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Original Article

Examining the Criminalization of Forced Displacement in International Law: Extracting Insights for Ethiopia

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Abstract

Forced displacement is a violation of fundamental human rights that often occurs during conflicts, natural disasters, and other crises worldwide. The criminalization of forced displacement under international law is a crucial aspect of ensuring accountability and justice for the victims. This study delves into the legal frameworks that govern the criminalization of forced displacement at the international level, examining key principles and precedents. By exploring these legal foundations, this research aims to extract valuable insights that can inform the development and implementation of appropriate measures in Ethiopia to combat forced displacement effectively. This study contributes to the ongoing discourse on protecting internally displaced populations and refugees and seeks to enhance Ethiopia's ability to address forced displacement issues in a manner compatible with international legal standards.

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Acronyms

API	Additional Protocol One
APII	Additional Protocol Two
CIH	Customary International Humanitarian Law
FDRE	Federal Democratic Republic of Ethiopia
IACs	International Armed Conflicts
ICC	International Criminal Court
ICL	International Criminal Law
ICTR	Statute of the International Criminal Tribunal for Rwanda
ICTY	Statute of the International Criminal Tribunal for former Yugoslavia
IDPs	Internally Displaced Persons
IHL	International Humanitarian Law
GCIV	Geneva Convention Four
UNHRC	United Nations High Commissioner for Refugee

Introduction

Throughout history, human populations have been forcibly displaced.¹ People are forced to flee due to a persistent dynamic of proximal and root causes that endanger lives and safety.² Forced displacement arises when state and non-state actors forcibly uproot individuals and communities from their homes or places of habitual residence due to armed conflict, widespread violence, violations of human rights,³ persecution,⁴ natural or man-made disasters, and/or development projects.⁵ According to Naziye Dirikgil, forced displacement comprises both involuntary movement and direct or indirect forms of coercion, which can take place either within a state's borders (forcible transfer) or outside (deportation).⁶ Forced displacement in its broadest sense indicates both the movement of Internally Displaced People (IDPs) within a State and refugees⁷ and asylum seekers⁸ across international borders.

¹Alexander Betts, Gil Loescher and James Milner, UNHCR: The Politics and Practice of Refugee Protection (Routledge, 2nd ed, (2012) 1. See also UNHCR, The State of the World's Refugees 2000: Fifty Years of Humanitarian Action (Oxford University Press, 2000) 1.

²Christina Boswell, 'Addressing the Causes of Migratory and Refugee Movements: The Role of the European Union' (*Working Paper No 73*, UNHCR, 25 December 2002) 7. External causes refer to the actions of foreign actors that result in displacement elsewhere. Root causes refer to the structural and deep-rooted socio-economic, legal and political conditions in a state that may exist over a long period. These include inequality, political repression, marginalization and ethnic tensions in a society. Proximate causes on the other hand refer to sudden events that threaten the lives and safety of people. These include, for example, the actual break out of a conflict or genocide, or the occurrence of a natural hazard. See Susanne Schmeid, 'Exploring the Causes of Forced Migration: A Pooled Time-Series Analysis, 1971–1990' (1997) 78(2) *Social Science Quarterly* 284, 287–289.

³Forced Displacement, available at: <<https://inec.org/eie-glossary/forced-displacement>> accessed on 2 January, 2024

⁴UNHCR Global Trends: Forced displacement in 2015: <<https://www.unhcr.org/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.htm>> accessed on 3 January, 2024.

⁵ Forced Displacement, *supra* note 3

⁶ Naziye Dirikgil, 'Protection of Internally Displaced People from Arbitrary Displacement: The Development of the Right not to be Arbitrarily Displaced', Thesis submitted for the degree of Doctor of Philosophy Aberystwyth University, (September 2020), p.125

⁷UN Refugee Convention, (1951), under Article 1 defined as, a refugee is a person who has fled their own country because they are at risk of serious human rights violations there. Because their own government cannot or will not protect them, they are forced to seek international protection. See also Organization of African Unity Convention on Refugees and the Cartagena Declaration that expanded the definition of refugee to include persons fleeing generalized violence (international war, internal armed conflict, foreign aggression or occupation, severe disruption of public order, or massive violations of human rights) in the whole or part of the country of nationality.

⁸An asylum-seeker is someone who is seeking international protection abroad, but hasn't yet been recognized as a refugee.

The UNHCR's Global Trends report provides the most recent official data on refugees, asylum seekers, and IDPs around the world, along with important statistical trends. As per the report, about 108.4 million people were forcibly displaced globally by the end of 2022 due to persecution, conflict, violence, abuses of human rights, and incidents that gravely disrupted public order.⁹ Similarly, there were 110 million forcibly displaced individuals globally in mid-2023 due to events that substantially disrupted public order, conflict, violence, persecution, or abuses of human rights. Out of these, 62.5 million are internally displaced, 36.4 million are refugees, 6.1 million are asylum seekers, and 5.3 million are others in need of protection.¹⁰ Furthermore, data collected by the International Organization for Migration using its Displacement Tracking Matrix methodology indicates that over 4.38 million people were displaced in Ethiopia between November 2022 and June 2023, with over half of those displacements being the result of conflict.¹¹ In addition, due to conflict and violence, around 3.1 million people in Ethiopia were forcefully displaced as of May 2023.¹²

From aforesaid reports, everyone can understand that IDPs, Refugees, and Asylum-seekers are victims of forced displacement and the state must criminalize it. For forced displacement to be classified as a crime under international law, it must be "arbitrary displacement" that is ordered or carried out without justification.¹³ It is deemed criminal under both international criminal law (ICL) and international humanitarian law (IHL).¹⁴ Acts of forced transfer or deportation have been outlawed by states in their military and domestic criminal codes, with differing degrees of clarity, since the United States passed the Lieber Code in 1863.¹⁵ As a result, states are required to outlaw certain arbitrary displacement actions that amount to international crimes,¹⁶ such as genocide,¹⁷ war crimes,¹⁸ and crimes against humanity.¹⁹ However, some acts of forced displacement that amount to international crime and/or ordinary crimes are not prohibited in the Federal Democratic Republic of Ethiopia Criminal Code (FDRE Criminal Code)²⁰ or other laws.

This Article aims to examine the Criminalization of Forced Displacement in International Law: Extracting Insights for

⁹UNHCR, Global Trends: Forced Displacement in 2022, available at: <<https://www.unhcr.org/global-trends-report-2022>> accessed on 3 January, 2024

¹⁰UNHCR, Refugee Data Finder, available at: <<https://www.unhcr.org/refugee-statistics/>> accessed on 5 January, 2024

¹¹New IOM Report, 23 August 2023, available at: <<https://ethiopia.iom.int/news/more-438-million-people-displaced-ethiopia-more-half-due-conflict-newiomreport#>> accessed on 8 January, 2024

¹²UNHCR, Ethiopia Humanitarian Crises, available at: <<https://www.unrefugees.org/emergencies/ethiopia/>> accessed on 5 January, 2024

¹³Federico Andreu-Guzmán, Criminal Justice and Forced Displacement: International and National Perspectives, ICTJ/Brookings Research Brief Criminal Justice and Forced Displacement, (June 2013), pp 2-3

¹⁴RLI Blog on Refugee Law and Forced Migration, Enhancing Refugee Protection Through the Criminalization of 'Mass Forced Displacement', Refugee Law Initiatives, RLI 3rd Annual Conference, School of advanced Study University of London (Aug 2, 2018)

¹⁵The Law of Armed Conflict at the Operational and Tactical Levels, Office of the Judge Advocate General of Canada, 13 August 2001; International Criminal Court Act 27 of 2002, 40

¹⁶ UNHCR, Making Arbitrary Displacement a Crime: Law and Practice, El Salvador, (2019), p. 9

¹⁷ Federico Andreu-Guzmán, *supra* note 14

¹⁸ Ibid

¹⁹ Ibid

²⁰ The FDRE Criminal Code, (2005)

Ethiopia. Section one explores the prohibition of forced displacement under IHL. Section two dealt with forced displacement in ICL. Under section three the principle of legality and forced displacement has been shortly addressed. The fourth section critically scrutinizes the FDRE Criminal Code and Forced displacement. The conclusion finalizes the article.

1. Prohibition of Forced Displacement under International Humanitarian Law

Notably, IHL is a body of regulations that in times of armed conflict, aim to limit the means and methods of fighting, while also protecting civilians who are not, or are no longer, directly involved in hostilities.²¹ IHL comprises key provisions to stop forcible displacement and to protect those who are compelled to escape, especially as they are enshrined in the 1949 Geneva Convention (hereafter GCIV)²² and their 1977 Additional Protocols (API and APII).²³ Deportations of protected individuals or group transfers are prohibited in International Armed Conflicts (IACs).²⁴ According to Article 49 of the GCIV, forcible transfer is specifically prohibited during armed conflict:

‘Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the

territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.’²⁵ Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons evacuated in such circumstances shall be transferred back to their homes as soon as hostilities in the area in question have ended.²⁶ The Occupying Power shall not deport or transfer parts of its civilian population into the territory it occupies.²⁷

Perceptibly, Article 49(1) GCIV proscribes "forcible transfer" within and "deportation" from occupied territory in IACs.²⁸ According to this provision, parties to an international armed conflict may not deport or forcibly remove the civilian population of an occupied territory unless necessary for the safety of

²¹ UNHCR, Handbook for the protection of Internally Displaced People, Global Protection Cluster Working Group, (March 2010), p 28

²² Geneva Convention (IV), Relative to the Protection of Civilian Persons in Time of War, Geneva, (12 August 1949)

²³ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of victims of International Armed Conflicts (Protocol I), (8 June 1977) (here after API) and Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), (8 June 1977) (here after APII)

²⁴ Common Article 2 of the Geneva Conventions of 12 August 1949, which is applicable to IACs, provides that:

In addition to the provisions which shall be implemented in peace time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

²⁵ GCIV, *supra* note 23, Article 49 (1)

²⁶ Id, Article 49 (2)

²⁷ Id, Article 49 (6)

²⁸ ICTY, Prosecutor v. Blagojevic´ and Jokic´, Trial Judgement, IT-02-60-T, (17 January 2005), para.595

civilians or urgent military reasons.²⁹ Another characteristic of forcible transfers or deportations is that, to be considered such, they must be implemented with force, that is, without the consent of the individuals involved, by the use of direct or indirect coercion or pressure.³⁰ Additionally, it is forbidden to forcibly transfer one person or more, therefore a violation of the Geneva Convention does not always need to involve a mass transfer.³¹ Traditionally, "deportation" occurs outside of an internationally recognized state border, whereas "forcible transfer" refers to a displacement or movement within the borders of a state or an occupied territory.³² There are three stages involved in evaluating a forcible transfer: first, legal transfers are those that are driven by a person's sincere desire to depart. Therefore, people are not driven by such illegality. In the context of "forcible transfer," "forcibly" refers not only to the use of physical force but also to threats of force or coercion resulting from psychological oppression, fear of violence, duress, detention, abuse of power against that person or those people, or from taking advantage of a coercive environment. Second, it's critical to remember that apparent consent to a transfer needs to be carefully evaluated because it might have been 'valueless' due to the circumstances or might have resulted from discrimination and other violations of human rights. Finally, it must be determined case-by-case, taking into account

all pertinent factors, whether a transferred individual truly has an option.³³

Even while it is strictly forbidden, not all population displacements that occur as a result of armed conflict are illegal. "If the security of the population or imperative military reasons so demand," "evacuations" are permitted under Article 49(2) of the GCIV and Article 17(1) of AP II.³⁴ Thus, even though population displacements through force are generally prohibited, the subcategory of evacuations may be allowed provided it is properly justified based on one of the two accepted grounds and complies with applicable laws.³⁵ The "security of the population" is the first justifiable reason for evacuation, and it is quite simple. In such circumstances, at least some of the impacted parties will likely agree to the evacuation.³⁶ More explanation is required regarding the justifiable reason for an evacuation under "imperative military ground." First of all, it should be understood that the political goals that the parties involved have successfully pursued do not always equate to valid "military reasons" for evacuations. Therefore, the language precludes using evacuations to "exercise more effective control over a dissident ethnic group" or to defend them as a form of ethnic cleansing.³⁷

²⁹ UNHCR, Handbook for the Protection of Internally Displaced Persons, *supra* note 22, p.29

³⁰Pictet Commentary IV at 279: Gerhard Werle, *Völkerstrafrecht* (Mohr Siebeck 2007), 448

³¹Diakonia International Humanitarian Law Centre, Displacement and IHL, Sweden, 2024 available at: <https://www.diakonia.se/ihl/resources/international-humanitarian-law/ihl-displacement/> accessed on 3 Januar,2024

³²*Prosecutor v. Blagojevic' and Jokic' supra* note 29

³³Diakonia International Humanitarian Law Centre, *supra* note 32

³⁴ Etienne Henry, 'The Prohibition of Deportation and Forcible Transfer of Civilian Population in the Fourth Geneva Convention and beyond', Forthcoming in Borhan Uddin Khan and Jahid Hossain Bhuiyan (eds), *Revisiting the Geneva Conventions: 1949-2019* (Koninklijke Brill 2019), p.17

³⁵Ibid

³⁶ Id, p.18

³⁷Id, p.19

However, as stated in Article 17 of the APII, Non-International Armed Conflict (NIAC)³⁸ forbids the forced displacement of civilians, saying that such orders may only be given for reasons related to the conflict or when the security of the civilians involved or pressing military needs so dictate.³⁹ It is forbidden to force civilians from their land for conflict-related causes.⁴⁰ This article states that "forced movement of civilians" is covered by APII under Article 17 and includes both ordering a person to be relocated within a territory (Article 17(1) AP II) and compelling a person to leave their territory (Article 17(2) AP II).⁴¹ According to Jan Willms, the focus of this article will solely be on "forced displacement," which is defined as the forcible transfer of civilians within a region during a conflict that is not on an international scale. Forced displacement is synonymous with terms like "ordered displacement" or similar expressions that suggest citizens are not allowed to leave.⁴² Consequently, parties to NIAC may not mandate the full or partial dislodgment of the civilian population for conflict-related reasons,⁴³ unless it is necessary for the security of civilians or urgent military purposes.⁴⁴ Upon

the cessation of the grounds for their displacement, displaced individuals are entitled to freely and safely return to their homes or places of habitual abode.⁴⁵ States are also prohibited from relocating portions of their civilian population into areas they currently control.⁴⁶

Additionally, like GCIV, API, and APII, Customary International Humanitarian Law (CIHL), both in IACs and NIAC, contains numerous pertinent rules that prohibit displacement and safeguard IDPs and refugees as members of the civilian population.⁴⁷ Similarly, states are prohibited from deporting or transferring portions of their civilian population into areas they control,⁴⁸ and those who have been displaced have the freedom to freely return to their homes or other habitual residences in safety as soon as the circumstances leading to their displacement end.⁴⁹

2. Forced Displacement in the International Criminal Law

Essentially, the post-World War II trials were important in the creation of the ICL,⁵⁰ which holds people criminally liable for violating IHL⁵¹ and for widespread or systematic

³⁸ International of Committee of the Red Cross, (2008) defined NIACs "as protracted armed confrontations occurring between governmental armed forces and the forces of one or more-armed groups, or between such groups arising on the territory of a State. The armed confrontation must reach a minimum level of intensity, and the parties involved in the conflict must show a minimum of organization."

³⁹ APII, *supra* note 24, Article 17 (1)

⁴⁰ Id, Article 17 (2)

⁴¹ Jan Willms, 'Without order, anything goes? The prohibition of forced displacement in non-international armed conflict', *International Review of the Red Cross*, Volume 91 Number 875 (September 2009), p. 550

⁴² Ibid

⁴³ Diakonia International Humanitarian Law Centre, *supra* note 32

⁴⁴ UNHCR, Handbook for the Protection of Internally Displaced Persons, *supra* note 22

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ CIHL-Rule 129 prohibits act of displacement as:
A. Parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand. B. Parties to a non-international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.

⁴⁸ Id, Rule 130

⁴⁹ Id, Rule 132

⁵⁰ First Report on Crimes against Humanity, Special Rapporteur Mr Sean D. Murphy, A/ CN.4/680, (17 February 2015), 27

⁵¹ Ibid

significant human rights violations, such as forced displacement.⁵² The first international criminal tribunal to be founded and the first to prosecute acts that amount to the war crime of forceful transfer or deportation was the International Military Tribunal at Nuremberg.⁵³ Accordingly, the national authorities are principally in charge of outlawing any transgressions of international human rights and humanitarian law within their borders.⁵⁴ Deportations and forced transfers were previously viewed as war crimes and crimes against humanity, but this has altered dramatically after the establishment of the International Criminal Tribunal for the Former Yugoslavia (hereafter the ICTY Statute) in 1993. Forced displacement was outlawed by the Statute under Article 2, which defined it as a serious violation of the Geneva Conventions⁵⁵ and a war crime. This included the unlawful expulsion or transfer of civilians as well as their unlawful imprisonment.⁵⁶ Here, certain elements must be considered for acts of forced displacement to constitute a war crime, such as unlawful deportation (across state border) or transfer (within a territory) or unlawful confinement against civilians and as a severe breach of the Geneva Conventions. Likewise, Article 5 prohibits the deportation of civilians, whether carried out during an internal

or international armed conflict, to be a crime against humanity,⁵⁷ even if the offense is the same in both cases.⁵⁸ On the other hand, expulsion or other forms of coercion that result in forced displacement are not penalized under Article 5.⁵⁹ Besides, the act violates Article 5 of the ICTY statute is punishable as persecution when it is carried out based on discriminating reasons, including political, racial, or religious ones.⁶⁰ Furthermore, it stipulates in Article 5 that crimes against humanity may be prosecuted "when committed in armed conflict, under other inhumane acts," which was defined to include forced transfers.⁶¹ These acts must be systematic, organized, targeted against civilians, of a specific size and seriousness, and directed at a civilian population to qualify as crimes against humanity.⁶² The ICTY which we shall discuss first recognized and prosecuted forced transfers as a crime against humanity under the section about "other inhumane acts," although it only included deportations in its Statute. Because of this, the ICTY developed relatively extensive jurisprudence of case law about forced transfers.⁶³

For instance, the ICTY prosecuted multiple instances involving offenses of forced displacement and distinguished between deportations and forced transfers as separate

⁵² Ibid

⁵³ Jean-Marie Henckaerts, Deportation and Transfer of Civilians in Time of War, *Vanderbilt Journal of Transnational Law*, Vol.26:469 (1993), pp.484-485.

⁵⁴ O. K. Lwabukuna, Reflections on the Possibility of a Comprehensive Framework for the Protection of IDPs in Africa's Great Lakes Region, (LLD thesis, University of Pretoria 2012) p.111.

⁵⁵ UN Security Council, Statute of the International Criminal Tribunal for the Former Yugoslavia, UN Doc. S/RES/808 (1993; last amendment 2002), Article 2(g)

⁵⁶ Ibid

⁵⁷ Id, Article 5(d)

⁵⁸ ICRC Study, Practice Relating to Rule 129. The Act of Displacement, available at: <[https://ihl-](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule129)

[databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule129](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule129)> accessed on 4 January, 2024

⁵⁹ Prosecutor v Karadjic, IT-95-5/18-T, (24 March 2016), para.488

⁶⁰ ICTY Statute, *supra* note 56 Article 5 (h)

⁶¹ Id, Article 5 (i); Judgement, *Kupreskic et al*, (IT-95-16), (14 January 2000), para.566

⁶² Nikolic, T-94-2-R61, Review of Indictment (20 October 1995), para 26

⁶³ Victoria Colvin and Phil Orchard, A Forgotten History: Forcible Transfers and Deportations in International Criminal Law, *Criminal Law Forum* 32(1), March 2021, DOI:[10.1007/s10609-020-09409-7](https://doi.org/10.1007/s10609-020-09409-7)

crimes.⁶⁴ According to the ICTY jurisprudence deportation could include crossing a *de jure* international border, but also in some cases *de facto* borders between the warring sides.⁶⁵ Afterward, forcible transfers were noticed as incorporating any movements of civilians that occurred exclusively within a State's territory.⁶⁶ Furthermore, there is no doubt that the ICTY established the illegal nature of forced displacement, declaring that the criminal responsibility for the forced uprooting of people from a territory rests with the one who initiates the forceful displacement and not with the place to which the people are sent.⁶⁷ To end with, while the ICTY did successfully convict several perpetrators for forcible transfers or deportations, in none of the cases were these the only crimes charged. The bulk of cases, however, were directly connected to genocide, particularly in light of the events at Srebrenica;⁶⁸ other cases were connected to detention procedures⁶⁹ or a variety of crimes committed during the Kosovo War, such as murder and persecution. Among these were charges of deportation, forcible transfer, murder as both war crimes and crimes against humanity against Vilastimir Đorđević,⁷⁰ and Šainović *et al*⁷¹ charged with expulsion, forced displacement, persecutions, and murder as both a crime against humanity and a war crime.⁷² In

the judgment, Šainović, Pavković, and Lukić were found guilty of murder and persecution, deportation, and murder in violation of the laws of war; on the other hand, Lazarević was found guilty of assisting and abetting deportations and forcible transfers.⁷³

Likewise, acts of forcefully transferring children from one group to another are considered acts of genocide under Article 2 of the 1994 Statute of the International Criminal Tribunal for Rwanda (here after ICTR Statute) when they are carried out with the intention of destroying a national, ethnic, racial, or religious group entirely or in part.⁷⁴ In addition, deportation on the basis of nationality, ethnicity, religion, or politics is illegal under Article 3 of the ICTR Statute and is considered a crime against humanity.⁷⁵ But, like the ICTY Statute, the ICTR Statutes do not distinguish between lawful and unlawful displacement, although the ICTY Statute has accepted that forced displacement must be caused without grounds permitted under international law.⁷⁶ Moreover, the Special Court for Sierra Leone Statute,⁷⁷ which is similar to the ICTY and ICTR deportation⁷⁸ and persecution on political, racial, ethnic, or religious grounds⁷⁹ are crimes against humanity. The crimes listed below must be committed by a person as part of a systematic or widespread attack against

⁶⁴The Appeal Judgement, *Stakić*, (IT-97-24-A), 22 March 2006, para.302) established the need to cross a *de jure* or *de facto* border, while the *Đorđević* trial judgment of 2011 (IT-05-87/1-T) (23 Feb 2011), paras.1604 and 1613.

⁶⁵Ibid

⁶⁶Ibid

⁶⁷Appeal Judgement, *Krnjelac* (IT-97-25-A), (17 Sept 2003), para.218

⁶⁸Radovan Karadžić (Judgement, Karadžić, (IT95-5/18-T) (24 Mar 2016) and Ratko Mladić, (Judgement, Mladić, (IT-09-92-T) (22 Nov 2017)

⁶⁹Milorad Krnojelac, (Judgement, Krnojelac (IT-97-25-T) Trial Chamber, 15 March 2002, para 486-498, See also Prlić *et al* (IT-04-74)

⁷⁰ Vilastimir Đorđević, (IT-05-87/1-T)

⁷¹ Šainović *et al.* (IT-05-87)

⁷² Ibid

⁷³Šainović *et al.*, (IT-05-87-A), Appeals Chamber, 23 January 2014

⁷⁴UN Security Council, 'Statute of the International Criminal Tribunal for Rwanda', UN Doc S/RES/955 (1994; last amendment 2006), (ICTR Statute), Article 2 (e)

⁷⁵ Id, Article 3 (d)

⁷⁶ Prosecutor v Krajisnik, IT-00-39-A, AC, Judgment, (17 March 2009), para.723

⁷⁷ Special Court for Sierra Leone Statute, (January 2002)

⁷⁸ Id, Article 2 (d)

⁷⁹ Id, Article 2(h)

any civilian population. The Special Panels for Serious Crimes of the United Nations Transitional Administration in East Timor have also pursued charges of war crimes and crimes against humanity for the violence and widespread forced displacement that followed the 1999 referendum, specifically for "deportation or forcible transfer of population" and "unlawful deportation or transfer or unlawful confinement."⁸⁰ However, while the Special Panels for Serious Crimes indicted 106 individuals for deportation or forcible transfer as a crime against humanity⁸¹, the failure of Indonesia to cooperate with the process meant that few alleged perpetrators appeared before the Panels. Only eight individuals were convicted by the Panels of deportation or forcible transfers including three who pled guilty.⁸²

Furthermore, on July 17, 1998, the Rome Statute was ratified and on July 1, 2002, the ICC's foundation treaty came into effect.⁸³ The ICC Statute was established to address the gravest international crimes, such as forced displacement and, more specifically, war crimes, crimes against humanity, and genocide.⁸⁴ Forced displacement is defined as genocide under Article 6 of the ICC Statute when it is carried out with the intention of eradicating a national, ethnic, racial, or religious group entirely or in part and involves the forcible transfer of children to another

group.⁸⁵ Similarly, "deportation or forcible transfer of population" is defined as a crime against humanity under Article 7(1) of the ICC Statute when it is "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack."⁸⁶ According to Article 7(2) (d) of the Statute, "deportation" or "forcible transfer" of people is defined as the forcible removal of the individuals in question from the territory in which they are lawfully present by expulsion or other coercive acts, without justification allowed by international law. Also, persecution against any identifiable group or collectivity on the basis of political, racial, national, ethnic, cultural, religious, or gender grounds is also considered a crime against humanity under Article 7(1) of the Statute when it is "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack."⁸⁷ "Persecution" is defined in the Statute under Article 7(2) (g) as the deliberate and severe denial of fundamental rights in violation of international law on account of the group or collectivity's identity. Further, according to Article 7(1) (k) of the ICC Statute other inhumane acts of a similar nature that are "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack," constitute a crime against humanity. These acts

⁸⁰United Nations General Assembly, "Report of the International Commission of Inquiry on East Timor," A/54/726,31 Jan 2000; United Nations Transitional Administration in East Timor, "Regulation No.2000/15," UNTAET/REG/2000/15, 6 June 2000, Section 5 5.1 (d) and Section 6 6.1(a) (vii)

⁸¹Bassiouni, M. C. 'Crimes against Humanity: Historical Evolution and Contemporary Application', Cambridge University Press, (2011), p.253

⁸²The Prosecutor v. Joao Sarmiento (18A/2001); Prosecutor v. Benjamin Sarmiento and Romeiro Tilman (18/2001). See also Prosecutor v. Anastacio Martins and

Domingos Goncalves (11/2001) Goncalves was found guilty of forcible transfers to West Timor.

⁸³Rome Statute of International Criminal Court (adopted 17 July 1998, entered into force on 1 July 2002) UN, Treaty Series, vol. 2187, No. 38544 (here after ICC Statute)

⁸⁴ Id, Article 5

⁸⁵Id, Article 6(e), see also Convention on the Prevention and Punishment of the Crime of Genocide (1948) (Genocide Convention), Article II

⁸⁶ Id, Article 7(1) (d)

⁸⁷ Id, Article 7(1) (h)

must also intentionally cause great suffering or serious harm to one's physical or mental health. Furthermore, the following are defined as "war crimes" under Article 8(2) of the ICC Statute: (a) serious violations of the Geneva Conventions of August 12, 1949, namely any of the following acts against individuals or property covered by the applicable Geneva Convention. The following acts, within the established framework of international law, constitute unlawful deportation, transfer, or confinement;⁸⁸ other grave violations of the laws and customs applicable in IAC: the transfer, directly or indirectly, by the Occupying Power of portions of its own civilian population into the territory it occupies; or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory,⁸⁹ additional grave transgressions of the rules and traditions that apply to armed conflicts not of an international character, within the established framework of international law, specifically, any of the following acts ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.⁹⁰

3. Principle of legality and Forced Displacement

Any contemporary criminal legislation must be based on the fundamental idea of legality.⁹¹ The principle of legality originated from the Latin word, which means "*Nullem Crimen, Nulla Poena Sine Lege*".⁹² The Latin phrase for the first time used as a legal discourse by German law Scholar Feuerbach⁹³ and he classified it into three main categories. First, "*Nulla Poena sine Lege*," which means 'every inflation presupposes a criminal statute'.⁹⁴ Second, "the imposition of punishment is contingent upon the existence of the threatened act" (*Nulla poena sine crimine*).⁹⁵ Third, the statutory prerequisite (the statute that threatens the deed) is dependent upon the statutory punishment, or *nullem crimen sine poena legali*.⁹⁶ Then, both regional and international legal instruments uphold the legality principle. The 1949 Geneva Convention III⁹⁷ and GCIV⁹⁸ are the first international legal documents that embrace the concept of legality. The Universal Declaration of Human Rights,⁹⁹ International Covenant on Civil and Political Rights,¹⁰⁰ Convention on the Rights of the Child,¹⁰¹ and regional human rights instruments, in particular the African Charter on Human and Peoples Rights,¹⁰² European Convention for the Protection of Human Rights, and Fundamental

⁸⁸ Id, Article 8(2) (a) (vii)

⁸⁹ Id, Article 8(2) (e) (viii)

⁹⁰ Id, Article 8(2) (e) (viii)

⁹¹ Simeneh Assefa, Methods and Manners of Interpretation of Criminal Norms, *Mizan Law Review* (11(1):88, (September 2017).

⁹² Hornle, Tatjana, Foundation Texts: P.J.A Von Feuerbach and His Textbook of the Common Penal Law (1801) (March 1, 2013). M. Dubber (ed), Foundation Texts in Modern Criminal Law, Oxford University press (2014), available at SSRN: <http://ssrn.com/abstract=2999796>, accessed on 7 January, 2024.

⁹³ Ibid

⁹⁴ Ibid

⁹⁵ Ibid

⁹⁶ Ibid

⁹⁷ Geneva Convention (III) Relative to the Treatment of Prisoners of War, Geneva, (12 August 1949)(GCIII), Article 99

⁹⁸ GCIV, *supra* note 23, Article 67

⁹⁹ Universal Declaration of Human Rights, (1948), Article 11

¹⁰⁰ International Covenant on Civil and Political Rights, (1966), Article 15 (1)

¹⁰¹ Convention on the Rights of the Child, (1989), Article 40 (2)

¹⁰² African Charter on Human and Peoples Rights, (1981), Article 7 (2)

Freedoms,¹⁰³ and American Convention on Human Rights,¹⁰⁴ all guarantee the international version of the principle of legality. The other important international legal instrument that provides the principle of legality is the ICC Statute which is a special ICL.¹⁰⁵

Furthermore, all modern criminal laws are based on the idea of legality. The FDRE Constitution of Ethiopia also included the principles of legality, such as the prohibition of double jeopardy¹⁰⁶ and the non-retroactivity of criminal law.¹⁰⁷ Likewise, a basic principle of legality was adopted under the FDRE Criminal Code. Accordingly, the FDRE Criminal Code under Article 2 provides that:

Criminal law specifies the various crimes and the penalties and measures applicable to criminals. (2) The Court may not treat as a crime and punish any act or omission which is not prohibited by law. The Court may not impose penalties or

measures other than those prescribed by law. (3) The Court may not create crimes by analogy, (4) the above provisions shall not prevent the Court from interpreting the law. In cases of doubt, the Court shall interpret the law according to its spirit, by the meaning intended by the legislature to achieve the purpose it has in view. (5) Nobody shall be tried or punished again for the same crime for which he has been already convicted, punished, or subjected to other measures or acquitted by a final decision by the law.

According to principles of legality, the above provisions embrace the following sub-principles. The first principle as provided under Article 2(1) is no law no offence and no law no punishment. According to this provision, an act or omission which is not specified as a crime in

¹⁰³ European Convention for the Protection of Human Rights and Fundamental Freedoms, (4 November 1950), Article 7.

¹⁰⁴ American Convention on Human Rights, (22 November 1969), Article 9

¹⁰⁵ ICC Statute, *supra* note 84, stated the principle of legality under Article 22(1) and Article 24(1) and (2) as:

“A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court and No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute ... In the event of a change in the law applicable to a given case prior to a final judgement, the law more favorable to the person being

investigated, prosecuted or convicted shall apply.”

¹⁰⁶ FDRE Constitution, (1995), under Article 23 provides that “No person shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the criminal law and procedure.”

¹⁰⁷ *Id.*, Article 22 stated as:

No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed. Nor shall a heavier penalty be imposed on any person than the one that was applicable at the time when the criminal offence was committed. 2. Notwithstanding the provisions of sub-Article 1 of this Article, a law promulgated subsequent to the commission of the offence shall apply if it is advantageous to the accused or convicted person.

criminal law is not a crime, and penalties or measures not specified at the time of committing a crime cannot be applied as a principle. According to Simenh, based on Article 55(5) of the FDRE Constitution criminal law should be enacted by the Federal lawmaking body of the House of Peoples' Representatives.¹⁰⁸ The third one is no offense by analogy and no penalty by analogy. The fourth ingredient is an interpretation of criminal law. According to Article 2(4) of the FDRE Criminal Code, the court shall interpret the law only in case doubt exists by legislative intent, but in case of difficulties interpreting in favor of the suspect (principle of strict construction).¹⁰⁹ The fifth principle is the prohibition of double jeopardy which is stated under Article 2(5). The sixth principle is the non-retroactivity of criminal law. The FDRE Criminal Code under Article 5 prohibits the retrospective application of criminal law, except in cases advantageous to him/her.

Overall, the aforementioned provisions and justifications of the principle of legality shall be considered in Ethiopian criminal law to criminalize acts of forced displacement. Thus, legality principles guarantee the accused person's right to a trial by existing law and are intended to deter and fight impunity in Ethiopian criminal law.

4. FDRE Criminal Code and Crime of Forced Displacement

The 1957 Empire Ethiopia Penal Code was superseded by the FDRE Criminal Code, which aims to prevent crime by informing people

about crimes and the penalties associated with, punishing offenders to make less likely to commit crimes in the future (specific deterrence), making them an example to others (general deterrence), and facilitating their reform and efforts to stop crimes from being committed.¹¹⁰ In Ethiopia, as addressed in introduction section, currently several IDPs, Refugees, and asylum seekers are overwhelmingly forcibly displaced. Ethiopia is a state party to the Kampala Convention, under Article 6 requires all member states to make acts of arbitrary displacement that constitute international crimes against humanity, war crimes, or genocide illegal.¹¹¹ In addition, some arbitrary displacement activities may also be considered ordinary crimes (common crimes) under certain special criminal laws.¹¹² So, let's try to explore the criminalization of forced displacement in the FDRE Criminal Code that amounts to international core crimes and ordinary crimes.

Fundamental offenses in violation of international law are governed by the FDRE Criminal Code under Part 2, Book 3, Title 2, chapter 1, from Articles 269 to 280. So, under which provisions forced displacement criminalized as core crimes against international law to be examined. Indeed, the FDRE Criminal code under Article 270 nebulously criminalizes some arbitrary displacement actions against civilian populations as war crimes. According to this provision, anyone who organizes, directs, or participates in acts against the civilian

¹⁰⁸ Simeneh Assefa, *supra* note 92, p 105

¹⁰⁹ Dejene Girma Janka, 'A Handbook on the Criminal Code of Ethiopia', revised edition, Addis Ababa (Finfinne), Ethiopia, (2021), p 19

¹¹⁰ FDRE Criminal Code, *supra* note 21, Article 1 para. 2

¹¹¹ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, Adopted by the Special Summit of the Union Kampala, Uganda 23rd October 2009, entered into force 6th December 2012 (Kampala Convention), Article 6

¹¹² UNHCR, Making Arbitrary Displacement a Crime, *supra* note 17, p. 16

population during a time of war, armed conflict, or occupation in violation of international humanitarian conventions and public international law "the compulsory movement or dispersion of the population, its systematic deportation, transfer, or detention in concentration camps or forced labor camps"¹¹³ is guilty of war crimes against the civilian population and faces a rigorous 5-to 25-year prison sentence, or, in more serious cases, life in prison or the death penalty. FDRE Criminal Code under Article 270(d) revealed forced displacement as one manifestation of war crime. According to this provision, the code has criminalized some acts of forced displacement within in context of war crimes. However, the issue is what acts constitute forced displacement as a war crime. From a close reading of this provision, we understand that the victims must civilian population, but the criminal code did not define what civilian population constitutes. The words civilian and civilian populations are defined under Geneva Convention III¹¹⁴ and GCIV as part of protected persons including IDPs and Refugees.¹¹⁵

In addition, for forced displacement of civilians to be classified as a war crime, the players involved must be directly or indirectly involved in the population's forced movement or dispersal, systematic expulsion, transfer confinement in concentration camps, or forced labor camps. The FDRE Criminal Code does

not, however, specify what behaviors qualify as forced displacement or population dispersal, systematic deportation, transfer, or incarceration in camps for concentration or forced labor. The ICC Statute to which Ethiopia is not a signatory state, for instance, in Article 8(2) (b) (viii) states that "the deportation or transfer by the Occupying Power of all or parts of the population of the occupied territory within or outside this territory" constitutes a war crime in IACs. Article 8(2) (e) (viii) of the same Statute, on the other hand, provides that "ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand" is a war crime in NIACs. Nevertheless, the FDRE Criminal Code under Article 270(d) does not identify an act that constitutes war crimes in international and internal armed conflict, as such ICC Statute. Thus, it is better to interpret the FDRE Criminal Code the provision that deals with forced displacement with the ICC Statute.

Furthermore, systematic transfers or detentions in concentration camps or forced labor camps conducted against civilian populations are classified as war crimes under Article 270 (d) of the FDRE Criminal Code. A careful reading of this clause reveals that any act that was conducted in a way that was consistently associated with warfare is classified as both a war crime and a crime against humanity. It is

¹¹³ FDRE Criminal Code, *supra* note 21, Article 270 (d)

¹¹⁴ GCIII *supra* note 98, under Article 50 define Civilian and Civilian Population as:

A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 A 1), 2), 3) and 6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian. 2. The civilian population comprises all persons who are civilians

¹¹⁵GCIV, *supra* note 23, under Article 4 and 27 protected person as civilian population including refugees and IDPs. Refugees receive, besides the general protection afforded to civilians by IHL, special protection in the GCIV under Article 44 that specifies detaining Powers should not treat as enemy aliens refugees who do not, in fact, enjoy the protection of any government. See also API, *supra* note 24, under Article 73 adds that refugees must be regarded as protected persons in all circumstances and without any adverse distinction.

specified as a clear war crime instead of being offered as such. Interestingly, compelling a protected civilian population is deemed a grave breach of Article 147 of GCIV, to which Ethiopia is a state party. Additionally, compelling a protected person to participate in the armed forces of a hostile power is illegal under Article 8(2) (a) (v) of the ICC Statute, regardless of how the act was carried out. It should be noted that, the ICC Statute's Article 8(2) (b) (xv) states that it is a war crime in IACs for someone to "compel the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service prior to the commencement of the war."

Article 270(1) of the FDRE Criminal Code also designates as war crimes against the civilian population, acts of displacing individuals who were, prior to the commencement of hostilities, regarded as stateless or refugees under applicable international instruments or national legislation of the State of refuge or State of residence. In this case, it appears that refugees and stateless people are receiving increased attention in an effort to shield them against acts of arbitrary displacement. Apart from the broad protection that the IHL offers to citizens, the IHL also provides special protection for refugees. To illustrate, Article 44 of GCIV guarantees that detained authorities shall not be regarded as refugee hostile aliens without government protection. Similarly, API provides in Article 73 that refugees must always and everywhere be treated equally and as protected individuals. Further, as stated in GCIV Article 45, "a protected person shall not be transferred to a country where he or she may have reason to fear persecution for his or her

political opinions or religious beliefs."¹¹⁶ This clause shields asylum seekers and refugees from being returned to their home country (*refoulement*) or to a third nation out of fear of persecution due to their religious or political views.

In addition to criminalizing forced displacement as a war crime against the civilian population, the FDRE Criminal Code also criminalizes acts of genocide as fundamental crimes.¹¹⁷ Genocide is defined as "committed with intent to destroy, in whole or in part, a nation, nationality, the ethnical, racial, national, color, religious, or political group" under Article 269 of the FDRE Criminal Code. This includes anyone who plans, directs, or participates in "compulsory movement or dispersion of peoples or children or their placing under living conditions calculated to result in their death or disappearance" during a time of war or peace.¹¹⁸

Here, to say acts of Genocide by forcibly transferring peoples or children, certain elements that constitute the offense shall be considered. Mainly, the perpetrator any time (in war or peace) partakes (directly or indirectly) through organizing, ordering, or engaging in the offense shall be considered. The other element, (physical element) forcibly transferring people or children or their placing under living conditions calculated to result in their death or disappearance. Lastly, the crimes must be carried out with the intention of completely or partially destroying a nation, nationality, ethnic group, race, ethnicity, color, religion, or political organization (mental element). Similarly, forcibly moving a group's children to another group that committed with the intent to destroy, in whole or in part, a

¹¹⁶ GCIV, *supra* note 23, Article 45 para.4

¹¹⁷ FDRE Criminal Code, *supra* note 21, Article 269

¹¹⁸ Id, Article 269 (e)

national, ethnic, racial, or religious group is considered genocide, according to Article II of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), to which Ethiopia is a signatory state.¹¹⁹ When we look at the constituents that establish the crime under Article 269 (e) of the FDRE Criminal Code and Article 2(e) of the Geneva Convention, they are all less similar, except for the protected persons. Accordingly, under the FDRE Criminal Code people and children are protected from acts of forcible transfer, but in the Genocide Convention, only children are protected. In addition, in both the FDRE Criminal Code and the Geneva Convention the scope of protections is destined to defined groups, but the FDRE Criminal Code expanded to Nation, nationality, color, or political group. Furthermore, it may be a crime against humanity to forcibly displace civilians. However, crimes against humanity in general, and deportation or/and forcible transfer of civilian population as crimes against humanity in particular are not criminalized in the FDRE Criminal Code¹²⁰ or any other laws, except in the FDRE Constitution.¹²¹ FDRE Constitution under Article 28 defined crime against humanity as genocide, summary executions, forcible disappearances or torture,¹²² and such offenses shall not be barred by the statute of limitation and may not be commuted by amnesty or pardon.¹²³ Also, according to Peter "genocide is recognized as one of the crimes

against humanity" under international law.¹²⁴ According to Article 7(1)(d) of the ICC Statute to which Ethiopia is not yet a state party, for instance, "deportation or forcible transfer of population" is considered a crime against humanity when it is "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." This does not mean that the "attack" has to be a military attack in the sense that it is defined by IHL, nor does it have to entail any use of force of any kind, including armed hostilities.¹²⁵ Thus, based on the principle of legality guaranteed under Article 2 of the FDRE Criminal Code we can understand that, in Ethiopia, acts of deportation and/or forcible transfer committed as part of a widespread or systematic attack directed against any civilian population were purposefully left out of the FDRE Criminal Code or any other specific law that has a criminal nature definition of crime against humanity. Even though Ethiopia is not a signatory to the ICC Statute, there are circumstances under which Ethiopian crimes against humanity may be investigated by the ICC. When the UN Security Council sends a referral to the ICC,¹²⁶ Ethiopia may voluntarily begin the investigation.¹²⁷ Moreover, it should be noted that the International Court of Justice has implicitly acknowledged the *jus cogens* rule on crimes against humanity.¹²⁸ International criminal tribunal rulings have also established the *jus*

¹¹⁹Genocide Convention, *supra* note 86, Article II (e); See also ICC statute, *supra* note 84, Article 6(e).

¹²⁰ FDRE Criminal Code, *supra* note 21

¹²¹ FDRE Constitution, *supra* note 107

¹²² Id, Article 28 (1)

¹²³ Ibid

¹²⁴ C .M. Peter, Human Rights in Africa; A Comparative Study of the African Human and Peoples' Rights Charter and the New Tanzanian Bill of rights, (1990) 60

¹²⁵ Rodney Dixon in Otto Triffterer (ed.), Commentary on the Rome Statute of the International Criminal Court (Baden-Baden: Nomos Verlagsgesellschaft, (1999), p. 124.

¹²⁶ ICC Statute, *supra* note 84, Article 13 (b)

¹²⁷ Id, Article 12 (3)

¹²⁸ Dire Tladi, 'Crimes against humanity as a peremptory norm of general international law (*jus cogens*): There

cogens prohibition against crimes against humanity. These consist of the rulings made by the ICC in Prosecutor v. William Samoei Ruto and Joshua Arap Sang,¹²⁹ Prosecutor v. Milan Simić, and Prosecutor v. Zoran Kupreškić et al.¹³⁰ It is widely acknowledged that the interdiction of crimes against humanity enjoys the status of *jus cogens* in the aforementioned instances. Accordingly, "deportation or forcible transfer of population," which is defined as a crime against humanity under Article 7(1) (d) of the ICC Statute, must be criminalized in Ethiopia.

Furthermore, the FDRE Criminal Code also failed to criminalize the crime of ethnic cleansing under any of the international crimes or as a separate crime. According to CIHL, a program of "changing the demographic composition of a territory"¹³¹ by "using military means to terrorize civilian populations, often to force their flight in a process that came to be known as "ethnic cleansing".¹³² Here, categorizing ethnic cleansing as a crime against humanity or as genocide is difficult. There is no precise definition of ethnic cleansing or specific acts that qualify as such, and it is not recognized by international law as a separate crime. According to the interim report of a United Nations Commission of Experts tasked with investigating breaches of international

humanitarian law in the former Yugoslavia, ethnic cleansing is¹³³ "... rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area."¹³⁴ The Commission outlined the definition of ethnic cleansing as follows in its final report:¹³⁵ "... a purposeful policy designed by one ethnic or religious group to remove the civilian population of another ethnic or religious group from certain geographic areas by violent and terror-inducing means."¹³⁶ According to the Commission of Experts, these actions "may constitute crimes against humanity and may be integrated into particular war crimes." Additionally, these actions might be covered by the Genocide Convention.¹³⁷ Therefore, ethnic cleansing is neither considered a distinct crime nor a part of an international crime under Ethiopian or international criminal law.

Moreover, acts of forced displacement that do not constitute international crimes are also not criminalized as ordinary crimes in the FDRE Criminal Code.¹³⁸ To characterize arbitrary displacement as an ordinary crime, certain elements need to be legally defined. For example, the Columbia Criminal Code criminalizes acts of forced displacement (arbitrary displacement) as international crime¹³⁹ and ordinary crime simultaneously.

really is no doubt! But so what?', *African Year Book on International Humanitarian Law*, (2020), p.9.

¹²⁹ ICC, Prosecutor v William Samoei Ruto and Joshua Arap Sang, ICC-01/09-01/11, Decision of Trial Chamber on the Request of Mr. Ruto for Excusal from Continued Presence at Trial, International Criminal Court, (18 June 2013), para 90

¹³⁰ ICTY, Prosecutor v Zoran Kupreškić et al, IT-95-16-T, (Judgment of 2000), para.520

¹³¹ CIHL-Rule 129, *supra* note 48

¹³² Report of the Secretary-General Pursuant to General Assembly Resolution 53/35: The fall of Srebrenica, UN Doc. A/54/549, para.19

¹³³UN Security Council, S25274, 10 February 1993, paras.55-56 <<https://undocs.org/S/25274>> accessed on 3 January,2024

¹³⁴ Ibid

¹³⁵ UN Security Council, S/1994/674, 27 May 1994, para.129 <<https://undocs.org/S/1994/674>> accessed on 3 January,2024

¹³⁶ Ibid

¹³⁷ Ibid

¹³⁸ FDRE Criminal Code, *supra* note 21

¹³⁹Columbia Criminal Code (Law 599 of 2000), Article 159 define Deportation, expulsion, transfer or forced displacement of the civilian population as: " Anyone who, on the occasion and during the development of an armed conflict and without any military justification,

According to this criminal code, the crime of forced displacement is as ordinary crime defined as: "anyone who arbitrarily causes one or more of its members to change their place of residence through violence or other coercive acts directed against a sector of the population."¹⁴⁰ It shall not be deemed forced displacement, however, if the population is forcibly dislocated by public force by international law for the population's security or in the event of urgent military necessity.¹⁴¹ Thus, the crime of forced displacement as an ordinary crime is defined as acts not permitted by law, and in exceptional circumstances, the act shall not constitute forced displacement. The writer asserts that, to fight impunity Ethiopian Federal government must criminalize some acts of forced displacement that constitute heinous crimes, as well as forced displacement as independent ordinary crime simultaneously.

5. Conclusion

Every year millions of civilian populations as individuals or in mass forcibly displaced from their legally owned homeland to another place. Forced displacement becomes an increasingly sneaky method of removing civilian populations through persecution, human rights violations, armed conflict, widespread violence, or man-made calamities. Persons who have been forcibly displaced may decide to apply for refugee status after crossing an international boundary, while the forcible movement of civilian populations within in territory of a single state leads to IDPs. In international law, the criminalization of forced displacement is a crucial aspect of ensuring accountability and justice for the victims.

The crime of forced displacement was initially identified in accords as early as the Nuremberg Charter, which came into effect shortly after World War II and was closely related to the crimes of deportation and population transfer. Later, the Nazis' widespread use of forced deportations during World War II served as the impetus for the 1949 Geneva Convention's explicit clause against forcible transfer and deportation. No matter the reason, the GCIV forbade the individual or mass forceful transfers and deportations of protected individuals from the occupied territory; additionally, "unlawful deportation or transfer of a protected person" is considered a grave breach. At first, nevertheless, the crime of forced movement was restricted to IAC alone. Nevertheless, the 1949 Geneva Conventions and their Additional Protocols forbid the forcible displacement of people within IAC and NIAC.

The jurisprudence of international tribunals has led to the treatment of forced displacement as a criminal offense. Although the ICTR legislation did not include the crime of forced displacement, it addressed the crime against humanity of "inhuman acts." In contrast, the ICTY statute includes deportation and the transfer of civilians as crimes against humanity, as well as deportation and deportation as war crimes. Moreover, the ICC Statute was created to address heinous crimes like genocide, war crimes, and crimes against humanity that involve forced displacement. According to the ICC Statute, forcing children to transfer to another group is considered genocide if the act is carried out to eradicate the group in whole or in part a national, ethnic,

deports, expels, transfers or forcibly displaces civilian population from their settlement site."

¹⁴⁰Article 180, shall incur a prison sentence from 6 to 12 years, a fine of 600 to 1,500 current legal monthly

minimum wages, and the prohibition of the exercise of rights and public functions for 6 to 12 years.

¹⁴¹ Ibid

racial, or religious group. Similarly, when "deportation or forcible transfer of population" is "performed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack," it is considered a crime against humanity. Additionally, forcible transfers are forbidden under Article 8 of the Rome Statute as war crimes. These transfers are defined as distinct unlawful deportations or transfers committed in IAC and displacement not justified by the necessity to protect civilians or imperative military reasons in NIAC. These definitions have been made possible by the Rome Statute and the practices of the ICC. However, compared to other crimes, the evolution of international jurisprudence on this specific topic has not been as extensive.

FDRE Criminal Code under the heading crimes against international law criminalizes war crime and Genocide, whereas it seems crime against humanity is deliberately absent. Even though the FDRE Criminal Code does not recognize or criminalize crimes against humanity, there is no chance to prosecute these acts as such. However, since crime against humanity is recognized as *jus cogens*, even if Ethiopia is not a signatory to the ICC Statute the provisions that deal with crime against humanity, particularly with forced displacement Ethiopia must apply. In the FDRE Criminal Code acts that do not constitute international crime are also not criminalized as an ordinary crime. Overall, to fill the lacunas in Ethiopian criminal law, it is better to extract from forced displacement criminalized under international criminal law.

business and the securities market of a country. At the same time, there are some shortcomings of such a type of share. So, to balance the two dimensions, allowing the issuance of bearer shares and keeping them with custodians is the smart way of enjoying the benefits and closing doors for the dark sides.

the best option instead of simply keeping it or abolishing it. Issuance of bearer shares has some benefits for the development of company