addresses the legal gaps presented in chapter three. The thesis came to the conclusion that it addresses ESC in its provisions, but it is lacking concrete provisions on rights such as work, education, and adequate standard of living and therefore risks a disproportionately affecting internally displaced women.

This led the thesis to the main research question, in chapter six, where the thesis analysed gendered impacts through the six gaps identified. To contextualize the

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244 Which legal framework applies for IDPs?
245 Which gender-based impacts of internal displacement can be identified in the Protection of IDP?
246 How are economic, social and cultural rights considered within Kampala Convention?
gaps in depth, the thesis applies the gaps on a spotlight illustration of Ethiopia, which was useful in the final analysis in section 6.7.

What became evident in the findings of the analysis and enhanced from the interviewees, was the Kampala convention’s willingness to reinforce a human rights-based approach and generate prospects for IDPs to claim their rights. The thesis identifies the protection of IDP can be correlated with all four actions of HRBA, however this thesis has focused on ‘Global Compliance’ and ‘Right talks’ – actions.

The findings of chapter 6 answered how gendered impacts of displacement is addressed through the Kampala convention, and concludes with its ability to increase the space for women to seek their rights. The thesis stresses the convention does provide well needed provisions to promote better protection for women. Examples given, does it create greater accountability on a wider scale, the convention provides special notions to prevent harmful practices and it provides special protection clauses for exposed women.

However, according to feminist approach to International law, creating one type of special protection provision for all exposed women could be criticized to an extent because it places all women in one type of ‘vulnerability group’ which could be problematic.

On another note, it is unfortunate that a majority of the data on impacts of displacement is not gender disaggregated. While more data would not reduce displacement, disaggregated data will help humanitarians to comprehend the dynamics of internal displacement. As suggestion for further research would to include a wider perception of gender disaggregation data and disaggregated not only by gender and sexuality but by age, disability, ethnicity, racialisation, caste, and socioeconomic class. This would go in line with the thesis overall notion on including ESC issues in internal displacement.

The thesis concludes that predicting the implementation and coverage of gendered impact of displacement is not something that can be done within the scope of the thesis itself and points towards further research with three suggestions:
Firstly, the original aim of the thesis was to include interviews with state authorities to get a full perspective of the implementation of the Kampala Convention. However, due to the outbreak of COVID-19, the access was limited. The thesis therefore suggests a study of the implementation of the Kampala Convention that includes the input from the state authorities.

Secondly, an in-depth investigation on the relationship between the ESC’s rights and internal displacement would be required to examine how ‘progressive realizing’ of ESC rights can improve the situation for IDPs and particular gendered impact of internal displacement.

Thirdly, it is suggested to thoroughly investigate the fourth action of HRBA, ‘the legal mobilization approach’ and gendered impacts of internal displacement. The illustration of Ethiopia would be a good example to study, as the state is currently in the starting phase of domestication process of protection of internal displacement. The gendered impacts of internal displacement are fundamental to consider in the domestication process, in order to achieve proportional assistance and support to women, men, girls and boys, which this thesis has shown in its findings.

Finally, the master’s thesis has presented how the Kampala convention undeniably applies right-based protection for IDPs. However, the findings conclude that the Kampala Convention raises awareness of gendered assistance and protection but does not provide a holistic coverage of gendered impacts of internal displacement.
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Websites

UNHCR [2020] UNHCR welcomes Ethiopia’s ratification of the Kampala Convention, Press release on 14 February 2020 [Access]

Other

https://reliefweb.int/sites/reliefweb.int/files/resources/46D644B62064FFEDC1256C28002AB8DA-Internal_Displcmt_Gender.html

Overview of the interviews

Interview 1, 30 April 2020, IDMC Researcher, 46 minutes

Interview 2, 8 May 2020, UN Protection Officer, 52 minutes
8 Annex 1. Summary of the GP

<table>
<thead>
<tr>
<th>Principle</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Principle 2</strong></td>
<td>Sets the definition mentioned above and standard definition used for IDPs since then. The definition stresses a set of “particular” causes of displacement, namely: \textit{armed conflict, generalised violence, human rights violations and “natural or human-made disasters.”}.</td>
</tr>
<tr>
<td><strong>Principle 3</strong></td>
<td>Outlines in that the primary duty and responsibility to provide protection and humanitarian assistance rests with the national authorities and not with the international community.</td>
</tr>
<tr>
<td><strong>Principle 5-9</strong></td>
<td>Outlines states should protect their people from displacement such as ethnic cleansing, persecution, and other forced methods of displacement. However, Kälin highlights that the GP does not indicate that all forced displacement is illegal. For instance, in the case of disaster, evacuation is sometimes needed due to health and safety and in armed conflict when if the security for the civilians is too highly threatened.^{247}</td>
</tr>
<tr>
<td><strong>Principle 12-23</strong></td>
<td>Outlines protection during displacement and covers both Political and Civil Human Rights as it covers Economic, Cultural and Social Rights. Includes a comprehensive list such as the right to life, right to movement and right to be recognized as equal individuals in front of the law.</td>
</tr>
<tr>
<td><strong>Principle 24-26</strong></td>
<td>Outlines the relationship between humanitarian assistance and the international community and state that the international community shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.</td>
</tr>
<tr>
<td><strong>Principle 28-30</strong></td>
<td>Addresses the issue of durable solution to internal displacement is discussed in relation to return, resettlement and reintegration. Kälin highlights the agreement among humanitarian actors that displacement does not automatically end with return. Displacement can only be considered to be over when former IDPs no longer have displacement-specific needs, i.e. needs they would not have had they not been displaced.</td>
</tr>
</tbody>
</table>

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^{247} Kälin, 2014:6
## 9 Annex 2. 25 Legal Gaps for the Protection of IDPs

<table>
<thead>
<tr>
<th>17 areas of insufficient protection gaps(^{248}):</th>
<th>Eight clear gaps in legal protection(^{249}):</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Extend the protection against discrimination and include a status of IDPs</td>
<td>(a) Protection against disappearances</td>
</tr>
<tr>
<td>(b) The Right to protection of life</td>
<td>(b) Honouring the missing and dead, an obligation to search for missing IDPs</td>
</tr>
<tr>
<td>(c) Right for protection against Gender-specific violence*, (d) Restrictions against Detention</td>
<td>(c) Prohibition of landmines and like devices and deploying and using such weapons against IDPs</td>
</tr>
<tr>
<td>(e) Prohibition of Shielding and the being used as human “shields”</td>
<td>(d) Safeguarding against arbitrary detention of IDP</td>
</tr>
<tr>
<td>(f) Protection against forcible recruitment</td>
<td>(e) Right to personal identification, documentation, and registration*</td>
</tr>
<tr>
<td>(g) Right to Subsistence needs such as food, water, clothing</td>
<td>(f) Protection of property-related needs and the right to restitution of property lost*</td>
</tr>
<tr>
<td>(h) Right to Medical care and special needs for women in reproductive rights and psychological health as well as for disabled persons in camps*</td>
<td>(g) Protection of relief workers and organizations</td>
</tr>
<tr>
<td>(i) Right to Free movement,</td>
<td></td>
</tr>
<tr>
<td>(j) Right Family related needs and reunification*</td>
<td></td>
</tr>
<tr>
<td>(k) Right to use of own language</td>
<td></td>
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<tr>
<td>(l) Right to practise Religion</td>
<td></td>
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<tr>
<td>(m) Right to Work and the special needs of internally displaced women and of internally displaced persons in general to seek equal opportunity for employment*</td>
<td></td>
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<tr>
<td>(n) Right to Education</td>
<td></td>
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<tr>
<td>(o) right to form Associations</td>
<td></td>
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<tr>
<td>(p) Right to political participation</td>
<td></td>
</tr>
<tr>
<td>(q) Right for IDPs to request and receive protection and assistance from their domestic government and the international community and actors.</td>
<td></td>
</tr>
</tbody>
</table>

\(^{248}\) See paragraph 415 in E/CN.4/1996/52/Add.2

\(^{249}\) See paragraph 416 in E/CN.4/1996/52/Add.2
10 Annex 3 - Information letter for interviewees


I, Andreas Yngvesson, student at the University of Oslo am currently writing my master's thesis on the issue of Protection of IDPs on the African Continent and specifically in Ethiopia. The purpose of this information letter is to give information about the master's thesis project and its research aims, and furthermore, what it would mean for you/your organization to participate in it.

Research objectives
Through semi-structured interviews with different stakeholders in Ethiopia, I aim to further examine the implementation of the Kampala Convention. The overarching objective of this study is to gain in-depth knowledge on the Protection of Internally Displaced Persons (IDPs) and research the status of the implementation of the Kampala Convention in practice. By using earlier legal analysis on the gaps in Human Rights Law and Refugee Law considering legal protection of IDPs, the thesis aims to examine if the gaps have been filled through the Kampala Convention. The thesis intends to specify in the legal caps concerning gender and gendered impacts of displacement. Through a qualitative literature study and interviews with Humanitarian Practitioners from key agencies, this thesis will outline where the challenges and implications for IDPs sits today.

Responsible for the Project
This master's thesis is organized under the master's thesis program - Theory and Practice of Human Rights, at the Norwegian Centre of Human Rights, University of Oslo.

The supervisor of this thesis is Peris S Jones, Professor and Master Programme Director at the Norwegian Centre of Human Rights, University of Oslo.

Contribution to my master's thesis project
If you chose to take part in the project, your contribution will be participating in an interview. I seek to interview relevant actors from all levels of society, such as UN Organizations, INGOs and NGOs and government officials in Ethiopia. By interviewing a wide range of relevant stakeholders, I hope to gain insight into the status of the implementation of the Kampala Convention and outline potential challenges for women, men, boys and girls. The interview questions will be focused on the status of the Kampala Convention in Ethiopia, how you/ your organisation is working with the implementation, comparison with current human rights protection, cooperation with state authorities and your organisation overall work with IDPs. The interviews will be semi-structured and last about 30-45 min. With your consent, the interview will be audio-recorded, and later transcribed. However, at the end of the project all notes and recordings will be deleted. Further details about where, when and how will be agreed upon through email or phone correspondence.

Voluntary participation
It is voluntary to contribute to my project. If you chose to contribute you can withdraw your consent at any time without stating a reason. There will be no negative consequences if you chose to withdraw your consent.

Your personal privacy – how I will store and use the information provided
The information you provide will be treated confidentially and anonymized. None of your personal information will be published and you will not be recognized in any publication of this research. To ensure your personal privacy, your name and contact information, along with
other personal details that can identify you, will be removed and replaced with a code which only I will know how to access.

Furthermore, all information will be stored safely on a password protected portable hard drive, and not on my personal computer. I will process the information confidentially and aligned with guidelines of the European General Data Protection Regulation and the Personal Data Act. The information provided through the interview will only be processed by me. However, I will consult my supervisor with the information if necessary. I will only use the information you provide for the purpose(s) specified in this information letter. At the project's end, tentatively beginning of June, all notes, recordings and information provided through the interview will be deleted.

Your rights
None of your personal information will be published. Any personal data obtained during the interview will be removed, anonymized or pseudonymized in the notes and transcripts of the interview. The removal of personal identifiable information will take place shortly after the interview, in order to maintain your personal privacy.

So long as you can be identified in the collected data, you have the right to:

- access the personal data that is being processed about you
- request that your personal data is deleted
- request that incorrect personal data about you is corrected/rectified
- receive a copy of your personal data (data portability), and send a complaint to the Data Protection Officer or The Norwegian Data Protection Authority regarding the processing of your personal data

What gives me the right to deal with the information provided in the interview?
The information provided is based upon your consent. NSD – The Norwegian Centre for Research Data AS has assessed that the processing of personal data in this project is in accordance with data protection legislation.

For further information if you have questions about the project, contact:

Student researcher – Andreas Yngvesson ayngvesson1@gmail.com
Supervisor - Professor Peris S Jones, Norwegian Center of Human Rights, p.s.jones@nchr.uio.no

NSD - The Norwegian Center for Data Research can be reached by email (personverntjenester@nsd.no) or by telephone: +47 55 58 21 17.