

## Legal Analysis of Provisions of Kampala Convention and Protection of IDPS\*

### Abstract

Displacement makes victims vulnerable. It also results to 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. It occurs in the West, Asian States, African countries and even the Caribbean. 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 herdsman who attack and kill farmers and innocent citizens and take over their communities. Natural disaster, human rights violations, generalized violence and government and manmade displacements are on the increase. In Nigeria no legislation exists to advance rights of IDPs. However, at the regional level, the Kampala convention adopted by member states of African Union has influenced the consciousness for protection of IDPs globally. This paper is aimed at analyzing the provisions of the African Union Convention for promotion and protection of Welfare and Assistance to IDPs also known as Kampala document or Kampala Convention. The paper examined the extent to which the provisions have protected victims of internal displacement and made useful recommendation.

### 0.1 Introduction

There is no legal definition for IDPs as there is for Refugees. However, the United Nations report, Guiding Principles on Internal Displacement postulates that IDPs are groups that are forced or obliged to flee or to leave their homes, and who have not crossed an internationally recognized state border. The 'push' and 'pull' factors are often due to armed conflict or violation of human right(s) or man-made disasters. Refugees are displaced persons who, due to one of the reasons as mentioned earlier, migrate to another state. Salama<sup>1</sup> noted that refugees have a unique status in International law. That UN High Commissioner for Refugee (UNHCR) has an international responsibility to protect the rights of affected victims and coordinate human and fundamental needs was accepted by UNHCR in 2001. In international law, there are two classifications of displacement; Refugee and Internally Displaced Persons with acronym IDPs. A refugee is a group of people who flee from their home country to neighbouring state to seek protection outside their state border due to a threat to life while the internally displaced persons flee from their homes but stay in the country where the conflict occurred<sup>2</sup>. According to the Guiding Principle of the United Nations population, Internally Displaced Persons are often referred to as those who flee their residence as a result of insecurity caused by violence and systematic abuse of human rights. Adesote and Peters,<sup>3</sup>

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<sup>1</sup> I. Salama and F. Hampson., *Relationship between human rights law and international humanitarian law*, Administration of Justice, Rule of Law and Democracy available at <<https://www.un.org/unispal/document/auto-insert-182944/>> accessed on 2<sup>nd</sup> August 2024.

<sup>2</sup> I. A. Kanu, "Migration and Religio-Political Insecurity in Africa". Journal of African Studies and Sustainable Development. Vol. 2. No. 4, 2019.

<sup>3</sup> SA Adesote & AO Peters, *A Historical Analysis of Violence and Internal Population Displacement In Nigerias Fourth Republic*, 1999-2011, International Journal of Peace and Conflict Studies (IJPCS) 2015, Vol. 2, No 3.

submitted that IDPs are those who seek relocation due to a conflict in their region. However, Hampton (2013) opted that people flee their homes to seek safer net within the confines of their national borders or home country are classified IDPs. It was recent that IDPs was given attention, before this time the focus of discourse was on Refugees. In 1988, the special Representative Secretary General of the United Nations issued a Guiding Principles for IDPs; this was a framework that helped in curtailing the challenges faced by the internally displaced persons. IDPs encounter greater challenges and uncertainty in camps which ranges from the right to property to dehumanizing conditions. Salama,<sup>4</sup> noted that the group of IDPs who migrate to other places does so unwillingly; hence they can be categorized under the term “forced displacement.” Cohen<sup>5</sup> observed that unlike refugees, IDPs often fall within a vacuum of responsibility within their countries. Cohen<sup>6</sup> has thrown up something that ordinarily would have remained elusive and vague to us thus; the distinction is better understood from the ‘internal-external’ angles of displacement. According to Egwu,<sup>7</sup> the full scope of displacement is unknown in Nigeria. He based his argument on the capacity and resource of accurate data from a complex nature of IDPs. Usman,<sup>8</sup> traced the factor responsible for displacement to the push and pull factors involved; stating that one must take into cognizance violent conflict coupled with increasing level of poverty and low levels of education, particularly in the northern Nigeria. The democratic transition in Nigeria in 1999 clearly showed the increase of people affected by diverse conflicts. Thus, since then the numbers of IDPs in Nigeria have been on the increase.<sup>9</sup> In Nigeria, the number of IDPs has more than doubled in the span of three years, from some 868,000 people identified by the Nigerian Government in the north-eastern regions at the end of 2014 to 1.7 million people by June 2017, according to the Displacement Tracking Matrix (DTM) report released by IOM.<sup>10</sup> Politicization of religion and ethnicity in Nigeria led to the emergence of groups like Oduduwa Peoples' Congress (OPC), Arewa Peoples' Congress (APC), and the Movement Jama'at Ahlus al-Sunnah Lidda'a Wati- Jihad styled as Boko Haram according to Bamidele.<sup>11</sup> The same goes to the Movement for the Actualization of the Sovereign State of Biafra (MASSOB) movement of 1999 and the dreaded Nigerian-Biafran Civil War that consumed many people and displaced 2,000,000-4,500,000 people.<sup>12</sup> The emergence of these groups had resulted in the growing number of IDPs for decades in Nigeria. But the most radical of the group is the Boko Haram with reported cases of violence with and across the shores of Nigeria. Attacks from this Islamic sect have resulted in the destruction and damage of

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<sup>4</sup> (n 76).

<sup>5</sup> R. Cohen, “*Developing an International System for Internally Displaced Persons.*” International Studies Perspectives 7, no. 2 (2006): 87–101. <<http://www.jstor.org/stable/44218434>> accessed on 2<sup>nd</sup> August 2024.

<sup>6</sup> Ibid.

<sup>7</sup> S. Egwu, “*Ethnic Crisis and Internal Displacement in Nigeria: Socio-Political Dimensions and Solutions.*” Paper Presented at the Multi Stakeholders Conference on Internally Displacement in Nigeria 2011.

<sup>8</sup> MM Usman, *Rehabilitating Internally Displaced Persons in Nigeria: Challenges and National Security Implications* in : SI Ladan, MR Darma, BA Albaba, M. Iyoboyi, H. Ibrahim & I. Bello (eds) Personal Security and Community Policing: Theory and Practice of Managing National Security Challenges in Nigeria. Katsina: Pleasant Press, 2020.

<sup>9</sup> J. I. Levitt, ‘*Conflict Prevention, Management, and Resolution: Africa—Regional Strategies for the Prevention of Displacement and Protection of Displaced Persons: The Cases of the OAU, ECOWAS, SADC, and IGAD*, Duke Journal of Comparative & International Law 11 2001.

<sup>10</sup> IOM approach: Accountability to affected populations (AAP). Internal briefing note (May 2020).

<sup>11</sup> O. Bamidele, ‘*Boko Haram Catastrophic Terrorism—An Albatross to National Peace, Security and Sustainable Development in Nigeria*’, Journal of Sustainable Development in Africa 14(1):2012.

<sup>12</sup> O. Bamidele, ‘*Domestic Terrorism in Nigeria: The Grown ‘Monster’ Within*’, Defence Studies 13(4): 2013.

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infrastructure worth billions Oriakhi and Osemwengie.<sup>13</sup> Ife and Modakeke have engaged in protracted conflict for over a century. It remains the oldest intra-ethnic conflict in Nigeria..<sup>14</sup> Another case of communal conflict is the case of Umuleri, Aguleri and the Umuoba-Anam communities over the quest for the contentious portion of land that spread from Otuocha, Oye Agu road to the Fish market; up to the Otuocha township stadium had claimed lives, property as well as dislodged many residents..<sup>15</sup> Omotola,<sup>16</sup> had contended that poverty remains the toughest problem that Nigeria is facing in her drive to development. It has been argued elsewhere that failure of government had led to the high rate of poverty and unemployment. This is in line with the position of Onimode about the vicious cycle of poverty that Africa is weak because of the mismanagement of the state resources by corrupt political gladiators. Ayegba,<sup>17</sup> cited rightly from Dollard (1939), notes that violence is due to “frustration that led men to act aggressively.” Thus, if the state lacks the political will to handle protection from hunger, poverty, disease, fear and wants, in such situations crimes become the order of the day. In Nigerian there is the National Commission for Refugee Migrants and IDPs Act<sup>18</sup>. Abonyi<sup>19</sup> posited that the absence of national legal framework for protection of victims of Internal Displacement poses a challenge to the effective protection of IDPs in Nigerian.

### **0.2 Definition of Terms**

Internal displacement is a global crisis affecting about twenty to twenty-five million people in over forty nations, literally all regions of the globe.<sup>20</sup> Africa, with half of the world’s displaced population in some twenty-one nations, is worst hit. The situation in Africa continues to worsen. 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.<sup>21</sup> Nigeria, like every other developing country is confronted with many challenges with insecurity being one of the most prevalent.<sup>22</sup> Insecurity has been a bane to national development in Nigeria and has assumed a formidable dimension with several

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<sup>13</sup> D. Oriakhi, and P. Osemwengie ‘*The Impact of National Security On Foreign Direct Investment in Nigeria: An Empirical Analysis*’, Journal of Economics and Sustainable Development 3(13) 2012.

<sup>14</sup> Folami, Olakunle Michael, Taiwo Akanbi Olaiya, and Jamie Halsall.. “*Gender, Storytelling and Peace Construction in a Divided Society: A Case Study of the Ife/Modakeke Conflict.*” Cogent Social Sciences 2 (12016). Available at <<https://www.tandfonline.com/doi/citedby/10.1080/23311886.2016.1159015?scroll=top&needAccess=true>> Accessed on 2<sup>nd</sup> August, 2024.

<sup>15</sup> Onwuzuruigbo, Ifeanyi. “*Horizontal Inequalities And Communal Conflicts: The Case Of Aguleri And Umuleri Communities Of South-Eastern Nigeria.*” Africa: Journal of the International African Institute, vol. 81, no. 4, 2011, pp. 567–87. JSTOR, <[://www.jstor.org/stable/41485309](http://www.jstor.org/stable/41485309)>. Accessed 2<sup>nd</sup> August. 2024.

<sup>16</sup> J. S. Omotola, ‘*Combating Poverty for Sustainable Human Development in Nigeria: The Continuing Struggle*’, Journal of Poverty 12(4) 2008.

<sup>17</sup> U. S. Ayegba, ‘*Unemployment and Poverty as Sources and Consequence of Insecurity in Nigeria: The Boko Haram Insurgency Revisited*’. Victoria Island: Academic Journals 2015.

<sup>18</sup> Cap N21 Law of Federation of Nigeria 2007

<sup>19</sup> A.U. Abonyi emerging issues in International Humanitarian Law

<sup>20</sup> C Roberta and D Francis, *Masses in Fight: The Global Crisis of Internal Displacement*’ (Washington DC: Brookings Institution Press, 2008) 16.

<sup>21</sup> National Emergency Management (NEMA), Abuja 2015 Records of Internally Displaced Persons 2015; see 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.

<sup>22</sup> G S Moronfolu, ‘*Insecurity Challenges in Nigeria: Way out of Seeming Despondency*’ (2022) <https://www.thisdaylive.com/index.php/2022/>. Accessed on 7<sup>th</sup>, May 2024.

lingering implications for the country's political and economic structure.<sup>23</sup> 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.<sup>24</sup> 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,<sup>25</sup> evacuation or relocation of persons or group of persons within internationally recognized borders.<sup>26</sup>

**a. Armed Conflict**

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.

**b. 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.<sup>27</sup> 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.<sup>28</sup> 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 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

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<sup>23</sup> 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.

<sup>24</sup> Constitution of the Federal Republic of Nigeria, 1999 (As Amended), S. 14.

<sup>25</sup> United Nations Guiding Principles on Internal Displacement 1998, (UNGPID) principle no. 6.

<sup>26</sup> African Union Convention for the protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) 2009, Article 1.

<sup>27</sup> (n 10).

<sup>28</sup> Ibid.

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complex because they may operate sequentially forcing a person or persons from their homes and the other prompting onward movement. 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.

**c. Victims**

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. 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.

**d. Protection**

Definition of the term "protection" means "to be protected."<sup>29</sup> It can also refer to a state of being protected or an act of protection.<sup>30</sup> According to these definitions, "protection implies

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<sup>29</sup> 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).

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,<sup>31</sup> 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.<sup>32</sup>

### 0.3 Analysis of Provisions of Kampala Convention and Protection of IDPS

From the 22nd-23rd of October 2009, the African Union at its Special Summit in Kampala adopted the Convention on the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).<sup>33</sup> This made the African Union the first continental body to provide a legally binding policy framework for protection of IDPS in Africa and developing responses to internal displacement. In 2012 Nigeria ratified the Kampala Convention. In May 2012, Nigeria became the 12th country to deposit its instrument of ratification with the African Union Commission. Swaziland became the 15th country to ratify the Convention in November, 2012. The instrument provides that 'this Convention shall enter into force thirty (30) days after the deposit of the instruments of ratification or accession by fifteen (15) member states'<sup>34</sup> and that the chairperson of the AU Commission shall notify Member States of the coming into force of this Convention. By virtue of the foregoing provision, the Convention came into force on the 16th of December, 2012. Some other countries in Africa have ratified the Convention.<sup>35</sup> The Convention has five core objectives<sup>36</sup> which include to:

- a. promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement and also provide durable solutions;
- b. establish a legal framework for preventing internal displacement, and protecting and assisting internally displaced person in Africa;
- c. establish a legal framework for solidarity, cooperation, promotion of durable solutions and mutual support between the States Parties in order to combat displacement and address its consequences;
- d. provide for the obligations and responsibilities of States Parties, with respect to the prevention of internal displacement and protection of, and assistance to internally displaced persons;

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<sup>30</sup> A. A. Uchechukwu, '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).

<sup>31</sup> M. Guha, Collins English Dictionary (Reference ed.) Reference Reviews (2016)(30)(4) pp.20 - 28. <https://doi.org/10.1108/RR-02-2016-0029>.

<sup>32</sup> Inter-Agency Standing Committee Internally Displaced Persons Protection Policy (1999).

<sup>33</sup> African Union, Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), adopted on Oct. 23, 2009, 49 I.L.M. 86, available at <[http://www.internaldisplacement.org/8025708F00.4BE3B/1/o28httpInfoFiles29/0541BB5F1E5A133BC12576B900547976/\\$file/Convention%20Enacted.pdf](http://www.internaldisplacement.org/8025708F00.4BE3B/1/o28httpInfoFiles29/0541BB5F1E5A133BC12576B900547976/$file/Convention%20Enacted.pdf) [hereinafter Kampala Convention]. Accessed on 2nd August 2024.

<sup>34</sup> Article 17 (1) Kampala Convention.

<sup>35</sup> Article 17 (2) Kampala Convention.

<sup>36</sup> Article 2 (a)-f Kampala Convention, 2009.

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e. provide for the respective obligations, responsibilities and roles of armed groups, non-state actors and other actors, including civil society organizations, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons.

The first objective encourages the elimination of the root causes of internal displacement by promoting and strengthening regional and national measures. State parties are also encouraged to provide durable solutions. Preventing, mitigating and eliminating the root causes of internal displacement in Nigeria may appear to be a herculean task as the causes of internal displacement in Nigeria are very complex but a durable solution can be achieved gradually. A durable solution is achieved when IDPS no longer have specific assistance and protection needs that are linked to their displacement and such persons can enjoy their human rights without discrimination as a consequence of their displacement.<sup>37</sup> Durable solution can be achieved through sustainable reintegration at the place of origin, sustainable local integration in areas where internally displaced persons take refuge; or sustainable integration in another part of the country where they have migrated to. The State party (in this case Nigeria) should understand that the search for a durable solution is a gradual, often long term process of reducing displacement specific needs and ensuring the enjoyment of human rights without discrimination; a complex process that addresses human rights, humanitarian, development, reconstruction and peace building challenges and a process requiring the coordinated and timely engagement of different actors.<sup>38</sup> The principle that should guide durable solutions for Nigeria and any State party includes:<sup>39</sup>

1. The State party must realize that the primary responsibility to provide durable solutions for IDPs must be assumed by the national authorities. International humanitarian and development actors only have complementary roles;<sup>40</sup>
2. The authorities concerned should grant and facilitate rapid and unimpeded access for humanitarian and development actors that assist IDPs in achieving a durable solution;
3. The needs, right and legitimate interest of IDPs should be the primary consideration guiding all policies and decisions on durable solutions.
4. All relevant actors need to respect the right choice on what durable solutions to pursue and to participate in the planning and management of the solutions;
5. An IDPs choice of local integration or settlement, must not be regarded as renunciation of his/her right to return should that choice later become feasible;
6. Under no circumstances should IDPs be encouraged or compelled to return or relocate to areas where their life, safety liberty or health would be at risk;
7. IDPS seeking a durable solution must not be subject to discrimination for reasons related to their displacement;
8. Likewise, populations and communities that reintegrate IDPs and whose needs may be comparable, must not be neglected in comparison to the displaced;
9. IDPs who have achieved a durable solution continue to be protected by international human right, and where applicable, humanitarian law.

Apart from the preamble, the Kampala Convention has 23 articles. The preamble offers the rationale for developing the convention; it contextualizes the international norms such as the GPID to the situation of internal displacement in Africa. Presenting the legal underpinnings within the AU and UN system, the preamble furnishes the legislative intention of the Kampala

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<sup>37</sup> Inter-Agency Standing Committee (IASC) Framework on Durable Solutions for Internally Displaced Persons, Bern, 2010, p. A1.

<sup>38</sup> Ibid, p. A2.

<sup>39</sup> Ibid, p. A2.

<sup>40</sup> Article 5 (1) of Kampala Convention, 2009.

Convention. It recognizes the need for a binding instrument to govern internal displacement in Africa. While removing the legal lacuna in the protection of IDPs has motivated the AU to develop the Kampala Convention, the disastrous impact of internal displacement on peace, security, environment and development of countries was another important justification necessitating such a treaty.<sup>41</sup> The Convention essentially aims to establish a legal framework for preventing or mitigating internal displacement, protecting and assisting internally displaced persons, and promoting durable solutions and mutual support among the States Parties. Internally displaced persons are defined as:

"persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human made disasters, and who have not crossed an internationally recognized State border."<sup>42</sup>

The term in fact merely describes the situation of an individual being displaced within one's country of habitual residence. In conformity with the approach first espoused by the Guiding Principles,<sup>43</sup> the Kampala Convention does not create a new special legal status for IDPs, but rather strives to ensure that the currently recognized needs are adequately addressed. As a consequence, recognizing that IDPs are individuals who are entitled to the whole range of rights attributed to them by international human rights and humanitarian law instruments, the Convention judiciously declares that the protection it provides is not prejudiced.<sup>44</sup> Accordingly, it also requires States to refrain from and prevent discrimination against IDPs "in the enjoyment of any rights or freedoms on the grounds that they are internally displaced persons."<sup>45</sup> Encouragingly, the Kampala Convention directly addresses the issue of displacement due to development. Article 10, entitled "Displacement Induced by Projects," provides as follows:

1. States Parties, as much as possible, shall prevent displacement caused by projects carried out by public or private actors;

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<sup>41</sup> UNGA (2009) Climate change and its possible security implications: report of Secretary-General, 11 September 2009, A/64/350, available at: <http://www.unhcr.org/refworld/docid/4ad5e6380.html>. (accessed April, 28<sup>th</sup> 2024).

<sup>42</sup> Art. 1(k). Kampala Convention.

<sup>43</sup> Walter Kalin, Guiding Principles on Internal Displacement: Annotations 1 (American Society of International Law, Studies in Transnational Legal Policy No. 32, 2000) (indicating the legal sources that provide the basis of the principles), [www.asil.org/pdfs/study\\_32.pdf](http://www.asil.org/pdfs/study_32.pdf). Accessed 2<sup>nd</sup> August 2024. In fact, as was explained by Kalin: It is important to stress that paragraph 2 is not a legal definition of internally displaced persons. Becoming displaced within one's own country of origin or country of habitual residence does not confer special legal status in the same sense as, say, becoming a refugee does. This is because the rights and guarantees to which internally displaced persons are entitled stem from the fact that they are human beings and citizens or habitual residents of a particular state. Those rights and guarantees emanate from the peculiar vulnerability and special needs that flow from the fact of being displaced. By locating the description of "internally displaced persons" in their introductory section rather than in their main body, the Guiding Principles seek to highlight the descriptive and non-legal nature of the term "internally displaced persons." Internally displaced persons need not and cannot be granted a special legal status comparable to refugee status. Rather, as human beings who are in a situation of vulnerability they are entitled to the enjoyment of all relevant guarantees of human rights and humanitarian law, including those that are of special importance to them. This does not rule out the possibility of administrative measures such as registration on the domestic level to identify those who are displaced and need special assistance. However, lack of such registration would not deprive internally displaced persons of their entitlements under human rights and humanitarian law.

<sup>44</sup> Art. 20, para. 2. Kampala Convention.

<sup>45</sup> Art. 9, para. 1(a) Kampala Convention.



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2. States Parties shall ensure that stakeholders will explore feasible alternatives, with full information and consultation of persons likely to be displaced by projects;
  3. States Parties shall carry out a socio-economic and environmental impact assessment of a proposed development project prior to undertaking such a project.<sup>46</sup>
- i. Provisions of the Convention on the provision of Basic needs of IDP, (Food, Shelter, Medication)**

The obligations of State Parties relating to protection and humanitarian assistance are dealt with in Article 5 of the Convention. This article is unprecedented in human rights treaty law. In fact, as is well known, detailed provisions regarding humanitarian assistance and, in particular, the contentious issue of humanitarian access, can be found only in the law of armed conflict.<sup>47</sup> With regard to international conflicts, international humanitarian law conventions stipulate inter alia that States are bound to accept humanitarian assistance if the civilian population under their control is not sufficiently provided for<sup>48</sup> and to allow the rapid and unimpeded passage of all relief consignments, equipment, and personnel, subject to verification and supervision.<sup>49</sup> The obligation to accept external relief when needed is even more exacting with respect to the population of an occupied territory.<sup>50</sup> As far as relief personnel is concerned, Protocol I provides that it must be protected and assisted to the maximum extent possible, even though its participation in relief activities is subject to the approval of the party controlling the territory where those activities are being carried out. Restrictions on the movement or the activities of relief personnel can be applied, on a temporary basis, only when dictated by imperative military necessity.<sup>51</sup> In relation to internal armed conflicts, humanitarian action is much more limited. Apart from Common Article 3 to the Geneva Conventions affirming that "an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict," the only explicit provision in this regard is found in Additional Protocol II. Here it is established that relief actions shall be undertaken when civilians are suffering undue hardship, subject to the consent of the government in power.<sup>52</sup> The latter clause gives an undeniable advantage to the State Party to the conflict, whose consent would be required even when the assistance is directed to civilians under the effective control of the insurgents. Nevertheless, a systematic reading of the Conventions as well as the principle of effectiveness suggest that if the relief does not have to go through territories controlled by the government, the latter's consent is not necessary.<sup>53</sup> In any case, in both international and non-international conflicts, rules on humanitarian access have to be read in conjunction with the absolute prohibition to

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<sup>46</sup> Art. 10. Kampala Convention.

<sup>47</sup> Flavia Zorzi Giustiniani, *Le Nazioni Unite E L'assistenza Umanitaria* (2008); *Assisting The Victims Of Armed Conflicts And Other Disasters* 92-94, 101-104, 181, 207 (Frits Kalshoven, Ed., 1989); Peter Macalister-Smith, *International Humanitarian Assistance: Disaster Relief Actions In International Law And Organization* 22-34, 52 (1985); Denise Plattner, *Assistance to the Civilian Population: The Development and Present State of International Humanitarian Law*, 32 INT'L REV. OF THE RED CROSS, no. 288, 1992 at 249, 249.

<sup>48</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 70, para. 1, June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Protocol I]. See Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 23, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Fourth Geneva Convention].

<sup>49</sup> Ibid. Protocol I, art. 70, paras. 2-3; Fourth Geneva Convention,

<sup>50</sup> Ibid. Protocol I, art. 69, para. 1; Fourth Geneva Convention, art. 55, para. 1 & art. 59, para. 1.

<sup>51</sup> Ibid. Protocol I, art. 71, para. 3.

<sup>52</sup> Protocol II, art. 18, para. 2.

<sup>53</sup> Michael Bothe, Karl Josef Partsch & Waldemar A. Solf, *New Rules For Victims Of Armed Conflicts: Commentary On The Two 1977 Protocols Additional To The Geneva Conventions Of 1949* At 696-97 (1982).

use starvation as a method of warfare.<sup>54</sup> All the above notwithstanding, it bears noting that so far States have been extremely reluctant to assume explicit obligations in this regard. In times of natural disasters and similar emergency situations they have only agreed on some soft law instruments on humanitarian assistance, and in particular on three General Assembly resolutions (43/131, 45/100, 46/182).<sup>55</sup> These resolutions affirm the primary responsibility of the territorial State to take care of the victims and the need of its consent for external assistance, and recognize that the abandonment of the victims "without humanitarian assistance constitutes a threat to human life and an offence to human dignity."<sup>56</sup> It therefore comes as no surprise that the former UN Representative on Internally Displaced Persons, Mr. Francis Deng, considered the obligation of States to accept offers of assistance for IDPs as one of the areas where international law is not sufficiently developed.<sup>57</sup> Against this background, the reading of Article 5 of the Kampala Convention leaves mixed impressions. On the one hand, it spells out in clearest terms the need for States to mutually support each other in protecting and assisting IDPs; to facilitate relief action and rapid and unimpeded passage of all relief consignments, equipment, and personnel; and to respect humanitarian principles as well as the independence of humanitarian actors.<sup>58</sup> Moreover, contrary to the draft text, paragraph 6 now explicitly provides that States shall seek the assistance of humanitarian organizations and other relevant actors each time they cannot provide sufficient assistance themselves, and not just where the maximum available resources are inadequate.<sup>59</sup> On the other hand, these welcomed provisions are counterbalanced by others that are inspired more by sovereignty concerns than humanitarian needs. I refer in particular to the clause on the so-called humanitarian initiative. In this respect paragraph 6, drawing directly from Common Article 3 to the Geneva Conventions, provides that humanitarian agencies and other relevant actors "may offer their services."<sup>60</sup> This reference to humanitarian initiatives is not

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<sup>54</sup> This prohibition is established in arts. 54 of the First Additional Protocol and 14 of the Second Additional Protocol. Protocol I, *supra* note 78, art. 54; Protocol II, *supra* note 68, art. 14. In this respect The ICRC study on the rules of customary international humanitarian law affirms that: "consent must not be refused on arbitrary grounds. If it is established that a civilian population is threatened with Starvation and a humanitarian organization which provides relief on an impartial and nondiscriminatory basis is able to remedy the situation, a party is obliged to give consent." International Committee of the Red Cross, Customary International Humanitarian Law, Vol. 1: Rules 197 (Jean-Marie Henckaerts & Louise Doswald-Beck eds. 2005), available at <http://www.icrc.org/eng/resources/documents/publication/pcustom.htm>.>. Accessed on 2<sup>nd</sup> August, 2024.

<sup>55</sup> Generally G.A. Res. 46/182, U.N. Doc. A/RES/46/182 (Dec. 19, 1991); G.A. Res. 45/100, U.N. Doc. A/RES/45/100 (Dec. 14, 1990); G.A. Res. 43/131, U.N. Doc. A/RES/43/131 (Dec. 8, 1988) (reaffirming the importance of humanitarian assistance and state sovereignty; urging affected states, states in proximity to affected states, and nongovernmental and intergovernmental organizations to coordinate with one another in the facilitation and implementation of humanitarian assistance for internally displaced persons; and implementing the annex establishing the guiding principles, roles of relevant actors, and general procedures for coordination of humanitarian assistance).

<sup>56</sup> G.A. Res. 46/182, annex, para. 3; G.A. Res. 45/100, pmbl., para. 2; G.A. Res. 43/131, pmbl., para. 2

<sup>57</sup> Representative of the U.N. Secretary-General on Internally Displaced Persons, Internally displaced Persons: Report of the Representative of the Secretary-General, Mr. Francis M Deng, Submitted Pursuant to Commission on Human Rights Resolution 1995/57, Compilation and Analysis of legal Norms, paras. 380, 415(q), U.N. Doc. E/CN.4/1996/52/Add.2 (Dec. 5, 1995) (discussing the lack of recognition, under international law, of an affected state's corresponding duty to accept humanitarian assistance from international actors when the state is unable or unwilling to provide the assistance to its own people and the need for an international instrument addressing this duty to accept aid and facilitate free passage and distribution of relief).

<sup>58</sup> Art. 5, paras. 2, 7-8. Kampala Convention.

<sup>59</sup> Art. 5, para. 6. Kampala Convention.

<sup>60</sup> Geneva Convention Relative to the Treatment of Prisoners of War art. 3, para. 2, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

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accompanied, though, by the important addition made to the First Additional Protocol that offers of relief "shall not be regarded as interference... or as unfriendly acts."<sup>61</sup> The final clause of Article 5 instead states that "nothing in this Article shall prejudice the principles of sovereignty and territorial integrity of states."<sup>62</sup> These provisions therefore leaves the impression that States Parties want to maintain a considerable degree of discretion in deciding whether outside action is required in order to protect and assist IDPs. Generally, aid is provided in camps that are expressly set up to deliver humanitarian services to civilians in need. Yet the ever-growing tendency to concentrate humanitarian activities in such artificial agglomerates brings with it serious problems.<sup>63</sup> The camps dilemma was recently put again to the fore in the report released by the ICRC on "Internal displacement in armed conflict", which observed: "Not all IDPs flee to or stay in camps. Camps deflect the world's attention from the harsh truth of internal displacement. They may be a last resort but more often than not they are in accessible places, away from frontlines, near towns, perhaps, or at least a short drive from an airstrip. Donors and media are flown in and out and what they find becomes high profile. The consequence is that for far too long the debate on IDPs has focused on those who are in camps to the detriment of those who are not."<sup>64</sup> States must allow the rapid and unimpeded passage of relief consignments, equipment and humanitarian personnel to IDPs. They must also aid local and international organisations and humanitarian agencies, CSOs and other actors in providing protection and assistance to IDPs.<sup>65</sup> "States shall provide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include food, water, shelter, medical care and other health services, sanitation, education, and any other necessary social services, and where appropriate, extend such assistance to local and host communities"<sup>66</sup>

**ii. Provisions of the Convention Relating to the Host Communities.**

In many situations of displacement, host communities, community leaders and civil society organisations (CSOs), including community-based organisations (CBOs) and faith-based organisations (FBOs), are often the first to respond to the needs of IDPs and to help resolve disputes or tensions that arise in areas of displacement or return. The Kampala Convention explicitly sets out a role for CSOs, in all phases of displacement, thereby giving recognition to activities that CSOs have engaged in for many years.<sup>67</sup> Over time, host communities that once welcomed displaced people with open arms may become less hospitable because there may not be enough food, water, jobs, schools or hospitals to meet the needs of an increased population. The Kampala Convention recognizes the important roles that host communities play in protecting and assisting IDPs, and the burden this places on them.<sup>68</sup> For example, the Convention calls for assessments of the needs of host communities as well as those of IDPs,

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<sup>61</sup> Art. 70, para. 1. Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 70, para. 1, June 8, 1977, 1125 U.N.T.S. 3 [hereinafter Protocol I]. See Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 23, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Fourth Geneva Convention].

<sup>62</sup> Art. 5, para. 12. Kampala Convention.

<sup>63</sup> Press Release, Refugee Law Project, Transitional Justice is key to addressing the challenge of mass displacement in Africa (Oct. 18, 2009), available at [http://refugeelawproject.org/press\\_releases.php](http://refugeelawproject.org/press_releases.php) (follow "Transitional Justice is key to addressing the challenge of mass displacement in Africa" hyperlink).

<sup>64</sup> Int'l Comm. of the Red Cross, Internal Displacement in Armed Conflict: Facing up to the Challenges 13-14 (2009)

<sup>65</sup> Articles 3(1)(j) and 5(7) Kampala Convention.

<sup>66</sup> Article 9(2)(b) Kampala Convention.

<sup>67</sup> Preamble and Articles 2(e), 3(2)(b), 4(3), 5(6), 5(7), 8(3) (c), 8(3)(d), 9(3), 11(3). Kampala Convention.

<sup>68</sup> Preamble and Articles 3(2)(c), 5(5), 9(2)(b). Kampala Convention.

and the extension of assistance to host and local communities where appropriate. These provisions are important to ensure that governments and aid organisations take steps to reinforce local infrastructures and social services to meet the needs of IDPs and host communities alike. The Kampala Convention appears to take account of these problems in various respects. Apart from the important reaffirmation of States' primary duty to provide protection and assistance "to internally displaced persons within their territory or jurisdiction without discrimination of any kind,"<sup>69</sup> article 5.5 also calls upon States to extend their assistance to host communities.<sup>70</sup> Host communities are often the most neglected group during displacement crises, even though the host may not have lesser needs and the burden of supporting displaced people can be extremely heavy and expensive. The said provision is also a progressive element with respect to the Guiding Principles - which does not address the issue -and draws inspiration from a similar provision of the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons.<sup>71</sup> Moreover, with respect to the security of IDP camps or settlements, States' parties endeavor to "respect and maintain the civilian and humanitarian character of the places where internally displaced persons are sheltered and safeguard such locations against infiltration by armed groups or elements and disarm and separate such groups or elements from internally displaced persons."<sup>72</sup> Again, this is a welcome development vis-A-vis the Guiding Principles, which is limited to the assertion that IDPs "shall be protected... against... attacks against their camps or settlements,"<sup>73</sup> merely reaffirming what was earlier, and more extensively, stated in the Great Lakes IDPs Protocol.<sup>74</sup>

### **iii. Provisions of Convention Relating to Registration of IDP Camps and assistance**

Efforts to provide adequate protection and assistance to IDPs must be based on accurate information about the number of IDPs (including the number of children, women and men in different age groups) in all locations, such as camps, cities, rural settings. It is therefore important to ensure that all IDPs are identified from the start. "States Parties shall create and maintain an updated register of all internally displaced persons within their jurisdiction or effective control. In doing so, States Parties may collaborate with international organizations or humanitarian agencies or civil society organizations."<sup>75</sup> The provision of assistance to IDPs should be guided by IDPs' levels of vulnerability and their needs. "States Parties shall assess or facilitate the assessment of the needs and vulnerabilities of internally displaced persons and of host communities, in cooperation with international organizations or agencies."<sup>76</sup> In situations where civil society organisations have information that people have been displaced,

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<sup>69</sup> Art. 5, para. 1 Kampala Convention.

<sup>70</sup> Art. 5, para. 5; also Art. 3, para. 2. Kampala Convention. (requiring State Parties to "adopt other measures as appropriate, including strategies and policies on internal displacement at national and local levels, taking into account the need of host communities").

<sup>71</sup> Great Lakes Protocol *supra* note 31, art. 4, para. 1(e), (providing that Member States should "[e]xtend protection and assistance, according to need, to communities residing in areas hosting internally displaced persons).

<sup>72</sup> Art. 9, para. 2(g). Kampala Convention.

<sup>73</sup> Guiding Principles, princ. 10, para. 2(d).

<sup>74</sup> Great Lakes Protocol, art. 3, paras. 9, 4(g) Kampala Convention. (providing that "Member States shall safeguard and maintain the civilian and humanitarian character of the protection and location of internally displaced persons in accordance with international guidelines on the separation of armed elements" and must also "[e]nsure the safe location of internally displaced persons, in satisfactory conditions of dignity, hygiene, water, food and shelter, away from areas of armed conflict and danger, and having regard to the special needs of women and children").

<sup>75</sup> Art 13(1). Kampala Convention.

<sup>76</sup> Art. 5 (5). Kampala Convention.

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but where there is insufficient information to guide protection and assistance programmes for IDPs, CSOs can either encourage the responsible authorities to assess the outstanding needs of IDPs, or they can do assessments themselves. Some groups of IDPs may be more difficult to identify or to locate. Disabled, chronically-ill and elderly IDPs, especially those without relatives or other care-givers, may not be able to participate in assessments or registration exercises. In some situations, community leaders and others may fail to include, or seek to exclude, members of marginalised groups from assessments, such as widows or households headed by women or children, IDPs living with HIV/AIDS, IDPs from certain religious or ethnic groups, or IDPs with certain political affiliations. Urban IDPs, or IDPs who live with host communities rather than in camps, may be difficult to distinguish from the local population. Assessments must be organized in such a way as to ensure that all IDPs who wish to be identified are included. CSOs have a special role in ensuring that this is the case. On the one hand, CSOs can advocate with the responsible authorities for assessments to be done specifically for neglected or unidentified groups of IDPs.

**iv Provisions of the Convention Relating to Integrating and Reuniting them with their families and loved ones.**

Internal displacement could not be adequately dealt with in the absence of a genuine and vigorous effort to foster durable solutions. AU leaders in Uganda in October 2009, realized the need for durable solutions and noted: "refugees and internally displaced persons are sometimes unable or unwilling to return to their homes immediately after their displacement and as a result, spend many years or even decades in camps and therefore require durable solutions to their displacement situation." A need for a special regime of protection disappears only once normal conditions are restored.<sup>77</sup> "State Parties shall enable internally displaced persons to make a free and informed choice on whether to return, integrate locally or relocate by consulting them on these and other options and ensuring their participation in finding sustainable solutions."<sup>78</sup> This latter provision establishes that return has to be voluntary, and, thus, the individuals concerned need to be involved in decisions regarding durable solutions. The right to return to one's own country is a well-known and explicitly recognized provision of international law<sup>79</sup> and can be considered a counterpart to the right to expel non-nationals.<sup>80</sup> In particular, as far as refugees are concerned, the right to voluntary return is a corollary of the principle of non-refoulement enshrined in Article 33 of the 1951 Geneva Convention Relating to the Status of Refugees.<sup>81</sup> Under the principle of non-refoulement States cannot return an asylum seeker to a situation where he or she would face persecution.<sup>82</sup> Similarly, conventions such as the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa

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<sup>77</sup> Representative of the Secretary-General on the human rights of internally displaced Persons, Protection of and assistance to internally displaced persons: Report of the Representative of The Secretary-General on the human rights of internally displaced persons, transmitted by note of the Secretary-General, para. 29, U.N. Doc. A/64/214 (Aug. 3, 2009) (recognizing that "[t]he achievement of [durable] solutions is a process through which the need for specialized assistance and protection gradually diminishes until an internally displaced person no longer has specific needs that are directly Linked to his or her having been displaced).

<sup>78</sup> Art. 11, para. 2. Kampala Convention.

<sup>79</sup> Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948), art. 13(2).

<sup>80</sup> G. Goodwin-Gill, The Right to Leave, the Right to Return and the Question of a Right to Remain, in *The Problem Of Refugees in the Light of Contemporary International Law* Issues 100 (V. Gowlland-Debbas ed. 1996).

<sup>81</sup> Geneva Convention Relating to the Status of Refugees, art. 33, Jul. 28, 1951, available at <<http://www.unhcr.org/3b66c2aa10.html>>. Accessed on 2<sup>nd</sup> August, 2024.

<sup>82</sup> J.C. Hathaway, *The Rights Of Refugees Under International Law* 915-16 (Cambridge 2005).

explicitly provide that "[t]he essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will"<sup>83</sup> In contrast, the right for those internally displaced to return to their home or place of residence has not gained an analogous recognition by States. However, because both universal and regional instruments for the protection of human rights recognize the right to move freely within a State and to choose one's place of residence, the right of voluntary return could be deduced implicitly. This deduction is supported by affirmations of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, in the Principles on Housing and Property Restitution of Refugees and IDPs (the so-called Pinheiro Principles, which were elaborated by drawing on existing human rights and humanitarian law norms) which state that "all refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence."<sup>84</sup> As of yet, to our knowledge, the only case in which this right has been recognized in a binding international instrument is that of the Dayton Peace Accord,<sup>85</sup> signed by Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia which sought to put an end to the Bosnian conflict. This Agreement in fact declared that all those displaced by the conflict should have the right to "return to their homes of origin."<sup>86</sup> The Kampala Convention does not limit itself to affirming the principle of voluntary return, but also indicates the modalities of such a return. In the first place, it provides that the territorial State should protect the displaced "against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk."<sup>87</sup> With similar terms, article 11 of the Kampala convention enshrines the undertaking of AU member States to seek lasting solutions by promoting and creating conducive conditions for voluntary return, local integration or relocation on a sustainable basis and in the circumstances of safety and dignity.<sup>88</sup> Furthermore, Article 11 provides for the need to "cooperate, where appropriate, with the African Union and international organizations or humanitarian agencies and civil society organizations, in providing protection and assistance in the course of finding and implementing solutions for sustainable return, local integration or relocation and long-term reconstruction."<sup>89</sup> In fact, as Special Representative Kalin observed, "experience shows that the successful return of IDPs and refugees to their homes and former places of habitual residence is based on three elements: ensuring the safety of returnees; returning property to the displaced and reconstruction of their houses; and creating an economic, social and political environment that sustains return."<sup>90</sup> In particular, persistent property-related disputes can hinder reconciliation and undermine the security and stability in the country.<sup>91</sup> Despite the

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<sup>83</sup> OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted By the Assembly of Heads of State and Government at its Sixth Ordinary Session, art. 5, Sept. 10, 1969, U.N.T.S. 14691.

<sup>84</sup>Pinheiro Principles, art. 10.1, Aug. 11, 2005, available at <http://www.unhcr.org/ua/Img/uploads/docs/PinheiroPrinciples.pdf> (emphasis added) Accessed on 2<sup>nd</sup> August, 2024.

<sup>85</sup> Dayton Peace Accord, art. 7 annex 7, Dec.14, 1995, available at <http://www.state.gov/www/regions/eur/bosnia/bosagree.html>.>Accused on 2<sup>nd</sup> 2024.

<sup>86</sup> Ibid.

<sup>87</sup> Art. 9 (2)e. Kampala Convention.

<sup>88</sup> Art. 11. Kampala Convention.

<sup>89</sup> Ibid.

<sup>90</sup>Kalin, The Great Lakes Protocol on Internally Displaced Persons: Responses and challenges, Symposium On International Law In Post Conflict Situations: The Great Lakes Process (Sept. 27, 2007), available at [http://www.brookings.edu/speeches/2007/0927\\_africa\\_kalin.aspx](http://www.brookings.edu/speeches/2007/0927_africa_kalin.aspx).>Accused on 2<sup>nd</sup> August, 2024.

<sup>91</sup>Ibid. This was also recognized by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which affirmed that "the adoption or application of laws by States which are designed to or result in the loss or removal of tenancy, use, ownership or other rights connected with housing or property, the active retraction of the right to reside within a particular place, or laws of abandonment employed against refugees or

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potentially devastating consequences, States have scarcely recognized the property rights issue, and it was only with the adoption-of the Pinheiro Principles, in 2005, that international standards specifically and comprehensively addressing property restitution rights were agreed upon.<sup>92</sup> In this respect, Article 12, entitled Compensation, enjoins States inter alia to provide appropriate forms of reparation for arbitrary displacement, as well as for damages incurred as a result of displacement.<sup>93</sup> As far as property rights and lands are concerned, Article 11 requires the establishment of: "appropriate mechanisms providing for simplified procedures where necessary, for resolving disputes relating to the property of internally displaced persons"<sup>94</sup> and of "all appropriate measures, whenever possible, to restore the lands of communities with special dependency and attachment to such lands upon the communities' return, reintegration, and reinsertion."<sup>95</sup> These provisions are significant insofar as they demonstrate an effort on the part of the States Parties to specifically address sensitive property-related problems issues. Guiding Principle 29, also provides protection of property rights, but its application is not limited to those IDPs who choose to return to their place of origin. At the same time though, the Convention lacks the essential assertion - contained in the Guiding Principles and reaffirmed in the Great Lakes Property Protocol - that States should only resort to compensation when recovery of property and possessions is not possible. Hopefully, State Parties will not decide to prioritize compensation, and in particular monetary compensation, because such a decision could have a very negative impact on the living conditions of returned IDPs. In fact, empirical research proves that reliance upon cash compensation leads to new poverty among the displaced population.<sup>96</sup>

**v. Provision on States Derogating from their Duties, and Domestication, Ratification of the Convention and Status of Nigeria under the Convention.**

The conventional framework for the protection and assistance of IDPs is based on the assumption - undisputed under international law - that States bear primary responsibility to respect, protect, and fulfill the rights to which the internally displaced are entitled, without discrimination of any kind.<sup>97</sup> Thus, the text of the Convention creates series of obligations on State Parties in all the different phases of displacement. Foremost among these obligations are to prohibit and prevent arbitrary displacement, to respect and ensure respect and protection of IDPs' human rights, to ensure individual criminal responsibility and the accountability of non-State actors involved in activities causing or contributing to displacement, and to maintain the civilian and humanitarian character of the protection and assistance of IDPs.<sup>98</sup> Mindful that

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internally displaced persons pose serious impediments to the return and reintegration of refugees and internally displaced persons and to reconstruction and reconciliation." Housing and property restitution in the context of the return of refugees and internally displaced persons, Sub-Commission resolution 1998/26, para. 3.

<sup>92</sup>Pinheiro Principles, art. 10.1, Aug. 11, 2005, available at <<http://www.unhcr.org/ua/Img/uploads/docs/PinheiroPrinciples.pdf> (emphasis added). Accessed on 2nd August 2024.

<sup>93</sup> Art. 12. Kampala Convention.

<sup>94</sup> Art. 11. Kampala Convention.

<sup>95</sup> Ibid.

<sup>96</sup> Scott Leckie, Conclusions – Best practices to guide future housing and property restitution, Efforts, In Housing And Property Restitution Rights Of Refugees And Displaced Persons: Laws, Cases, And Materials Chapter 14, (Scott Leckie, ed. 2003).

<sup>97</sup>Pmbl., para. 11. art. 2, para. D, Kampala Convention, (enumerating among the Convention's objectives that of "provid[ing] for the Obligations and responsibilities of States Parties, with respect to the prevention of internal displacement And protection of, and assistance, to internally displaced persons").

<sup>98</sup> Art. 3, para. L(a, d, f-I )Kampala Convention,. Importantly, States Parties are Also required to register IDPs. This requirement is designed to address situations where governments minimise or otherwise manipulate

the primary bearers of obligations often coincide with the same subjects who directly or indirectly cause displacement, State Parties have also assigned a special role to the African Union. The responsibilities of the AU are outlined in Article 8, which conceives of the organization as both a coordination mechanism and, in exceptional circumstances such as when a State is unable or unwilling to cope with a displacement crisis in its territory, as a major support or substitute for State action.<sup>99</sup> As far as coordination is concerned, the African Union shall support the State Parties in assisting and protecting IDPs, in particular by strengthening the Union's institutional framework and capacity, coordinating the mobilization of appropriate resources, and collaborating directly with relevant stakeholders with respect to the measures to be taken to protect and assist the displaced.<sup>100</sup> The AU shall also share information with the African Commission on Human and People's Rights on the situation of displacement and collaborate closely with the Special Rapporteur for Refugees, Returnees, IDPs and Asylum Seekers in addressing issues of internally displaced persons.<sup>101</sup> In relation to its role as a support or substitute for State action, the Convention's Constitutive Act<sup>102</sup> provides for the right of the African Union to intervene in the territory of a member State when international crimes are committed. The Constitutive Act also gives member States the right to request intervention from the AU<sup>103</sup> to "restore peace and security.., and thus contribute to the creation of favourable conditions for finding durable solutions to the problem of internal displacement.<sup>104</sup> States are prohibited from arbitrarily displacing people.<sup>105</sup> This does not mean that states are never allowed to displace people. People may be evacuated when their safety and health is in danger as a result of natural disasters. Similarly, the security of civilians may warrant forced displacement in situations of armed conflict. Under certain circumstances, states may also displace people through forced evictions if this is in the public interest, for example where homes need to make way for public infrastructure or development projects. However, for such forced evictions to be lawful, they must be undertaken in a nondiscriminatory way and in accordance with strict criteria in terms of consultation, notification and the provision of alternative housing.<sup>106</sup> Where forcible displacement by the state is not done in accordance with the law, it amounts to arbitrary displacement. There is an important role for civil society in monitoring situations of forcible displacement by the state, in order to ensure that such forcible displacement does not amount to arbitrary displacement. Where people have been arbitrarily displaced by the state, CSOs can assist the victims to

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numbers of IDPs or make it difficult for them to access assistance or social services. Article 13(1) in fact provides that "State Parties shall create and maintain an up-dated register of all internally displaced persons within their jurisdiction or effective control." Art. 13, para. 1. Instead, the Guiding Principles do not require that States institute an IDP registration system. Guiding Principles, princ. 20, para. 2 (providing only that "the authorities concerned shall issue to [IDPs] all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates").

<sup>99</sup> Art. 8 Kampala Convention.

<sup>100</sup> Art. 8, para. 3(a-d). Kampala Convention.

<sup>101</sup> Art. 8, para. 3(e-f). Kampala Convention.

<sup>102</sup> Art. 4, para. H. Constitutive Act of the African Union, Kampala Convention. The African Union's right to intervene in a State Party in certain grave circumstances is enshrined in art. 4(h) of its Constitutive Act. Organization of African Unity, Constitutive Act of the African Union, art. 4, para. h, July 11, 2000, 2158 U.N.T.S. I-37733.

<sup>103</sup> Art. 4, para. J. Kampala Convention.

<sup>104</sup> Art. 8, para. 2. Kampala Convention.

<sup>105</sup> Articles 3(1)(a) and 4(1). Kampala Convention.

<sup>106</sup> Committee on Economic, Social and Cultural Rights, General Comment 4: The Right to Adequate Housing (art. 11.1 of the Covenant), 13 December 1991; and General Comment 7: The Right to Adequate Housing (art. 11.1 of the Covenant): Forced Evictions, 20 May 1997.



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obtain a legal remedy, including compensation. In situations of armed conflict, there could also be a role for CSOs in making non-state armed groups aware of their obligation to respect international humanitarian law (also known as “the laws of war”), including the prohibition on the displacement of civilians, unless such displacement is necessitated by the security of the civilians or imperative military reasons. The International Committee of the Red Cross has a mandate to monitor respect for International humanitarian law and to protect civilians in armed conflict; where CSOs are concerned about the fate of civilians in armed conflict, they can alert local representatives of the ICRC to the situation. In relation to displacement caused by natural disasters, while states cannot prevent disasters such as earthquakes or storms, they can do much to prepare for them by implementing disaster risk reduction measures. These measures may help to reduce the impact of natural disasters, including by limiting the resulting displacement. CSOs can help to identify people at risk of displacement from certain natural disasters such as floods, and they can advocate with governments for the development of adequate disaster relief and preparedness plans. CSOs can help to raise awareness of these plans to the populations at risk. Where necessary, CSOs can highlight failures by the state to take adequate preventative measures. The development of national legal frameworks in line with the Kampala Convention is an important step towards the implementation of the Convention and the protection of IDPs’ rights. But legal frameworks alone do not suffice, even when they perfectly reflect the rights and obligations set out in the Convention. The laws and policies must be implemented in practice to have any impact. CSOs should thus monitor the extent to which governments’ actions are in line with their legal obligations to protect the rights of IDPs, and to report on failures to implement them with a view to encouraging governments to make the necessary adjustments. National activities for CSOs could include:

- i. Monitoring the implementation of laws and policies, and collecting information systematically about problems that IDPs face in accessing their rights.
- ii. On the basis of such information, advocating for changes in government policies or government responses to particular situations of displacement.
- iii. Establishing legal clinics for IDPs to advise them on their rights under national and international law and to help them access remedies through the justice system where necessary.

At the regional and the AU levels, possible CSO activities include:

- i. ECOSOCC members could discuss matters relating to the implementation of the Kampala Convention at the ECOSOCC meetings prior to the Ordinary Summits of the AU. The Political Affairs Cluster Committee of ECOSOCC has a special role in ensuring that CSOs’ observations about the implementation of the Kampala Convention are included in the annual ECOSOCC reports to the AU Assembly, and in the statements by the ECOSOCC president to the Council and Assembly at the twice-yearly ordinary summits of the AU.
- ii. As noted earlier, the Kampala Convention provides for the establishment of a Conference of States Parties to monitor and review the implementation of the objectives of the Convention.<sup>107</sup> No explicit mechanism is provided under the Convention for CSOs to provide information to this Conference of States Parties. CSOs could explore the possibilities for using ECOSOCC, or the CCAR and the PRC Sub-Committee, as platforms for bringing information about the implementation of the Convention to the attention of the Conference of States Parties.<sup>108</sup>

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<sup>107</sup> Article 14(1). Kampala Convention.

<sup>108</sup> The AU has a Permanent Representatives’ Committee (PRC), consisting of all AU member states’ permanent representatives to AU. The PRC has a Sub-Committee on Refugees, Returnees and Internally Displaced Persons,

- iii. As noted in section 4.5, whenever states present their reports under Article 62 of the African Charter on Human and Peoples' Rights (which they must do every two years), states that have ratified the Kampala Convention must include information about the legislative and other measures they have taken to give effect to the Convention. CSOs should work with governments to ensure that they meet their obligations in this respect. CSOs can also provide information to the ACHPR, prior to the consideration by the ACHPR of the state report, to highlight particular problems in relation to IDP rights, including reports of violations by states of their obligations under the Kampala Convention.
- iv. NGOs may also propose resolutions during the NGO Forum prior to the regular sessions of the ACHPR, for consideration and adoption by the ACHPR, in relation to failures by particular states to abide by their obligations under the Kampala Convention.
- v. Finally, CSOs can also engage with the various mechanisms of the Regional Economic Communities and with the Pan-African Parliament to ensure proper and comprehensive monitoring of the implementation of the Kampala Convention. If IDPs and people at risk of displacement are to benefit from the Kampala Convention, states must do more than just ratify the Convention: they must proceed to implement it. Implementation has two components. First, states must amend existing law and policies (or adopt new laws and policies) in order to bring their legal frameworks into line with their obligations under the Kampala Convention. Second, states must respect their own laws and policies; i.e., they must act to protect and assist IDPs effectively.

To ensure that states take the necessary steps to implement the Convention, and then abide by their obligations under this implementing legislation, it will be important for CSOs to ensure that the Kampala Convention remains high on the agenda of policymakers and legislators. They thus have an important role to play in contributing to a sustained interest in the Convention, even after it has been ratified, to ensure that states take the necessary steps to discharge their responsibilities under it. This means that all the activities remains relevant for CSOs even after a particular state has ratified the Kampala Convention.

#### **0.4 Challenges Of Enforcement Of The Provisions Of Kampala Convention:**

Ideally, Nigeria is a signatory and have ratified the Kampala convention. However, that cannot automatically mean that the said convention is enforceable in Nigeria. It is provided that no treaty between the federation and other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.<sup>109</sup> Thus, until the said Kampala convention is domesticated by the National Assembly, the said convention cannot apply strictly in Nigeria.

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which has the same membership as the PRC itself. UNHCR has observer status at the PRC Sub-Committee. The PRC Sub-Committee meets two or three times a year, and has a Bureau of five member states, one from each of the five official AU regions. The Bureau regularly conducts country missions and prepares reports for the PRC Sub-Committee. Once endorsed by the PRC, these reports are presented to the AU Executive Council. The AU also has a Coordinating Committee on Assistance and Protection to Refugees, Returnees and Internally Displaced Persons (CCAR). The CCAR membership consists of AU member states, UNHCR and NGOs. The CCAR secretariat is provided by the Humanitarian Affairs, Refugees and Displaced Persons (HARDP) division of the Political Affairs Department of the AU Commission. The CCAR is expected to meet twice a year. The CCAR Working Group meets in Addis Ababa when it is not possible to call a meeting of the full CCAR. The CCAR provides a platform for follow-up on the Kampala Convention, and for IDP and refugee matters in general. The CCAR is an advisory body to the PRC Sub-Committee on Refugees, Returnees and IDPs; CSOs can thus use the CCAR as a mechanism to bring matters relating to the Kampala Convention to the attention of the PRC Sub-Committee. Since PRC reports to the AU Executive Council, the CCAR also provides an indirect mechanism for CSOs to put matters relating to the Kampala Convention on the agenda of the Executive Council.

<sup>109</sup> Constitution of Nigeria 1999 s 12 (1)

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### **a. Lack of Coordination and Collaboration among Institutions**

Human rights actors aim to ensure the wellbeing of internally displaced children in armed conflicts. These actors include a country's government and its agencies, NGOs, international humanitarian organizations, local governments, private companies, and individuals. These actors have, over the years, performed various roles in the ongoing armed conflict in Nigeria. However, a lot of persons are still suffering. One of the challenges in protecting them is the lack of coordination and collaboration between these agencies.<sup>110</sup> Coordination is important between these actors because it prevents confusion and fosters effectiveness.

### **b. Constraints on Humanitarian Access and Assistance**

Internally displaced persons require humanitarian assistance due to the destruction of property as a result of combat operations, inability to use farming areas because of fear of attacks or landmine explosions, and displacement from their homes, which amounts to abandoning sources of income. The conflict across North-East Nigeria has resulted in a deepening humanitarian crisis.<sup>111</sup> Humanitarian access and assistance are significant challenges to the protection of internally displaced persons in armed conflicts in Nigeria.<sup>112</sup> The U.N. Security Council has identified the denial of humanitarian access for persons as one of six grave violations that affect people in periods of armed conflict. Security related concerns make it difficult for humanitarian actors to reach populations situated in areas where hostilities are ongoing, due to the fear of being killed or abducted. As such, some relief operations are cancelled or suspended when the risk of casualties is significant.<sup>113</sup> Humanitarian access may also be denied for political reasons. A state may deny access to some areas on the pretext of trying to protect the humanitarian workers from danger, "when in reality it has a hidden agenda of limiting witnesses to human rights abuses." Access may also be denied when relief actions are seen as a threat to the sovereignty of a state or because of the perceived "legitimization" of a non-state group as a result of engagement with it for humanitarian purposes.<sup>114</sup> Thus, "in such cases the relevant authorities often argue that they have the capacity to handle the situation themselves, without external support." They may also claim that proposed relief actions do not meet the conditions of being exclusively humanitarian and impartial, as required by IHL. Refusal of access of humanitarian relief is a violation of human right to survival. This refusal increases vulnerability to disease and malnutrition, or both because they might be unable to get to distribution centers and because they might be isolated in the midst of hostilities where food, clothing, and other life-saving humanitarian aid cannot

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<sup>110</sup> Internal Displacement Monitoring Ctr. & Nor. Refugee Council, Nigeria: Institutional Mechanisms Fail to Address Recurrent Violence and Displacement: A Profile of the Internal Displacement Situation 11 (Oct. 29, 2007).

<sup>111</sup> United Nations Office for the Coordination of Humanitarian Affairs (OCHA), (n 2). In the most-affected and least accessible areas of Borno and Yobe, severe forms of hunger and even famine-like conditions have been reported. The three most-affected states are predominately agricultural, and due to insecurity, a dramatic reduction in cultivated lands has resulted in agricultural production that is inadequate to meet the needs of the communities. People engaged in agricultural livelihoods need some measure of security to allow them return to their land; inability to return due to fear of Boko Haram attacks means they will continue relying on assistance.

<sup>112</sup> Report of U.N. Office of the Special Representative of the Sec'y-Gen. for Children and Armed Conflict, Working Paper No. 1: The Six Grave Violations Against Children During Armed Conflict: The Legal Foundation, 23-24 (2013).

<sup>113</sup> International Committee of the Red Cross (ICRC) Review, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, at 24, Doc. No. 31IC/11/5.1.2 (Oct. 2011) [hereinafter *Challenges of Contemporary Armed Conflicts*].

<sup>114</sup> *Ibid.*

reach them. In some circumstances, aid organizations have access to war-torn areas but their efforts are not sufficient to meet the increasing needs of people affected by armed conflict.<sup>115</sup> A study conducted by International Alert and UNICEF on four IDP camps representing four local governments that have suffered heavy attacks by Boko Haram in Nigeria, established that while humanitarian assistance is reaching survivors, it is inadequate to meet the magnitude of the need.<sup>116</sup> Moreover, those who arrived at the camps first had better access to goods and services than those who came much later. The humanitarian response in Nigeria has been slow, fragmented, and unable to meet the needs of those affected by the conflict. Few international organizations work directly in the North-East, leaving the government and local groups with limited capacity to support and assist survivors of attacks. Many of these local NGOs operate informally and without strong donor support, and as a result of the limited humanitarian presence, basic resources that are made available to children affected by the conflict are inadequate, particularly in remote areas.<sup>117</sup> In 2014, meal consumption in some communities dropped to one meal per day, and hospitals lacked staff, supplies, and infrastructure. Since February 2012, acute malnutrition rates for children under five in Borno and Yobe States have been above the global cutoff of ten percent.<sup>118</sup> Furthermore, humanitarian actors lack formal expertise in child protection issues, which limits assistance to children in armed conflict.<sup>119</sup> The broader needs of children are usually not taken into consideration during relief actions.

**c. Lack Of Political Will**

The pattern of contemporary governance is such that responsibilities for the welfare of citizens of a state vests in the government of that state.<sup>120</sup> Similarly, the Nigerian Constitution provides that “the security and welfare of the people shall be the primary purpose of government.”<sup>121</sup> Unfortunately, the Nigerian government has not fulfilled its responsibilities of protecting the welfare of internally displaced people during armed conflicts, mostly due to a lack of political will.<sup>122</sup> Political will can be defined as the determination of the government to do things that will produce a desired outcome for the benefit of the citizens.<sup>123</sup> In Nigeria there are over 250 ethnic groups this has led to clashes between them sometimes leading to arms struggle resulting in displacement of persons. There exist Christianity and Islam in Nigeria. While Muslims are found more between the Fulani-Hausa in the North, Christians

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<sup>115</sup> UNICEF & Int’l Alert, ‘*Bad Blood*’: *Perceptions of Children Born of Conflict-Related Sexual Violence and Women and Girls Associated With Boko Haram in Northeast Nigeria* 12 (2016) [hereinafter *Bad Blood*]. This study specifically looked at the effect of sexual and gender based violence.

<sup>116</sup> These camps and local governments are: Bama (Dalori IDP camp), Gwoza (Government College IDP camp), Dikwa (Sandi-Kyarimi II School IDP camp), and Damboa (NYSC Permanent Orientation IDP camp). *Id.* at 11.

<sup>117</sup> United Nations Office for the Coordination of Humanitarian Affairs OCHA, *Watchlist on Children and Armed Conflict*. Humanitarian Bulletin Nigeria Issue 2, at 2 (Mar. 2014)).

<sup>118</sup> United Nations Office for the Coordination of Humanitarian Affairs OCHA, *The United Nations Country Team Assessment on the Humanitarian Impact of the Insurgency and Subsequent State of Emergency in North East Nigeria*, at 10 (Sept. 2013).

<sup>119</sup> (n 154).

<sup>120</sup> International Committee of the Red Cross ICRC, *International Humanitarian Law: Answers to Your Questions* 65 (2015) (“Under international law, States bear the primary responsibility for ensuring that the basic needs of civilians and civilian populations under their control are met.”).

<sup>121</sup> 1999 Constitution of Nigeria, as amended t ss. 14(2)(b).

<sup>122</sup> Hilary Matfess, ‘*It Is Survival of the Fittest Here*,’ *Foreign Pol’y* (Apr. 3, 2015), <https://foreignpolicy.com/2015/04/03/nigeria-buhari-idp-kuchigoro/>.

<sup>123</sup> James Manor, U.K. Dep’t for Int’l Dev., *Politicking For the Poor*. Final Report to the U.K. Department for International Development (2004).

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are more in the Middle Belt and Southern part of the country.<sup>124</sup> There is the issue of trust between both religions prompt different inter-ethnic conflicts among Muslim majority Fulani-Hausa and nationalities of other ethnic groups.<sup>125</sup> Ethno-religious conflict between Tiv and Jukun in October 2001 displaced between three hundred thousand to five hundred thousand people. In the same vain there was a clash between the Yoruba's and Hausas in 2002 leading to over two thousand persons being displaced.<sup>126</sup> Other examples of ethno-religious clashes in Nigeria are: Kafanchan-Kaduna conflict that occurred during the 1980s and 1990s, the Kaduna Sharia riots of 2000 and the Jos riots Of 2001 resulted to the loss of lives and displacement of people.<sup>127</sup> In 2018 crisis broke out in Kaduna state which brought about the death of 55 persons. This was as a result of ethno-religious crisis among Muslims and Christians; this has led to people fleeing their places of residence.<sup>128</sup> Bamidele,<sup>129</sup> observed that the politicization of ethnicity and religion in Nigeria has been responsible for the creation of groups such as the Igbo People's Congress (IPC), the Nigerian or Yobe Taliban, Movement for the Emancipation of the Niger Delta (MEND), Oduduwa People's Congress (OPC), Arewa People's Congress (APC), Niger Delta Volunteer Force (NDVF), Movement for the Actualization of the Sovereign State of Biafra (MASSOB), Movement for the Survival of the Izon Nationality of the Niger Delta (MOSIEND), Niger Delta Resistant Movement (NDRM). The actions of these groups at one point or the other have been responsible in increasing the figures of IDPs in the country.<sup>130</sup> Even before the armed conflict started in Nigeria, the lack of political will was evident in the welfare and condition of children in some of the country's states.<sup>131</sup> The lack of a sustained political will has resulted in the failure to devise appropriate solutions to protect displaced children, as well as achieve sustainable peace in the present Boko Haram conflict that has plagued Nigeria since 2009.

**d. Inadequate Financial Resources**

Lack of resources is a major reason why some states are incapable of protecting the rights of internally displaced people, and Nigeria is not an exception. States require significant resources to take care of internally displaced children, educate them during and in the aftermath of conflict, and prosecute violators.<sup>132</sup> However, during prolonged conflicts, the bulk of government resources is spent on purchasing arms, ammunition, uniforms, and other equipment needed by the military.

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<sup>124</sup> A. Ahmad, *Forced displacement and the plight of internally displaced persons in northeast Nigeria*. Humanities and Social Science Research, Vol. 1, 2018, pp. 46-52.

<sup>125</sup> J. Ezeanokwasa, U. Kalu, & F. Okaphor, *A critique of the legal framework for arresting the threat of internal displacement of persons to Nigeria's security*. Journal of International Law and Jurisprudence, Vol. 9, 2018 pp. 10-22.

<sup>126</sup> Ibid.

<sup>127</sup> H. Canci, & O. A. Odukoya, *Ethnic and Religious Crises in Nigeria: A Specific Analysis upon Identities 1999-2013*. 2016 available at <<https://www.accord.org.za/ajcr-issues/ethnic-religious-crises-nigeria/>>. Accessed on 2<sup>nd</sup> August, 2024

<sup>128</sup> Y. Akinwale, *Killings and destruction in kaduna: what have we gained?* 2018 available at < <http://saharareporters.com/2018/10/22/killings-and-destructionkaduna-what-have-we-gained-yekken-akinwale%E2%80%8B>> accessed on 2<sup>nd</sup> August, 2024.

<sup>129</sup> O. Bamidele. *Boko haram catastrophic terrorism- an albatross to national peace, security and sustainable development in Nigeria*. Journal of Sustainable Development in Africa, 2012 pp. 32-44.

<sup>130</sup> Ibid.

<sup>131</sup> H. Ahmed, *Effects of Poverty on Child Health and Paediatric Practice in Nigeria: An Overview*, 6 ANNALS AFR. MED. 142 (2007).

<sup>132</sup> Meetings Coverage, Security Council, Children's Rights Violations During Armed Conflicts on Rise Despite National Action Plans to End Abuse, Security Council Told in Day-Long Debate; Speakers Urge Concrete Steps to Tackle Root Causes of Displacement, Violent Extremism, U.N. Meetings Coverage SC/12470 (Aug. 2, 2016).

**e. Corruption and Inept Leadership Among African States.**

Corruption is a core challenge affecting African governments in meeting up with its Responsibility to Protect R2P Displaced Persons including Nigeria. This is associated with the management and distribution of humanitarian funding to government and its inability to fully execute the 'Kampala Convention' on displaced persons through logistical, resources and legal, are reasons for poor humanitarian condition of IDPs in the country. As items given to IDPs for humanitarian purposes are sometimes diverted by the agencies and sold for personal profit as evident in some internally displaced persons' camps in Nigeria. Oduwole and Fadeyi<sup>133</sup> argued that national government only gives money for IDPs welfare and after that does not care if such money were well utilized in catering for their needs. Alqali<sup>134</sup> noted that the agencies responsible for the protection and provision of basic needs for IDPs divert aids that are meant for displaced persons in the North. NEMA a federal government aid and SEMA have come under fire for inefficiency. The problem with IDPs welfare in Nigeria is that government and individual aids gets diverted and does not reach IDPs. Some reports<sup>135</sup> contends that most of IDPs are accommodated by private individuals in an impressive solidarity effort. But, some of these short term living lack adequate access to water, food, sanitation, health facilities and non-food items. Mohammed<sup>136</sup> stressed that Nigerian government both at federal, state and local levels do not have adequate machinery in place to address internally displaced persons challenges. While the absence of data management, credible data base and weak legislation, poorly funded state and emergency management agency, insufficient facilities in health sectors and over population are among the plights bedevilling effective emergency management in Nigeria. According to Ahmad,<sup>137</sup> displacement regards to developmental projects is the forceful evacuation, movement of people, removal, or uprooting of communities from their habitual residence to create way for developmental projects. This can only be orchestrated by a private actor or state it occurs when there is construction of roads, railways, dams, hydroelectric power projects, natural resource extraction, agricultural investment and so on. A project of this nature requires the local population to vacate their homes and exposes the affected people to some vulnerability. According to Internal Displacement Monitoring Centre (IDMC),<sup>138</sup> espoused that 15 million persons are internally displaced by developmental projects yearly worldwide. In 1980s, 26000 individuals were displaced internally to create way for the Dadin Kowa dam along Gongola River in Nigeria. In 2015, over 10,000 citizens in Lagos state were evicted from Badia east community to create way for Lagos metropolitan development and government projects with-

<sup>133</sup> T. Oduwole, & A. Fadeyi, *Issues of refugees and displaced persons in Nigeria*. Journal of Sociological Research, Vol. 4, 2013, pp. 1-18.

<sup>134</sup> A. Alqali, *When aid goes missing*. Global voices 2016 available at <<https://iwpr.net/global-voices/nigeria-when-aid-goes-missing>>. Accessed on 2nd August, 2024.

<sup>135</sup> UNESCO (2017). Displaced Person/ Displacement. Social and Human Sciences. Available at <<http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/displaced-person-displacement/>>. Accessed on 2nd August, 2024.

<sup>136</sup> F. Mohammed, *The Causes and Consequences of Internal Displacement in Nigeria and Related Governance Challenges*. 2017 Working Paper. Available at <[https://www.swpberlin.org/fileadmin/contents/products/arbeitspapiere/Mohammed\\_2017\\_Internal\\_Displacement\\_Nigeria.pdf](https://www.swpberlin.org/fileadmin/contents/products/arbeitspapiere/Mohammed_2017_Internal_Displacement_Nigeria.pdf)>. Accessed on 2nd August, 2024.

<sup>137</sup> A. Ahmad, *Forced displacement and the plight of internally displaced persons in northeast Nigeria*. Humanities and Social Science Research, Vol. 1, 2018, pp. 46-52.

<sup>138</sup> IDMC Report. *What Does Development Caused Displacement look like in Africa?* 2016. Available at <<https://www.internal-displacement-org/expert-opinion/what-does-development-caused-displacement-look-like-in-africa>>. Accessed on 2nd August, 2024.

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out compensating and resettling those displaced. The struggle for resources and the extraction of oil is another reason for IDPs in Nigeria. Oil spillage could contaminate drinking water and the destruction of farm lands which have led to people fleeing their homes and lands for safer places.<sup>139</sup> The issue of resource control in the Niger Delta region has brought about violence involving government and the militants. The government force launched air and land strikes around Warri a city in Delta state and later to Rivers state. The attack launched led to 1000 IDP seeking shelter in a hospitals and schools and close to 10,000 people who have fled into forest and could not go back home. Women and children were hosted in the hospitals while the men went into hiding in the bush avoiding been arrested by government forces. In 2009 there were clashes in Warri but there was no record of the figures of people displaced.<sup>140</sup>

### **0.5 Recommendation**

This paper recommends the following:

Every Nigerian is entitled to the fundamental human rights, and internally displaced persons as they are also Nigerians, they shouldn't be left out. The government should continue to put enormous effort in harmonizing these rights to ensure equality. Amendment of the 1999 Constitution of Nigeria by making chapter II of the Constitution justiciable will assist the reduction of gaps between the rich and the vulnerable in Nigeria. Introduction of vocational and skill acquisition programs – IDPS in escaping for their safety have to leave behind their means of livelihood. For instance, farmers are unable to relocate their farmlands and it is unlikely that in their host communities they will be able to acquire such lands or their farming skills may not be in consonance with those of the area in which they have settled. This tends to bring about dependency on aid and a resultant loss of dignity. The fact the women make up a large portion of the inhabitants of the IDP camps as their movement is restricted because they are responsible for the care of the children due to traditional and gender roles, cultural and gender biases, also leads to feminization of poverty. It is important to teach IDPs livelihood skills to overcome these concerns.

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<sup>139</sup> Ibid.

<sup>140</sup> IDMC Report. *Nigeria: No End to Internal Displacement*. 2009, available at <https://reliefweb.int/report/Nigeria/nigeria-no-end-internal-displacement>>Accused on 2nd August, 2024.

