

Protection of Victims of Internal Displacement in Nigeria: A Review of the Kampala Convention*

Abstract

All over the world, millions of people are forced out from their area of primary residence owing to factors either beyond their control or threatening their safety and survival and that of their loved ones. Each year, there are increasing cases of displacement which trigger mass movement of individuals from one part of their country to the other but not beyond the recognized international border. Displacement makes victims vulnerable and also results in other issues like criminality, forced pregnancy, overcrowding, over stretched facilities in trust communities, insecurity, dearth of basic needs of the victims like food, water supply, poor medication and inadequate shelter or housing. Displacement occurs round the globe. The incidences of displacement in Nigeria has been linked to factors like armed conflict between state actors and some non-state arm bearing groups like the Boko Haram Militias in the North, the Islam Society of West African Provinces ISWAP and other groups that have perpetrated acts forcing many out of their homes. Notably among the groups is the Fulani herdsmen who attack and kill farmers and innocent citizens and take over their communities. The cases of natural disaster, human rights violations, generalized violence and indeed government and manmade displacements are also on the increase. At the level of states, and at the regional level and international fora, efforts have been made to address the issue of displacement with a view to protecting the victims. Regrettably, in Nigeria no single legislation has been put in place to advance the rights of IDPs in Nigeria. However, at the regional level, the Kampala convention adopted by the member states of the African Union is a convention that has influenced the consciousness for protection of IDPs globally. This paper is aimed at reviewing the provisions of the convention, to examine the extent of protection afforded to IDPs. The paper found out that bold provisions were made by the convention for the protection and promotion of welfare and assistance of IDPs in African. It is recommended that the procedure for enforcement of the provisions towards protection of IDPs under the convention has to be strengthened to ensure that states are adequately under obligation to carry out the provisions of the convention and observe them in their states. It is concluded that the convention is a veritable instrument for protection and promotion of assistance and welfare of IDPs in Africa including Nigeria if domesticated.

0.1 Introduction:

Background to the Study

The issue of internal displacement has been a central issue among the comity of nations in recent times most especially in the early 90s. This is as a result of the increasing wave of incidents leading to forced displacement of populations that are products of conflicts such as (ethnic, religious, economic and boundary conflicts), communal clashes, natural and man-made disasters amongst others with their attendant massive destruction to lives and properties. Globally, during the last decade, the estimated number of internally displaced persons as a result of armed conflict and generalized violence, excluding natural disasters and development induced displacement has been placed at 25million. In 2023, Nigeria was among

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the countries in West Africa to record the highest number of conflict displacements, with 291,000, almost double the figure for 2022. The increase was mostly the result of more comprehensive data collection. Conflict persisted in the north-eastern states of Adamawa, Borno and Yobe, where various non-state armed groups (NSAGs) operate. Africa accounts for more than half of the global displacement, global attention has repeatedly been drawn to the growing danger which may affect the little gain recorded in the Millennium Development Goal.¹ According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA),² a set of guiding principles was seen as a prevention and management of internal displacement by nations all over the world, and as a guide to all governmental and non-governmental humanitarian actors working with internally displaced persons. Both the concept and meaning of IDPs are derived from legal connotations. Ladan³ is of the view that displaced persons under international law, are persons or group of persons who have been forced or obliged to flee or to have cause to leave their homes or places of habitual residence in particular, due to or in order to stave off the effects of armed conflict, military engagement, violations of human rights, situations of generalized violence, natural or man-made disasters, to another place considered relatively safe within their own national borders. This, displacement may also extend to construction and development of projects, although sympathetic attention and international aid usually center around those displaced by disasters than victims of project development. Thus, if persons who are persecuted cross their national border, an elaborate system of international law and institutions comes into play for their protection, however if these individuals remain within the national border they are considered internally displaced persons, hence are not entitled to such protection. Internally Displaced Persons may be given Adhoc protection if the United Nations General Assembly requests the United Nations High Commissioner for Refugees (UNHCR) to render its 'good office' to assist, or if the Security Council so directs.

0.2 Conceptual Definition:

Due to human and natural disasters, people are displaced within their national boundaries. In the process of displacement, fundamental rights of the displaced persons are infringed upon. It is this that has necessitated this study to investigate how much of these rights that are upheld according to international best practices within the Kampala Convention. The following concepts are defined for comprehensive understanding of the research.

(a) Internal Displacement

In international law, there are two classifications of displacement; Refugee and Internally Displaced Persons, popularly known as IDPs. Internal Displacement as a concept is the sudden and unplanned movement of persons from their area of primary residence to another area for fear of imminent danger for the security, safety and comfort of the person or persons concerned as a result of natural disasters, human and man-made factors, armed conflicts and hostilities, human rights violations, violence as well as harsh economic and political policies of government which makes existence and survival of the persons concerned very difficult and as a result they flee their residence to another area within the state even though

¹ 2012-2024 Internal Displacement Monitoring Centre (IDMC) Nigeria, <https://www.internal-displacement.org/countries/nigeria/>accused> on 4th August, 2024

²United Nations Office for the Coordination of Humanitarian Affairs (OCHA), guiding principles on internal displacement <<https://www.internal-displacement.org/publications/ocha-guiding-principles-on-internal-displacement/>>. accused on 4th August, 2024

³ National Authorities, *Nigeria: National Policy on Internally Displaced Persons*, 1 September 2021, available at <<https://www.refworld.org/policy/strategy/natauth/2021/en/124154>>. accused on 4th August, 2024

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temporarily and against their wish.⁴ Internal displacement is a global crisis affecting about twenty to twenty-five million people in over forty nations, literally all regions of the globe.⁵ Africa, with half of the world's displaced population in some twenty-one nations, is worst hit. The situation in Africa continues to worsen with every crisis that ensues resulting in a humanitarian rights tragedy. Nigeria has 3.3 million internally displaced persons, mainly as a result of conflicts and violence, thus having the highest number in Africa. The report's global overview in 2016 attributed violence, abuses, and false evictions to the conflict mix in many of these situations, while in places such as Nigeria, evidence abound about how challenging life becomes for those already displaced by conflict when they are struck down again by severe floods and storms.⁶ Nigeria, like every other developing country is confronted with many challenges with insecurity being one of the most prevalent.⁷ Insecurity has been a bane to national development in Nigeria and has assumed a formidable dimension with several lingering implications for the country's political and economic structure.⁸ It has led the entire nation to the effect of loss of their loved ones, low investments and absence of safety in most parts of the country. The number of violent crimes such as killings by herdsmen, kidnappings, ritual killings, hijacking of cars or car snatching, suicide bombings, religious killings, politically-motivated killings and violence, ethnic clashes, armed banditry and others has increasingly become a consistent attribute of Nigeria's social and political life. The thirst for blood and the preference for violence in expressing pent-up frustration and disenchantment with the state, its citizens and national totems account for the escalating rate of insecurity in the country. This is so despite the constitutional provisions that the security and welfare of the people is the primary purpose of government.⁹ The United Nations Guiding Principles on Internal Displacement does not define the term "Internal Displacement" but however gave situations where internal displacement may arise and its exceptions Internal displacement according to Kampala Convention, is the involuntary or forced movement,¹⁰ evacuation or relocation of persons or group of persons within internationally recognized borders.¹¹ The definition of internal displacement is equally adopted in the Nigerian Policy on Internally Displaced Persons, 2021 which is just an institutional framework outlining the duties and responsibilities/obligations of the government with respect to internally displaced persons without any legal flavour though adopted during the Jonathan Administration by Federal Executive Council but there is no law to drive the policy. In other words, Internal Displacement is a forced movement or relocation of an individual or group of individuals from one location to another as a result of fear of being harmed, maimed or attacked either by

⁴ A. U. Abonyi, "Protection of Rights of Victims of Internal Displacement in Nigeria" A task impossible without an enabling legal framework" (Journal of property law and contemporary issues, vol. 11) <https://www.nigeriajournalonline.com>. Accessed on 19/4/2024.

⁵ C Roberta and D Francis, *Masses in Fight: The Global Crisis of Internal Displacement* (Washington DC: Brookings Institution Press, 2008) 16.

⁶ National Emergency Management (NEMA), Abuja 2015 Records of Internally Displaced Persons 2015; See further National Commission for Refugees in Nigeria (NCFR), Abuja 2015 Report, Table 2. In May, the commission revealed the existence of about 3.2million internally displaced persons in Nigeria due to complex causes.

⁷ G S Moronfolu, *'Insecurity Challenges in Nigeria: Way out of Seeming Despondency'* (2022) <https://www.thisdaylive.com/index.php/2022/>. Accessed on 7th, May 2024.

⁸ O Comfort, *'Addressing the Insecurity Challenges in Nigeria: The Imperatives of Moral Values and Virtue Ethics'*, Global Journal of Human Social Science and Political Science, (2013) 13, 1.

⁹ Constitution of the Federal Republic of Nigeria, 1999 (As Amended), S. 14.

¹⁰ United Nations Guiding Principles on Internal Displacement 1998, (UNGPID) principle no. 6.

¹¹ African Union Convention for the protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) 2009, Article 1.

natural disasters or man-made disasters, within internationally recognized state or borders as against across another internationally recognized state.

(b) Armed Conflict

Armed conflict could be international or domestic. It is international when the conflict is between at least two independent states like war of national liberations. Domestic or non-international armed conflict is a fight between regular armed forces and certain or identifiable armed bearing groups within a state territory. Non international armed group could exist between two locally armed bearing non state groups within a state. Thus, where there is uprising or conflicts between two or more armed groups, internal displacement becomes inevitable: for example the Nigeria Civil War, armed conflict between Boko Haram Insurgents and Nigerian Army, Ebube Agu and the Indigenous People of Biafra (IPOB) armed groups, the herdsmen attacks all over Nigeria, all these have led to displacement of Millions of the Nigerian population especially in the North-Eastern and Central states of Borno, Yobe, Adamawa, Benue, Plateau and the South Eastern part of Nigeria.

(c) Natural Disaster

Disasters in this regard could be of natural or manmade origin. Natural disasters includes but not limited to floods, drought, famine, earthquakes etc. while man-made disasters comprises other factors that can lead to internal displacement like execution of government projects, industrial activities, oil exploitation activities leading to gas flaring, spillage and other environmental hazards.¹² Victims of disaster whether natural or manmade might also become victims of discrimination and other human rights violations as a consequence of their displacement as they have to move to an area where they constitute an ethnicity minority.¹³ Similarly, so many a times, government respond to these disasters by discriminating or neglecting certain groups of victims on political or ethnic grounds or by violating their rights in other ways. In particular, the causes of displacement is not exhaustive and hence other possible causes of internal displacement can for instance include large scale development projects such as Dams built without government's attempt to resettle or compensate those displaced. Large scale development projects are mentioned in the United Nations Guiding Principle No 6 and referred to as cases or arbitrary displaced. A popular government project of the Previous administration carried out in a large scale and capable of causing internal displacement assuming the Federal Government did not have a bold plan and structure on ground leading to the resettlement of the people of the area concerned is the Zungeru Dam Project for power generation in Niger State. In such a large scale project, there is every tendency that many people will be forced to leave or flee their homes where there is no attempt or plan by the project undertaker to resettle the indigenes or indeed the population in the affected area. As we have noted before now, the concept of internal displacement is a complicated one. Thus, the relationship between the primary causes of displacement is complex and one triggers the other and their combined pressure forces the people to move out or flee their area of residence and homes. This happens in displacement caused by disasters as well as others. For example, as Tamara reasoned, the relationship between conflicts and disasters when it comes to displacement is complex because they may operate sequentially forcing a person or persons from their homes and the other prompting onward movement. Many people may be forced out of their homes by conflicts and violent attacks and are at the risk of further displacement due to flooding during the annual rains. Within pastoralist communities in many African states, diminishing water and pastures have led to violent

¹² A. U. Abonyi Ibid (Note 10)

¹³ Ibid.

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clashes both among pastoralists and between pastoralists and local communities providing further pressure for movement. Recent events in Benue State and some other states clearly show cases of violent clashes between the Fulani Herdsmen carrying their cattle from place to place in search of grazing resources and feeds for their animals and the farmers who contend that the cattle destroys their crops. Whereas the herder's claim that cattle rearing are their business, the farmers also contend that the crops destroyed is the source of their livelihood. The crisis has led to acrimonies between the federal government with some states such that whereas the Federal Government states is rooting for a "Grazing Law" that permits the creation of cattle colonies in different parts of Nigeria, States are rooting for "Anti Open Grazing Law" that prohibits grazing openly in their states. States like Benue and other sister states in Nigeria affected or threatened to be affected in the herdsman farmers clashes have passed their respective state Anti Open grazing Law to check such clashes. Although some scholars and commentators have argued that herdsman / farmers clashes is beyond the issue of mere "grazing and farming" activities, our considered view is that today herdsman are more than the ordinary "Fulani herdsman of the old that only move with their cattle having a long stick in their hands, a kettle and a dagger or matchets with a rope hanged and dangling from the neck through their hands as they move. The present herders are more "sophisticated" and it is this aspect that leaves doubt with the people whether indeed they are herdsman in practical sense of it or something else. Measures must be taken to protect and provide protection to internally displaced persons. In our firm view, such protection must take care of the complex nature of the concept of internal displacement. Thus, the existing measures and the proposed plans for protection must not over look this important aspect of the concept and in doing this, identifying those that deserve the protection must appreciate and take into consideration the multi causality of displacement. This is because; more often than not there is rarely a displacement arising from one sole cause. Thus, rarely, will a natural hazard be a sole cause nor will conflict be since in conflict ridden areas, poverty, weak governance and lack of social support may influence a person's decision to leave a disaster affected region. What it means is that in a displacement caused by disaster or for disaster displaced person or displacement caused by conflict or for conflict displaced person, there may not be a requirement that disaster or conflict is the only cause of displacement but only a contributing cause of displacement

(d) Victims

Victims of internal displacement know no bond. It includes where possible the children, the women, the men, the aged as well as the sick, those who are forced to flee or leave their homes and place of habitual residence as a result of harsh political and economic policies of government which more or less makes them prisoners in their own state and are mainly the civilian population or citizens of the state. The victims of internal displacement are those under the ravaging effects, the recipients or the down trodden who become helpless and homeless as a result of the natural or manmade disasters which forced them out of their habitual residence indiscriminately. It is indeed imperative to create a legal framework to cater for the protection of those internally displaced persons especially in Nigeria without fear or favour. From the foregoing, it is evident that the victims of internal displacement properly speaking are mainly the civilian population who are forced out of their homes or areas of habitual residence as a result of armed conflict, generalized violence human rights violations or abuses, natural and man – made disasters and other variables. It is therefore expected or required that law must be used to protect and promote the rights of the victims or those under the pains and ravaging effects of internal displacement including the children, the

women, the men alike, the aged and the sick. It is therefore advised that there should be no discrimination as to who is entitled or who should not be entitled to protection on the basis of one reason or ground and/or the other. Fairly speaking, a victim of internal displacement once collected should be accorded recognition as an IDP, given protection and assistance without emphasis on his status to deprive him such protection and assistance. What should be paramount is that he should be properly identified and documented (or registered) to ascertain his family lineages or linkage to assist in tracing the family links for reunion to his or her family members. It is our considered view further that prior to the full or complete identification and documentation process, any entitlement afforded to those already identified and documented should be extended to such person or persons as if they have been so identified and documented. Non identifications or registration of IDP in a place designed as IDP settlement home or camp is therefore not a ground for denial or deprivation of their entitlements like feeding, medication and other necessities including receipt of clothing materials and other things important for his or their survival. Article 2 sub-sections a, b, c of the Kampala Document makes very important provision as it relates to protection and assistance to the victims of internal displacement as well as how to address the consequences of the internal displacement. Properly, Article 2 subsection a, b, c states that the objectives of the Kampala document shall be to:

- (a) Promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate the root causes of internal displacement as well as provide for durable solutions.
- (b) Establish a legal frame work for preventing internal displacement, and protecting and assisting internally displaced persons in Africa.
- (c) Establish a legal frame work for solidarity cooperation, promotion of durable solutions and mutual support between the states parties in order to combat internal displacement and address the consequences.

From the wordings of Article 2 (a) (b) (c) of the Kampala document, every effort must be made both at national and regional level to promote and strengthen all measures capable of eliminating, preventing, mitigating and prohibiting the root causes of internal displacement and in doing so, there has to be a legal frame work to encourage solidarity among the states, their co-operation in their efforts or attempts to creative mutual support to each other towards creating or proving durable solutions to internal displacement and the consequences of same. The Article and its provisions no doubt represents a succinct and dynamic commitment towards protecting the victims of internal displacement and by this address the ever-growing consequences of the menace not just to the individual but to the state. As we highlighted above, the consequences of internal displacement occurring as a result of any of the factors mentioned above to the individual is on a very serious note over bearing and enormous. In addition to the earlier consequences, internal displacement results in overcrowding of places of settlement or camps thereby increasing spread of diseases including contagious and non-contagious viral diseases like HIV/AIDS, and other sexual related diseases like Syphilis, *Gonococcus erectus* and other “STD’s”. There is also increasing cases of unwanted pregnancies, “child pregnancies”, abortions, widening criminality of all sorts in the campus like rape, defilement of young girls, forced pregnancies, human rights abused and others. On the part of the state or government, the consequences of internal displacement is colossal. First, it increases the budgetary and appropriation estimates to take care of the over bearing burden of the recurring expenditure of maintaining the IDPs in the camps likely to be scattered in the area deeply ravaged by the root causes of displacement. Take for instance, of late; the government of Nigeria has to face the effects of internal displacement in the North

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East arising from the unending armed banditry and hostility or conflicts between the Boko Haram Islamist Sect and the regular armed forces of the state of Nigeria. There are camps in almost all the states in the Northeast as the sect has not retreated and has continued to make way into many areas, taking over some cities and town and even the whole of a local government. The Nigerian military has not also stopped and has launched their own attacks but clearly against the highly sophisticated weaponry of the sect. Many Nigerians have died in the circumstances and million displaced. The rampaging “herdsmen” and their conflicts with farmers in some states in the North particularly in the Middle Belt-Benue, Kogi and other instances in Taraba is another scenario that have also increased the number of IDPs and their camps in the areas affected. The government expenditure profile has increased as a result and the government at the centre and the states where the action are taking place have all suffered one way or the other in addressing the needs of the IDPs. Those categories of person are entitled to equal protections in law after duly identified and kept in IDP camps.

(e) Vulnerability

In the past decade or so, vulnerability has become a fairly prominent concept in human rights law. It has evolved from being an underlying notion to an explicit concept.¹⁴ It frequently appears nowadays in, for example, international human rights law. The concept of vulnerability has an intuitive and broad appeal. It has become more than a legal concept to the extent that it has evolved into a discourse within the broader human rights movement, and it has the potential to steer discussions about the human rights movement in one direction or another. Persons detained for reasons related to an armed conflict are in a vulnerable position.¹⁵ They have been deprived of their liberty; they are in the hands of the adverse party, the very entity against which the armed conflict is being fought; and they are at the mercy of their captors. The situation of detainees is perhaps even more precarious in non-international armed conflicts than in international armed conflicts, as ideologies and emotions tend to be heightened.¹⁶ During international and non-international armed conflicts, detainees are frequently mistreated. For example, in the armed conflicts in Syria, there are reports of numerous detainees being tortured, beaten to death, and dying as a result of inhuman conditions of detention. The International Criminal Tribunal for the former Yugoslavia found that conditions of detention were sometimes appalling, with detainees provided insufficient food and water, being housed in poor sanitary conditions, and numerous detainees being crammed into small spaces. Certain groups of detainees—the wounded and sick, women, children, those with disabilities, and the elderly—are in a particularly vulnerable position when compared with “ordinary” detainees. Additionally, the way in which non-international armed conflicts are fought can make it difficult for some parties to comply with those rules benefiting particularly vulnerable detainees. For example, in conflicts in which a State intervenes on the side of the State party to the conflict, the intervening State does not necessarily have the same capabilities as the State on whose territory the conflict is taking place. Even in non-international armed conflicts that are fought entirely within a single State, the type of detention facility will affect the conditions of detention. The same standards cannot be expected of transit centers as of long-term detention facilities. The capabilities of parties to a non-international armed conflict also vary considerably. Some non-State armed groups do not control territory and have limited resources and capabilities. These armed

¹⁴ Francesca Ippolito, *Understanding Vulnerability in International Human Rights Law* (Editorial Scientifica 2020).

¹⁵ This is true of detention generally, including detention in peacetime.

¹⁶ L. C. Green, *The Contemporary Law Of Armed Conflict* 355 (3d Ed. 2008).

groups might find it difficult to comply with all the protections afforded to detained persons. Persons detained for reasons related to an armed conflict are in a vulnerable position, as vulnerability almost inevitably flows from the fact of detention. International humanitarian law (IHL) recognizes that certain categories of persons are particularly vulnerable during times of armed conflict and affords specific protections to those persons. Under the conventional law governing non-international armed conflict, specific reference is made, *inter alia*, to the wounded and sick in Common Article 3 of the Geneva Conventions,¹⁷ as well as to medical and religious personnel, children, women, and persons subject to the criminal process in Additional Protocol II. Further, the conventional law of international armed conflict identifies additional vulnerable groups.¹⁸

(f) Protection

The definition of the term "protection" means "to be protected."¹⁹ It can also refer to a state of being protected or an act of protection.²⁰ According to the aforementioned definitions, "protection implies the act done specifically or primarily to ensure safety and security of the thing" or the "individual" protected. In the legal sense, protection simply refers to a method or practice that offers security for an object, a person, and other things outside human beings, such as animals. According to Collins English Dictionary,²¹ protection is defined as "laws and other official measures intended to safeguard people's liberties and rights." In addition, Inter-Agency Standing Committee Internally Displaced Persons Protection Policy defined protection as "...all activities aimed at obtaining full respect for the individual's rights in accordance with the letter and the spirit of the relevant bodies of law" (i.e. human rights law, international humanitarian Law, refugee law). This is to avoid and/or lessen the immediate impacts of a particular pattern of abuse, as well as to restore dignified circumstances of life through reparation, restitution, and rehabilitation. Protection therefore entails creating an atmosphere that promotes respect for human beings.²²

¹⁷ Convention (I) for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field art. 3, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31 [hereinafter Geneva Convention I]; Convention (II) for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea art. 3, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85 [hereinafter Geneva Convention II]; Convention (III) Relative to the Treatment of Prisoners of War art. 3, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 [hereinafter Geneva Convention III]; Convention (IV) Relative to the Protection of Civilian Persons in Time of War art. 3, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Geneva Convention IV]; see also Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts arts. 5(1)(a), 7, 8, June 8, 1977, 1125 U.N.T.S. 609 [hereinafter Additional Protocol II].

¹⁸ For example, Article 14 of the Fourth Geneva Convention refers to "hospital and safety zones and localities so organized as to protect from the effects of war, wounded, sick and aged persons, children under fifteen, expectant mothers and mothers of children under seven." Geneva Convention IV, *supra* note 6, art. 14. Article 17 provides that [t]he Parties to the conflict shall endeavour to conclude local agreements for the removal from besieged or encircled areas, of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas. Geneva Convention IV, *supra* note 6, art. 17.

¹⁹ A. U. Abonyi, 'Analysis of the Concept and Nature of Legal Framework for Animal Welfare Protection in Nigeria' COOU Journal of Commercial and Property Law(2018) (1)(1) pp. 288-305).

²⁰ A. A. Uchekukwu, 'Protection of the Rights of Victims of Internal Displacement in Nigeria: A Task Impossible Without Enabling Legal Framework' The Journal of Property Law and Contemporary Legal (2019)(11)(1).

²¹ M. Guha, Collins English Dictionary (Reference ed.) Reference Reviews (2016)(30)(4) pp.20 - 28. <https://doi.org/10.1108/RR-02-2016-0029>.

²² Inter-Agency Standing Committee Internally Displaced Persons Protection Policy (1999); on the primary duty of a state to protect its citizens, see Chike B. Okosa, 'Current trends in Statehood Theory: Humanitarian

(g) Human Rights Violation

According to the 9th edition of the Blacks Law Dictionary, a right is something that is due to a person by a just claim, legal guarantee, or moral principle. It is something that is appropriate under law, morality, or ethics (know right from wrong).²³ Also, Legal Dictionary defined a right as an entitlement to something, including ideas like fairness or due process.²⁴ The court in *Plethora* of cases gave a legal definition of the term "right". In the case of *Omon v Ekpa*,²⁵ the court defined a legal right as a right the law recognizes and such right can be enforced by the person entitled to it in a law court. It is a party's right recognised and safeguarded by the rule of law, the infringement of which would be a legal wrong done to the plaintiff, even though no action is taken. This definition was also given a judicial recognition in the case of *Oko v A.G. Rivers State*.²⁶ In Nigeria, there were serious cases of human rights violations during the unconstitutional reign of the military juntas in the history of the existence of Nigerian state. Many citizens were forced out of their homes and made to flee their area of habitual residence in anticipation of attack or arrest and possible incarceration by the military dictators, others were arrested and detained and put out of circulation for years while there were series of protest and uprising by those opposed to the inhuman transgressions of government against the people. Human rights violations remain one of the vices that heightened the level of vulnerability among the victims of internal displacements. Cases of human rights violations have led many people to desert their homes and flee from their area of habitual residence in anticipation of attack or arrest and possible incarcerations by the dictators or the government. For instance cases of human rights violation have been recorded in Nigeria in the years past and presently like the case of Ken SaroWiwa and his associates, Dele Giwa, the case of Nnamdi Kanu and the Federal Government .

0.3 Laws Protection Victims of Displacement in Nigeria and Beyond:

1. Nigerian Laws

In Nigeria, there is no specific legislation for protection of IDPs. However, in issues of the protection of fundamental rights of IDPs in Nigerian, recourse is often made to constitutional provisions guaranteeing the rights of Nigerian citizens. Thus, since IDPs remain Nigerian citizens regardless of their displacement. It is the responsibility of government through its institutions to ensure the protection of the constitutionally guaranteed rights of IDPs under sections 33-43 of the Constitution. These are the Rights to life, human dignity, personal liberty, privacy and family life, fair hearing, freedoms of religion, expression, assembly, association, movement, from non-discrimination and to acquire and own immovable property. Further, as the primary purpose of government, under section 14(2) (b) of the Constitution of the Federal Republic of Nigeria (As amended), the State is constitutionally obligated to ensure the promotion of the security and welfare of all the people (including IDPs).

(a) Constitution of The Federal Republic Of Nigeria, 1999

The Nigerian Constitution contains provisions protecting all Nigerians from violations of their rights to life, human dignity, movement, freedom from torture and inhumane treatment, as

Intervention, Responsibility to Protect and the Diminution of Sovereignty,' (2021) 7(1) *University of Jos Journal of International Law and Jurisprudence* [285-302]

²³ Garner B., Black's Law Dictionary, (9th ed. West Publishing Company Dallas) pp. 353 and 397.

²⁴ Legal Dictionary – Law.com." Law.com Legal Dictionary, A. (Ed.) (2004) Available online at dictionary.law.com/Default.aspx?selected=1857#:~:text=Search%20the%20Definitionsall%20words%20any%20words%20phrase,in%20property%2C%20real%20or%20personal. Accessed 5 May, 2024.

²⁵ (2019) 15 NWLR (Pt.1696) 504 CA.

²⁶ (2021) 14 NWLR (Pt.1795) 63 SC.

well as granting freedom of religion and culture.²⁷ These provisions also apply to internally displaced persons, even though not specifically stated. In Nigerian, every citizen, including the IDPs, has the right to life and may not be deprived of it except only in pursuance of a court judgment on a person that is found guilty of a criminal offence by a court of competent jurisdiction. In essence, this section seeks to protect the sanctity of human life. By human life, it goes beyond mere physical existence to protecting every part of human body or means of livelihood without which life would be impossible. Thus, indeed the allegation made in support of deprivation such right must always be cogent. If not, to take the life of a person in circumstances not permitted by law is a criminal act and indeed, any conspiracy or act directed towards the fulfillment of the said objective for the purpose of taking the life of anyone, is also a criminal act. Looking at the above provision critically, it appears that the section merely intends to preserve the sanctity of human life and the limited circumstances under which that right may be deprived. Unfortunately, the section says nothing on how this right can be effectively protected and preserved. The effect of this gap is more worrisome in situation of internal displacement. Internal displacements whether arising from natural disasters or any other cause in Nigeria, present one of the worse scenarios where the right to life is not often protected and guaranteed. For instance, in various IDPs camps across the country, it is common to hear of loss of lives due to inadequate protection and provision. Furthermore, even when the IDPs are resettled, in most cases, they are not always provided with the means of livelihood to make life easier. Situations like this cannot protect, preserve and guaranteed the right to life provided by the constitution. Section 34 (1) of the Constitution provides every citizen of Nigeria the Right to Human Dignity. This is in consonant with Article 5 of the Universal Declaration of Human Rights which prohibits torture, cruel, inhuman and degrading treatment, slavery or servitude and compulsory labor. Hence IDPs just like any other Nigerian citizen should not be subjected to rape, gender specific violence, forced prostitution or other indecent assaults or inhuman treatment. The Guiding Principles also calls for protection from slavery, including sale into marriage, sexual exploitation and forced labor of children.²⁸ This right tends to protect the integrity of the human person and dignity through criminalizing illegal subjection of citizens to torture and any other form of inhuman and degrading treatments. Therefore in order to cater for right of internally displaced persons to human dignity, the State is expected to take extraordinary measures in preventing violence to life, health and physical or mental well-being of IDPs by special protection against murder, torture, rape, degrading treatment and punishment as well as prohibiting abductions, and permitting or tolerating the disappearance of individuals. The Constitution guarantees the right of a citizen to freedom to act as they will as long as it is within the ambit of the law. The right also instructs that no person lawfully detained while awaiting trial shall be kept in detention for a period longer than the maximum period of imprisonment prescribed for the offence. The right to liberty guarantees arrested or detained citizens' access to legal practitioners of their own choice. Pursuant to the provision of the Constitution guaranteeing personal liberty Section 35, arrested persons must be informed within 24 hours, the basis for which he/she is denied the enjoyment of this right and should a person be denied this right in the course of justice, it stipulates the duration beyond which it will be unlawful to detain such a person. Section 35 (7) (a) of the 1999 Constitution of Nigeria Provides for arrest and detention based on Reasonable suspicion that a person committed a capital offence. For better appreciation, it might be Necessary to reproduce the section in full:

²⁷ Constitution of Federal Republic of Nigeria 1999 (As Amended)

²⁸ Article 5 of the Universal Declaration of Human Rights.

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(7) Nothing in this section shall be construed -

(a) In relation to subsection (4) of this section as applying in the case of a person Arrested or detained upon reasonable suspicion of having committed a capital Offence and

Subsection (4) of section 35 provides:

Any person who is arrested or detained in accordance with subsection (1) © of this Section shall be brought before a court of law within a reasonable time, and if Not tried within a period of-

(a) Two months from the date of his arrest or detention in the case of a person Who is in custody or is not entitled to bail; or

(b) Three months from the date of his arrest or detention in the case of a person Who has been released on bail, he shall (without prejudice to any further Proceedings that may brought before him) be released either unconditionally Or upon such conditions as are reasonably necessary to ensure that he appears For trial at a later date.

Subsection (5) clarified the expression ‘reasonable time’ to mean:

(a) In the case of an arrest or detention in any place where there is a court of Competent jurisdiction within a radius of forty kilometers, a period of one Day; and

(b) In any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable

Further subsection 1 (c) of section 35 provide;

Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law:

(c) For the purpose of bringing him before a court in the execution of the order of a court or upon reasonable suspicion of having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence.²⁹

The apparent import of section 35 (7) of the Constitution therefore is that sub sections (4) and Invariably sub section (5) do not apply in the case of persons arrested or detained upon reasonable suspicion of having committed capital offence. Those who are detained but not on reasonable suspicion of committing a capital offence enjoy certain privileges which apparently are not enjoyed by those arrested or detained on reasonable suspicion of having committed capital offence. First, section 35 (4) (a) and (b) appears to confer pre- trial benefits to suspects³⁰ who are not arrested or detained on suspicion of committing non-capital criminal offence. Some of these benefits have been explained by Nigerian courts. In *Commissioner of Police v Amalu*³¹ Achi- Kanu J. after drawing a distinction between ‘suspects’ and ‘accused’ persons concluded that section 32 (4) applied only to ‘suspects’ and not ‘accused persons’ who, he felt, were regulated by the proviso to section 32 (1) of the 1979 Constitution. The apparent reason for the ‘suspects’ enjoying the benefits in section 32 (4) was made clearer by Idoko J in *Onu Obekpa v. Commissioner of Police*,³² Thus, as it appears the spirit behind the provisions in section 32 (4) (a) and (b) of the Constitution³³ is to keep an accused person³⁴ out

²⁹ Italics supplied. The italicized clause fall into the category often referred to as ‘Preventive Detention’. Preventive Detention is a variant of the genre of detention enshrined in section 35 (7) (a) of the Nigerian Constitution. Both involve detention of persons not convicted by any court of law.

³⁰ This category of persons immediately becomes ‘accused persons’ when arraigned before a court. This Distinction was highlighted by Achi-Kanu J, although in our view in less distinct manner, in the case of *C.O.P v. Amalu* (1984) 5 N.C.L.R p. 443.

³¹ (1984) 5 N.C.L.R p. 443.

³² (1981) 2 N.C.L.R 420.

³³ 1979 Constitution. this provision is the same with that of section 35 (4) of the 1999 Constitution.

³⁴ Idoko J used this term not in the restrictive sense Achi-Kanu used it. It appears that from his perspective, This term cover both those Achi-Kanu termed ‘suspects’ and ‘accused persons’

of incarceration until found guilty through the process of court trial. It is a conditional privilege which he is entitled to under the Constitution. The reason for such privilege is obvious. It allows those who might be wrongly accused to escape punishment which any period of imprisonment would inflict while awaiting trial: the stay out of prison guarantees easy accessibility to counsel and witnesses and ensures unhampered opportunity for preparation of the defence. Of much further advantage in this regard is the fact that unless the right to bail or to freedom before conviction is preserved, protected and allowed the presumption of innocence constitutionally guaranteed to every individual accused of a criminal offence would lose its meaning and force.³⁵ In other words, a person who is detained or arrested for a bailable offence, that is, an offence which is not a capital offence must be brought to Court within a day or two days of his arrest or detention by the police. Section 37 of the Constitution of Nigeria guarantee and protect the right to the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications. This right has been described as recognition of the saying that “a man’s home is his castle”. The right guarantees that security agencies should not tap ones phone lines or subject ones house to unwarranted searches or seizure of one’s property.

The Constitution provides for secularity of Nigeria,³⁶ guaranteeing the peoples entitlement to religious freedom including freedom to change religion or belief and manifest and propagate ones religion or belief in worship, teaching, practice and observance. This right is entrenched in Article 18 of the UDHR, Article 1 of the ICCPR and Article 8 of the African Charter on Human and People’s rights. S. 38(1) of the 1999 Constitution provides:

- (1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.
- (2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction ceremony or observance relates to a religion other than his own, or religion not approved by his parent or guardian.
- (3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.

³⁵ (1981) 2 N.C.L.R pp. 420 – 422.

³⁶ The Nigerian Constitution 1999 provides for religion and secularity at the same time in four sections of the constitution namely: (a) Section 10: It is established the secularity of the Nigerian state by stating that, ‘The government of the federation or of a state shall not adopt any religion as state religion.’ (b) Section 38: It re-enforces the rights of Nigerians to freedom of thought, conscience and religion. Section 275 and 280: this made a volt-face and contradicted the two earlier quoted sections. Section 275 and 280 respectively provide for the creation of Shia Courts of Appeal and Customary Courts of Appeal, for states that require them. First, the secularity of the Nigerian state as well as the freedom of religion as provided for in sections 10 and 38 respectively are completely negated by the provisions found in sections 275 and 280 of same constitution. Establishing Sharia and Customary Courts of Appeal in various states indirectly compels non- adherents to either Sharia legal system or customary Legal system to become bound thereof. Second, the adherents of other religions apart from Islamic and Customary legal systems have been relegated to an inferior status and discriminated against by the provisions in sections 275 and 280 because their religions were not given equal recognition by the same Constitution. Third, while these provisions recognise the important place of religion in our national life, they pretend that we can operate some modicum of secularism and not pluralism. For while secularism hold the position that religious belief should not influence public and governmental decisions, pluralism Is the holding of more than one religion at a time.

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(4) Nothing in this sect shall entitle any person to form, take part in the activity or be a member of secret society.

In the case of *AMORC V Awoniyi*,³⁷ the court declared that the appellant organization was a secret society within the meaning of this section and thus, could not use the right to freedom of thought and conscience as a defence. It is said that the courts decide against secret societies based on public policy. Every citizen shall not be subjected to any form of discrimination, disability or deprivation by reason of to his/her community, ethnic group, place of origin, circumstances of birth, sex, religion or political opinion. Every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria. Apart from the above listed Fundamental Rights, there are many other rights that citizens are entitled to. But it must be stressed that although these rights are there to protect a person's interest, they should not be used to violate other people's rights.

(b) National Commission for Refugees Migrants and IDPs Act³⁸

The National Commission for Refugees (NCFR) was established by Decree 52 of 1989 (now Act) to provide for safeguarding the interest and treatment of persons who are seeking to become refugees in Nigeria or persons seeking political asylum in Nigeria and other matters incidental thereto. NCFR is mandated by the NCFR Act to lay down general guidelines and overall policies on issues relating to Refugees and asylum seekers in Nigeria and to advise the Federal Government on policy matters relating to refugees. In 2002, President Obasanjo informally expanded NCFR's mandate to cover the management of the affairs of IDPs³⁹ due to their sheer volume, trend and impact of their plight on the Nigerian society. Although the NCFR Act of 1987 N21, Cap.244 Laws of the Federation of Nigeria 2004 incorporated the 1951 UN Convention relating to the status of Refugees, its 1967 Protocol and the 1969 OAU Convention governing specific aspects of refugees problems in Africa, and together, they form the guide to protection duties in Nigeria, the enabling law remains obsolete and does not incorporate new challenges and additional mandate of the NCFR on IDPs, Returnees and Stateless Persons. Section 2 National Commission for Refugees Migrants and IDPs Act provides that the Act applies to matters relating to refugees, migrants, asylum seekers, and internally displaced persons. However, by Section 1 (b) of the same Act, it is provided that:

1. The objective of the Act shall be to.
- b) Implement the (i) United Nations Convention Relating to the Status of refugees, 1951 (ii) Protocol Relating to the Status of refugees, 1967 (iii) Organization of African Unity Conventions Governing specific aspects of refugees problems in Africa, 1969, (iv) 1954 Convention Relating to the Status of Stateless Persons, and (v) other treaties and conventions in relation to refugees migrants, asylum seekers, and internally displace persons, which are ratified and domesticated by Nigeria.

Nigeria has ratified the Kampala Convention, but is yet to domesticate the convention. The result is that; by inclusion of the requirement of domestication, in section 1(b) of the Act establishing the commission did not bestow a legal mandate on the commission to advance the protection and assistance of IDPs. Similarly, the commission may not be held accountable or called to action to intervene in matters relating to IDPs. Nigeria has an obligation under the Kampala Convention to put in place a legal framework for the realization of the goals of the

³⁷ 3 NWLR (Pt. 178) 245.

³⁸ Nigeria: National Commission for Refugees, Migrants and Internally Displaced Persons Act, 2022, Cap N21 LFN 2004. Available at < <https://www.refworld.org/legal/legislation/natlegbod/2022/en/147560>> Cap N21 LFN 2004.

³⁹ Section 28 of the Act makes provisions for the protection of internally displaced persons.

convention. It should also be pointed out that no meaningful progress can be made in respect of any commitment to the protection and assistance of internally displaced persons, without first domesticating the Kampala Convention or adding to the genre of domestic legislation by enacting a law on the protection and assistance of internally displaced person. The current national IDPs Act, LFN, 2022 is a political smokescreen on matters relating to IDPs. The Act is bereft of content on matters affecting IDPs for two major reasons; firstly the Commission is merely an Institution set up without any legislation stating or categorizing who are Internally displaced persons, what are the obligations of the State towards them, what are the duties and responsibilities of the State towards the IDPS and how these duties are to be performed and by who. Secondly, the failure to domesticate the Kampala Convention further aggravates the hazy approach to matters affecting Internally displaced persons, in Nigeria.

(c) National Human Rights Commission Act

The National Human Rights Commission (NHRC) was established by the National Human Rights Commission Act⁴⁰, in line with the resolution of the United Nations which enjoins all member states to establish Human Rights Institutions for the promotion and protection of human rights. The commission serves as a mechanism to enhance the enjoyment of human rights. Its establishment aims at creating an enabling environment for extra-judicial recognition, promotion and enforcement of human rights, treaty obligations and providing a forum for public enlightenment and dialogue on human rights issues thereby limiting controversy and confrontation. The Commission's Strategic Work Plan is based on above includes public education and enlightenment, training, mediation, on the spot assessment, policy oriented research and so on. It includes strategies targeted at promoting democracy and good governance, rights of vulnerable groups, conflict situation and issues relating to extra-judicial killings/torture and other violence

(d) National Emergency Management Agency Act

Section 1 (1) of the NEMA Act⁴¹ established NEMA with headquarters in Abuja and with 6 Zonal offices in Enugu, Port Harcourt, Lagos, Jos, Maiduguri and Kaduna. Section of the Act goes further to among others, mandates the agency to organize, provide and coordinate emergency relief to victims of natural disasters throughout the Federation and matters incidental thereto. The Agency is empowered to provide direct material assistance to displaced persons and repatriated Nigerians irrespective of the cause of displacement. Historically, in Nigeria, the framework for disaster relief and response had its foundation with the National Emergency Relief Agency (NERA) which was promulgated via Decree No. 48 of 1976. The Agency was tasked with arranging, delivering, and coordinating emergency relief for victims of natural catastrophes across the federation. NERA was created to collaborate with a network of organizations such as the Nigerian Red Cross Society, the Nigerian Armed Forces, and the Nigerian Police Force, all of which have duties and responsibilities that overlap. However, the need to expand the operational scope of the National Emergency Relief Agency (NERA), ostensibly to cater for all aspects of disaster management mitigation, preparedness, response and recovery, informed the establishment of the National Emergency Management Agency (NEMA) in 1999.⁴² In other words, the NERA Act was replaced with the National Emergency Management Agency (Establishment) Act. Hitherto, the NEMA Act remains the only law that primarily focuses on disaster relief and

⁴⁰National Human Right Act 2010

⁴¹S.1(1) National Emergency Management Agency(Establishment Act) , 1999.

⁴² Fowowe, Adetomiwa Isaac, An Examination Of The Legal Framework Of Disaster Relief And Response In Nigeria' SSRN (2022).

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response in Nigeria, which indirectly include internally displaced persons in Nigeria. Nigeria is plagued by different disasters, however, most of these disasters do not have designated legislations to regulate these disasters—same as internally displaced persons problem. The National Emergency Management Agency (NEMA) was established via Act 12 as amended by Act 50 of 1999, to manage disasters in Nigeria. It has been tackling disaster-related issues through the establishment of concrete structures. Currently, a bill for an Act to Amend the current NEMA Act is in the National Assembly and has scaled through second reading.⁴³

2. Regional and International Instruments

Reinforcing international human rights are several regional human rights instruments, which enhance human rights protection for all persons in the region, including IDPs. In Africa, Latin America and Europe, the regional human rights framework is particularly important because rights can be enforced in regional human rights courts.

(a) African Charter on Human and Peoples Rights

The African Charter on Human and Peoples' Rights affirms the range of civil, political, economic, social and cultural rights, including the right of every individual to freedom of movement and choice of residence as well as the right to property. Supplementing the Charter's provisions for protection of the rights of women and children are the African Charter on the Rights and Welfare of the Child and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. The Summit of the Heads of State of the Organisation of African Unity adopted the African Charter on the Rights and Welfare of the Child (ACRWC) in 1990, and the Charter entered into force in 1999.⁴⁴ The Charter, which notes that the child "occupies a unique and privileged position in the African society," stresses the preservation and strengthening of positive African values that are complementary to the development of the African child.⁴⁵ In addition, it seeks to discourage those values that are harmful to the health and status of children. Article 22(3) provides that children who have been affected by tensions and strife caused by situations of non-international armed conflicts, should be well cared for and protected. Article 23 provides that internally displaced children who are victims of natural disasters, non-international armed conflicts, and civil strife, should receive appropriate protection and humanitarian assistance so as to enjoy their rights expressly stated in international instruments. Both instruments include specific provisions relating to State obligations to respect human rights in times of armed conflict and reiterate the responsibility of States to respect and ensure respect for international humanitarian law, including protection of civilians. The Charter on the Rights of the Child also affirms that no child is to be recruited or otherwise take direct part in hostilities, and makes express reference to the need to protect and assist internally displaced children and to ensure family reunification in situations of displacement. The Protocol on the Rights of Women also includes commitments to:

- i. protect internally displaced women against all forms of violence, rape and sexual exploitation and ensure perpetrators are brought to justice;
- ii. ensure the increased participation of displaced persons, in particular women, in the management of camps and settlements; and

⁴³ Bill to Amend NEMA Act Passes Second Reading' Vanguard (2017) www.vanguardngr.com/2017/07/bill-amend-nema-actpasses-second-reading.

⁴⁴ThokoKaime, *The Foundations of Rights in the African Charter on the Rights and Welfare of the Child: A Historical and Philosophical Account*, 3 AFR. J. LEG. STUD. 120, 124 (2009).

⁴⁵ African Charter on the Rights and Welfare of the Child, pmbl., adopted July 11, 1990, OAU Doc. CAB/LEG/24.9/49 (entered into force Nov. 29, 1999).

iii. pay particular attention to widows' property rights (which is key for women heads-of-household, whose numbers tend to dramatically increase during displacement).

Monitoring the implementation of States' commitments under the African Charter is the African Commission on Human and Peoples' Rights. Individuals, including of course IDPs, can submit individual complaints of rights-violations to the Commission for consideration by the African Court on Human and Peoples' Rights. The Commission also has a Special Rapporteur on Refugees, Asylum Seekers and Displaced Persons in Africa, who is mandated to: seek, receive, examine and act upon information concerning the rights of refugees, asylum seekers and IDPs, undertake fact-finding missions to displacement situations; engage in dialogue with states and others relevant actors; develop strategies to better protect the rights of these groups; and raise awareness of the legal standards for their protection. At the sub-regional level, there are instruments specifically relating to internal displacement, in particular:

- i. Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons and Model Law (2006) and the Protocol on the Property Rights of Returning Persons (2006) are legally binding on any country that ratifies them;
- ii. The non-binding Khartoum Declaration of the Inter-Governmental Authority on Development (IGAD) Ministerial Conference on Internal Displacement (2003) contains important commitments by States in East Africa to protect the rights of IDPs.

(b) Kampala Convention

On October 23, 2009, the African Union (AU) adopted the Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).⁴⁶ The Kampala Convention is the first regional, legally binding convention imposing clear duties on states with regard to the protection and assistance of IDPs.⁴⁷ It reiterates existing human rights and international humanitarian law (IHL) standards and combines them, thus offering a new legal framework that can both address the situation of internal displacement on the African continent and provide a clearer and stronger legal basis for the protection of IDPs. The Kampala Convention requires states to prevent arbitrary displacement by respecting their obligations under international law.⁴⁸ The Convention provides that states "shall bear the primary duty and responsibility for providing protection of and humanitarian assistance to [IDPs] . . . without discrimination of any kind."⁴⁹ Accordingly, the Convention imposes obligations on states to assess the needs and vulnerabilities of IDPs and host communities,⁵⁰ and to provide adequate humanitarian assistance to IDPs, in all phases of displacement.⁵¹ Article 7 provides that members of armed groups "shall be held criminally responsible for their acts which violate the rights of [IDPs] under international law and national law."⁵² The Convention prohibits armed groups from recruiting children or allowing them to participate in

⁴⁶ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), Oct. 23, 2009 (entered into force Dec. 6, 2012), <http://au.int/en/content/african-union-convention-protection-and-assistance-internally-displacedpersons-africa> [hereinafter Kampala Convention].

⁴⁷ African Union Econ., Soc. And Cultural Council et al., Making the Kampala Convention Work for IDPs: Guide for Civil Society on Supporting the Ratification and Implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa 13 (Oct. 22, 2017).

⁴⁸ Art. 3(1)(a) Kampala Convention.

⁴⁹ Art. 5(1) Kampala Convention.

⁵⁰ Art. 5(5) Kampala Convention.

⁵¹ Art. 9(2)(b) Kampala Convention.

⁵² Art. 7(4) Kampala Convention.

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hostilities.⁵³ Armed groups are also prohibited from kidnapping, abducting, or sexually abusing and trafficking women and children.⁵⁴ States also have the obligation to prevent the recruitment of children and their use in hostilities.⁵⁵ The Kampala Convention highlights the specific needs of separated and unaccompanied children and notes that they shall have equal rights to obtain necessary identity documents, “such as passports, personal identification documents, civil certificates, birth certificates and marriage certificates,” and those that have been lost should be replaced.⁵⁶ On April 17, 2012, Nigeria became the twelfth African country to ratify the Kampala Convention. However, since ratification, the Convention has not been domesticated.⁵⁷ There is a draft bill currently before the National Assembly of Nigeria that seeks to domesticate the Kampala Convention. The Bill was submitted to the House of Representatives in April 2016 and passed the second reading in July 2016.⁵⁸ If domesticated, the Convention will offer enforceable guidance on the protection of IDPs, including children. Kampala convention is a regional instrument by African Union to promote an strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions. It is an instrument purposely for preventing internal displacement, protecting and assisting internally displaced persons in Africa etc.⁵⁹ The law provides that state parties to the convention shall respect and ensure respect for the principles of humanity and human dignity of internally displaced persons; Respect and ensure respect and protection of the human rights of internally displaced persons, including humane treatment, non-discrimination, equality and equal protection of law.⁶⁰ Other obligations relating to protection from internal displacement, protection and assistance of IDPS, obligations of international organizations or state parties during internal displacement of IDPS and many more are provided by the instrument.⁶¹ One other important provision of the Kampala convention is the compensational provision of the instrument which states that state parties shall provide persons affected by displacement with effective remedies, establish an effective legal framework to provide just and fair compensation or other forms of reparations where appropriate, to internally displaced persons for damages incurred as a result of displacement, in accordance with international standards, state parties shall be liable to make reparation to internally displaced persons for damages when such a state party refrains from protecting and assisting internally displaced persons in the event of natural disasters.⁶² The state parties agree that, except if it is expressly stated in the convention, the provisions of the convention apply to all situations of internal displacement regardless of the causes of the said internal displacement whether natural or manmade. Nigeria no doubt is signatory to both the international guiding principles of internal displacement and the Kampala convention and thus obliged to be bound by the provisions of the instruments with respect to the treatment of internally displaced persons in Nigeria.

⁵³ Art. 7(5)(e) Kampala Convention.

⁵⁴ Art 7(5)(f) Kampala Convention.

⁵⁵ Art 9(1)(d) Kampala Convention.

⁵⁶ Art 13 Kampala Convention.

⁵⁷ Romola Adeola, Kampala Convention and Protection of IDPs in Nigeria, PUNCH: OPINION (Apr. 28, 2016), <<http://punchng.com/kampala-convention-protection-idps-nigeria/>> 104 ICRC, Internal Displacement in North East Nigeria: Operationalising the Kampala Convention in Borno, Adamawa and Yobe States 23 (2017).

⁵⁸ ICRC, Internal Displacement in North East Nigeria: Operationalising the Kampala Convention in Borno, Adamawa and Yobe States 23 (2017).

⁵⁹ Art II. Kampala Convention.

⁶⁰ Art III (1) and (d) Kampala Convention.

⁶¹ Art IV, art v, art VI, art VII, art IX etc. Kampala Convention.

⁶² Art XII (1) (2) and (3) Kampala Convention.

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(c) UN Guiding Principles for Protection and Promotion of Assistance and Welfare of IDPs.

The United Nations (U.N.) Guiding Principles on Internal Displacement were developed by the Representative of the U.N. Secretary-General on Internally Displaced Persons.⁶³ They spell out the rights of IDPs, as well as the responsibilities of states and other actors with regard to the IDPs.⁶⁴ Although not a binding document, the Guiding Principles are based on and reflect existing binding standards of international human rights law and IHL, all brought together in one document of thirty principles.⁶⁵ The Guiding Principles cover all phases of displacement, which include “protection from arbitrary displacement; protection and assistance during displacement; and protection while finding a durable solution.” Principle 1 affirms that IDPs “shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country” and “shall not be discriminated against . . . on the ground that they are displaced.”⁶⁶ In situations of armed conflict, civilians have the right to be protected from being arbitrarily displaced from their home, unless it is for their security or for military reasons.⁶⁷ When such displacement has to occur, it “shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.”⁶⁸ Regarding the right to respect of family life, Principle 17 provides that in situations of internal displacement, family members who wish to remain together shall be allowed to do so and that “families which are separated by displacement should be reunited as quickly as possible.”⁶⁹ Special attention is paid in the Guiding Principles to the situation of internally displaced children. As a general principle, internally displaced children, especially unaccompanied minors as well as expecting mothers, and mothers with young children, are “entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.”⁷⁰ Further, Principle 11 prohibits “any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour [sic.] of children.”⁷¹ In addition, internally displaced children shall not be recruited or permitted to take part in hostilities.⁷² The right to education was also emphasized, and displaced children are to receive free and compulsory education at the primary level, which should “respect their cultural identity, language and religion.”⁷³ Special efforts should be taken to include girls in such educational programs.⁷⁴ To adequately protect internally displaced children, the above stated human rights provisions must be supplemented with international humanitarian rules, because a number of human rights guarantees may be significantly limited or even derogated in situations of armed conflict. Moreover, IHL applies not only to states, but also to insurgent groups and other non-state authorities engaged in conflict. IDPs benefit from the general rules of protection granted to the civilian population against the effect of hostilities. For example, Article 48 of the first Additional Protocol to the Geneva Conventions provides that: In order to ensure respect for and protection of the civilian

⁶³ U.N. Rights and Guarantees of IDCs, *supra* note 26, at 15.

⁶⁴ U.N. Guiding Principles on Internal Displacement, *supra* note 21.

⁶⁵ U.N. Rights and Guarantees of IDCs, *supra* note 26, at 15.

⁶⁶ U.N. Guiding Principles on Internal Displacement, *supra* note 21, at princ. 1.

⁶⁷ U.N. Guiding Principles on Internal Displacement at princ. 6(2)(b).

⁶⁸ U.N. Guiding Principles on Internal Displacement. at princ. 8.

⁶⁹ U.N. Guiding Principles on Internal Displacement. at princ. 17(3).

⁷⁰ U.N. Guiding Principles on Internal Displacement at princ. 4(2).

⁷¹ U.N. Guiding Principles on Internal Displacement at princ. 11(2)(b).

⁷² U.N. Guiding Principles on Internal Displacement at princ. 13(2).

⁷³ U.N. Guiding Principles on Internal Displacement at princ. 23(1)–(2).

⁷⁴ U.N. Guiding Principles on Internal Displacement at princ. 23(3).

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population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives.⁷⁵ Also known as the principle of distinction, this customary rule of IHL is applicable in international and non-international armed conflicts.⁷⁶ Additionally, in accordance with the principle of proportionality, even attacks with military objectives may not be carried out if the attack may cause civilian casualties or damage “which would be excessive in relation to the concrete and direct military advantage anticipated.”⁷⁷ The second Additional Protocol to the Geneva Conventions provides that displaced civilians should have “satisfactory conditions of shelter, hygiene, health, safety and nutrition.”⁷⁸ Rules requiring parties to a conflict to allow relief materials to reach civilians in need also affords protection to IDPs.

(d) International Humanitarian Law (IHL)

For the purpose of International Humanitarian Law (IHL), IDPs in States that are in armed Conflict are treated as civilians and are protected by the Fourth Geneva Convention,⁷⁹ Additional Protocol I⁸⁰ and II.⁸¹ The fourth Geneva Convention and the Additional Protocol I will apply where the armed conflict is international in character while Protocol II and common Article 3 will apply in times of internal conflict. This distinction is important because it indicates the threshold of application of these laws. In Nigeria particularly, we have conflicts that have not met the threshold for the application of the conventions. These conflicts are classified as other situations of violence although it has led to the displacement of thousands of persons in Nigeria as noted earlier in this article, for the purpose of such internal conflicts, Article 3 common to the fourth Geneva Conventions becomes applicable in addition to the human rights laws and other national laws. Common Article 3 applies because it is customary international law. Civilians are also protected from the effects of military operations.⁸² Particularly, the Protocol prohibits the forced movement of civilians unless imperative military reasons so demands or where their security is threatened. Civilians must be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.⁸³ Article 48 of Additional Protocol I sets out in great detail the protection given to IDPs. The provisions of common Article is reinforced by the provisions of Article 4 (1) and (2) of Additional Protocol II. This Article forbids collective punishments, acts of terrorism and pillage. It prohibits outrage upon personal dignity such as rape, enforced prostitution and any form of indecent assault. Persons deprived of their liberty are also protected,⁸⁴ and judicial

⁷⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, art. 48, June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Protocol I].

⁷⁶ Rule 1. The Principle of Distinction Between Civilians and Combatants, INT’L COMMITTEE RED CROSS, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule1 (last accessed May 8th, 2019).

⁷⁷ See Protocol I, supra note 120, at art. 51(5), 57(2)(a)(iii).

⁷⁸ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, art. 17, June 8, 1977, 1125 U.N.T.S. 609 [hereinafter Protocol II].

⁷⁹ Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, International Committee of the Red Cross (ICRC), Geneva, available at <<http://www.icrc.org>> accessed 2nd August 2024.

⁸⁰ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of the Victims of International Armed Conflicts (Protocol I), of 8 June 1977, available at <<http://www.icrc.org>> Accessed 2nd August 2024.

⁸¹ Protocol Additional to the Geneva Conventions of 12 AUGUST 1949, AND Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977. Available at <<http://www.icrc.org>>. Accessed 2nd August 2024

⁸² Article 13-16 Additional Protocol II.

⁸³ Article 17 Additional Protocol II.

⁸⁴ Article 5 Additional Protocol II.

guarantees are ensured.⁸⁵ The wounded and the sick including those caring for them are to be protected and respected.⁸⁶ Women and children are also given special protection.⁸⁷ Nigeria has ratified and domesticated the Conventions and the Protocols have also been ratified. The provisions of these laws are very relevant and should be relied upon in protecting IDPs. The Protocol further provides that whenever civilians are deprived of supplies essential for their survival, relief actions of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction are to be undertaken with the consent of the State concerned.⁸⁸

0.4 Recommendations:

The drivers of displacement in Nigeria are multi-faceted, complex and often overlapping. In the marginalized north-east, the emergence of the militant Islamic group, Boko-Haram, has caused large numbers of displacements since 2014. In the Middle Belt region, competition between pastoralists and farmers has caused tensions, culminating in significant levels of violence and displacement, and conflict has also emerged in several states in the North West, linked to banditry and criminal violence. Nigeria has a Body charged with responsibility over matters relating to Internally Displaced Persons; known as the National Commission For Refugees, Migrants and IDPs. However there is no Policy Framework on which the activities of the Commission could be anchored. The result is that the commission is sterile with respect to the needs and yearning of Internally Displaced Persons in Nigeria. It is therefore correct to say that, without a legal framework on Internal Displacement, the Commission is just like a rudderless ship. To avert these social abnormalities, the paper, therefore, recommends;

There is need for the government to improve efforts to address the vulnerabilities and needs of IDPs within host communities. The government and relevant agencies should eradicate the notion that IDPs far from their vicinities and staying with family members are not true IDPs and ensure compliance with the global meaning of internal displacement as stipulated in the Guiding Principles on Internal Displacement, so that the rights and human dignity of displaced persons that are not within formal IDP camps can be protected and respected. The government needs to create a mechanism to verify IDP status, such that they are catered for by the government irrespective of where they decide to resettle.

In an attempt to catering for the IDPs in the country, the government should see the need to reduce or eradicate economic or social causes of human displacement in the country and those causes that cannot be averted; the government should find means of educating the affected persons and thereby teaching them not to feel less of themselves by making them feel equally important to the society. Therefore, the Nigerian government should see to the enforcement of the rights of these internally displaced persons in Nigeria. The various challenges being faced by these internally displaced persons should also be looked at and critically solved, which could vary from provision of good shelter, healthy food and other personal and basic needs of life. The level of involvement and participation of nongovernmental organizations in Nigeria should be the order of the day. This participation should be critically looked at to ensure that the operation of the NGO is within their object clause without bias. It is known that every Nigerian is entitled to the fundamental human rights, so also the internally displaced persons as they are also Nigerians, they shouldn't be left out. Fundamental rights such as right to life, right to speech and so on and so forth. The

⁸⁵ Article 6 Additional Protocol II.

⁸⁶ Article 7-12 Additional Protocol II.

⁸⁷ Article 4 (3) Additional Protocol II.

⁸⁸ Article 8 (2) Additional Protocol II.

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government should continue to put enormous effort in harmonizing these rights so as to ensure equality in the land.

An Amendment of the 1999 Constitution of Nigeria by making chapter II of the Constitution justiciable will definitely assist the reduction of the gaps between the rich and the vulnerable in Nigeria. Domestication of Kampala Convention by the National Assembly, in accordance with provision of the 1999 Constitution of the Federal Republic of Nigeria (as amended); to make the provisions of the convention enforceable in Nigeria with respects to the Protection of IDPs. Ensuring of adequate security and protections of the IDPs in the various camps as well as enforce the rule of law within the camps to obviate the incidences of rape, extortions and other human rights violations witnessed in the camps. Implementations of policies in favour of reducing the rate of poverty and unemployment among the Nigerian population by the federal government; other policies which devoid of generalized violence or ethnic violence per se by the Government.

