

Internally Displaced Persons in Nigeria and the Kampala Convention

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Abstract

This article examines the management of internal displacement in Nigeria using the Kampala Convention as a guide and defines key concepts for a better understanding of the issues under consideration. This paper also examines the history and causes of internal displacement in Nigeria. The article shows that Nigeria has a total of 981,416 internally displaced persons currently. It did an overview of the Kampala Convention and other relevant laws in Nigeria. This is necessary because the article discovered that the Kampala Convention has not been domesticated in Nigeria although it has been ratified. The implication of this is that the Convention will not be applicable until it has been domesticated in line with the provisions of the Nigerian Constitution. A critical examination of the relevant agencies involved in the management of internal displacements forms part of the discussion. Their roles and challenges were highlighted by this article. It concludes by encouraging the government to domesticate the relevant laws and to adequately fund the relevant agencies. This will help in achieving durable solutions to displacements. The article suggests that the root causes of displacements in Nigeria should be tackled and that government policies that engender arbitrary displacements should be challenged and concludes by noting that curbing internal displacements should be a collective effort on the part of the government and its agencies, nongovernmental organizations, non-state actors and individuals.

I. Introduction

This article examines the management of internally displaced persons in Nigeria against the background of the provisions of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa.¹ This is necessitated by the fact that recently, Nigeria has been grappling with the situation of internal displacement caused either as a result of political, ethnic or religious conflicts, or as a result of natural disaster as was the case in the year 2012 when several states in the country experienced situations of floods which sacked town and village and left many homeless and some dead. A critical look at the Kampala Convention would reveal series of obligations and responsibilities on a State party to the Convention which would help the state handle cases of internal displacement.

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1 The Convention was adopted at the Special Summit of the African Union held in Kampala on the 22nd day of October, 2009. Kampala Convention would be used throughout the report.

The objective of this article is to discover to what extent Nigeria as a State party to the Convention has complied with the provision of the Convention which it ratified in handling situations of internal displacement within her territory. To achieve the stated objective, the article is divided into seven parts. Part one introduces the work, part two deals with conceptual framework, part three discusses the history of internal displacement in Nigeria, parts four discusses causes of internal displacement in Nigeria, five and six critiques legislative works in Nigeria against the backdrop of some provision of the Kampala Convention which the country ratified in 2012, part seven concludes the article.

II. Conceptual Framework

In this section, the article attempts to define some key concepts such as internal displacement, internally displaced persons, refugees, ethnic groups', ethnic conflicts and non-state actors. These definitions are apt as people often misconstrue some of these concepts. For instance, some people assume that internally displaced persons are refugees. It is therefore pertinent that a distinction should be drawn between the terms that are used in this article for purposes of clarity.

Internal displacement refers to the voluntary or forced movement, evacuation or relocation of persons or groups of persons within internally recognized State borders.² Internally displaced persons (IDPs) on the other hand means persons or a group of persons who have been forced or obliged to flee or to leave their homes or place or habitual residence, in particular as a result of or in order to avoid the effects of armed conflicts, situations of generalized violence, violations of human rights, natural or human made disasters, and who have not crossed an internationally recognized States border.³ With the growing numbers of IDPs at an alarming rate, their plights have not been adequately addressed by the government and the international community has not done much due to the fact that such responsibility lies with the affected states government as the situation is seen as an internal affair of the State concerned.

What then differentiate an IDP from a refugee? A refugee is any person who, owing to a well- founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself of that country or who, not having a nationality and being outside the country of his former habitual residence, is unable or owing to such fear, is unwilling to return to it.⁴

From the above, it is submitted that the key difference between the groups is that an IDP has not crossed an internally recognized border while a refugee has crossed an internationally recognized border. This distinction is crucial as this article will focus on IDPs and

2 Article 1(c) Kampala Convention 2009.

3 Article 1 (K) Kampala Convention 2009.

4 The 1951 United Nation Convention Relating to the Status of Refugees and its 1967 Protocol.

not refugees. The International Criminal Tribunal for Rwanda in *Prosecutor v. Akeyesu* defined ethnic group as a group whose members share a common language or culture.⁵ Again, ethnic group has been defined as consisting of interacting members, who define themselves as belonging to a named or labelled social group with whose interest they identify and which manifests certain aspects of a unique culture while constituting a part of a wider society.⁶ This paper does not intend to identify with specificity the number of ethnic groups existing in Nigeria as it is beyond the scope of this article but it is believed that Nigeria has 250 ethnic groups.⁷ This is borne out of the fact that there is a lack of agreement on the criteria used to identifying ethnic groups.⁸

Ethnic conflicts are conflicts between two or more ethnic groups and finally a non – state actor means private actors who are not public officials of the State.⁹ Various non-state actors have been operating in Nigeria and they include but not limited to Boko Haram sect, the movement for the Emancipation of Niger Delta (MEND) the Ijaw Youth Congress (IYC); the Egbesu Boys; Odua People’s Congress (OPC); the Arewa Consultative Forum (ACF); the Movement for the Actualization of the Sovereign State of Biafra (MASSOB) and others. The actions and inactions of these groups have contributed immensely to the increasing cases of internally displaced persons in Nigeria.

III. History of Internal Displacement in Nigeria

This section discusses the history of internal displacement in Nigeria albeit briefly as some of the reasons for displacement will be discussed under causes in the next part. The political structure known and identified as Nigeria was colonized by the British Government. The various boundaries were delimited by the British government only after the indigenous cultural geography had been established. It should be noted that prior to colonization, contemporary Nigeria formation was made up of systems identified variously as empires, a caliphate, kingdoms, chiefdoms and villages.¹⁰ Prior to British colonization and occupation, these entities had attained different stages of development.¹¹ British entrance into Nigeria was marked with the annexation of Lagos in 1861.

5 *Prosecutor v. Jean Paul Akeyesu*, Case No. ICTR 96-4-T. Para 150. Judgment delivered on 2 September 1998.

6 *Bamgbose, J.*, Fundamentals of Nigerian Politics, Lagos, 1998, p. 118.

7 *Wahab, E.O.*, Ethnicity and Tribalism in Nigeria: Myths and Reality, in: *Odumosu, T. et al.* (ed.), Social Problems and Social Works in Nigeria, Lagos, 2000, pp. 111 – 118.

8 *Ibid.*, p. 116.

9 Article 1(A) Kampala Convention, 2009.

10 *Oyovbaire, S.E.*, Structural Change and Political Processes in Nigeria, in: *African Affairs*, Vol. 82 (1983), No. 326, p. 6.

11 *Post, K.*, Nationalism and Politics in Nigeria: A Marxist Approach, in: *The Nigerian Journal of Economics and Social Studies*, Vol. 6 (1964), No. 2, p. 169.

It later extended to the South-Eastern part and the North was developed and secured for British enterprise.¹² In 1960, Nigeria gained independence from the British Government but the structure left behind helped in breeding tensions. By the mid 1960's Nigeria had witnessed numerous violent communal conflicts.¹³ The first of these conflicts was seen in western Nigeria when *Obafemi Awolowo* and *Ladoke Akintola* parted ways.¹⁴ This led to the declaration of a state of emergency to forestall the series of clashes and crises in the western region.

The next crises took place in Kaduna following the assassination of *Ahmadu Bello* in a coup led by *Kaduna Nzeogwu* in January 1966¹⁵. The events that followed this led to the civil war of 1967-1970, essentially between the Ibos and the Hausas.¹⁶ A lot of people were displaced during this crisis. After the civil war, Nigeria experienced some measure of peace until the 1990s when there was series of conflicts in Kaduna.

with a population of about 173.6 million inhabitants¹⁷ and more than 250 ethnic groups,¹⁸ Nigeria is Africa's, most populated nation with series of religious, ethnic and political divides that periodically erupt into communal violence.¹⁹ This has given rise to various cases of internally displaced populations especially with the return of democracy in 1999.²⁰ The democratic agenda brought new opportunities for people to express their grievances and new areas of conflict emerged by the competition for political gains or what is commonly called the dividends of democracy.²¹ Between 1999 and 2015, Nigeria has witnessed unprecedented numbers of internally displaced persons to the extent that the established camps can no longer take the number. On the 15th of February, 2015, it was re-

12 *Osuntokun, J.*, The Historical Background of Nigeria Federalism, in: *Akinyemi, B. et al.* (eds), Reading on Federalism, Lagos, 1979, p. 92.

13 *Olagunju, O.*, Management of Internal Displacement in Nigeria, (2006) Working Paper #35, Brandeis University, p. 5.

14 *Ibid.*, p. 5.

15 *Adeyokun, S.*, Reckoning with Internally Displaced Persons, <http://www.compassnews.org/index.php/features/commune/10746-reconing-with-internallydisplaced-persons>. (accessed 18 September 2014).

16 *Ibid.*

17 The figure of 173.6 million inhabitants was for 2013. In 2014, the figure rose to 178,516,904 million inhabitants. In 2015, the figure published had risen to 183,523,432 million inhabitants in Nigeria. World Meters, "Population of Nigeria", <http://www.worldmeters.info/world-population/Nigeria-population...> (accessed 24 March 2015).

18 "How Many Ethnic Groups Exists in Nigeria", <http://www.start.csail.mit.edu/startfarm.cgi?query...many+ethnic+groups...Nigeria...> (accessed 24 March 2015).

19 Global IDP Project "Internally Displaced in Nigeria: A Hidden Crises" (2005) <http://www.idpproject.org>. (accessed 20 July 2014), p. 8.

20 *Ibid.*, p. 8.

21 *Ibid.*, p. 8.

ported that only 20,000 out of the 30,000 internally displaced persons could be accommodated in the camp at Jos, Plateau State.²²

IV. Causes of Internal Displacement in Nigeria

Causes of internal displacements in Nigeria can be traced to communal, ethnic, religious or political violence.²³ Although some of the conflicts may appear to be caused by a single factor such as religion or marginalization, but the reality is usually more complex.²⁴ As earlier mentioned, Nigeria's return to civil rule in 1999 has given rise to thousands of deaths in recurring inter – ethnic conflicts and politically motivated violence and these have led to large scales of internal displacement.²⁵ Flooding and forced evictions have caused significant population movements.²⁶

1. Natural Disaster

This is having a real impact in Nigeria and needs to be addressed urgently. There is an increase in the rate of diseases, declining agricultural productivity, increasing number of heat waves, unreliable weather patterns. Flooding, declining rainfall, decreasing food production, destruction of livelihood by rising water in coastal areas where people depend on fishing and farming have resulted in displacements.²⁷ Natural disaster is making some lands uninhabitable and affecting water supplies. This trend has threatened the population basic needs and has given rise to displacements and one way of adapting to the effects of natural disasters in Nigeria is internal migration.²⁸

22 Report of the National Emergency Management Agency (NEMA) on Channels News, 15 February 2015. NEMA is in charge of cases of displacement and other emergency situations in Nigeria.

23 These factors include: ethnic rivalry, religious violence, land conflicts related to the demarcation of boundaries and political elections and conflicts linked to oil production especially in the Niger Delta Region.

24 The introduction of Sharia law in a total of 12 of Nigeria 36 states in recent years has caused tensions. The intention of the Boko Haram sect to Islamize Nigeria has caused a lot of crises leading to displacements and death of citizens of Nigeria.

25 Internal Displacement Monitoring Centre (IDMC), "Nigeria: Increasing Violence Continues to Cause Internal Displacement" (2012), <http://www.internaldisplacement.org> (accessed 23 January 2015).

26 In 2012, some States in Nigeria including Edo, Delta, Anambra, Bayesa, Kogi, were affected by floods that sacked several communities and villages particularly those located near the Rivers.

27 *Ujah, O. C.*, Internal Displacement in Nigeria, <http://www.unisdr.org/hfa> (accessed 17 December 2014).

28 *Ibid.*

Reports have it that in 2007, about 5,650 persons in Nigeria was displaced by floods with 34 deaths reported.²⁹ These floods exposed people to water-borne diseases, damaged crops and disrupted the planting season. Some areas were cut off from the rest of the community. In the year 2000, over 200,000 persons were displaced by floods in Niger State.³⁰ In Kano State, over 300,000 persons were also displaced by floods in 1998.³¹ Flooding is a yearly occurrence in Nigeria particularly in areas along the River Niger and its tributaries. In 2012, Bayelsa, Delta, Anambra, Edo and Kogi States were severely affected by floods that displaced person in these states. Two thirds of Bayelsa State and half of Delta State are inundated by devastating floods for at least a quarter of each year.³²

2. Environmental Degradation and Lack of Benefits from Oil Revenue

This appears to be one of the major reasons for conflict in the 1990's. Displacement has been linked to oil production in Niger Delta Region of the country. The violence associated with environment degradation and lack of benefit from oil revenue forced people in the region to leave their homes. In 2004, it was reported that not less than 6,000 persons had been displaced in the wake of the violence between the local militia and security forces, as well as the infighting between the militia groups.³³ Amnesty International also reported that about 670 people were killed in the Delta Region.³⁴ Fighting between insurgents and government troops protecting oil installation led to the death and forced displacement of thousands of civilians between 2004 and 2009.³⁵ The campaign of the militants was directed against both the multi-national oil companies and the government.³⁶

In 2009, MEND³⁷ declared an indefinite ceasefire that brought relative peace to the Niger Delta Region following a presidential amnesty. Fighting ultimately resumed in 2010 causing the destruction of homes and death of several civilians. In January 2011 MEND

29 The international Emergency Events Data base EM-DAY <http://www.emdat.be> (accessed 23 August 2013).

30 *Ujah* (note 27), p. 37.

31 *Ibid*, p. 37.

32 In areas affected by water, schools and markets were suspended for weeks at a time in the 2012 flood disaster; some areas were cut off preventing children from attending schools and hindering access to health and other social services. NEMA reported that in the 2012 flood which occurred between July and October 2012, a total of 7.7 million persons were affected by the flood. Out of this number 2.1 million persons were internally displaced.

33 Integrated Regional information Networks (IRIN) "Nigeria: Over 100 killed in Month of Violence in Port Harcourt" (10 September 2004).

34 Amnesty International "Nigeria: Are Human Rights in the Pipeline?" (9 November 2004).

35 Integrated Regional Information Network (IRIN) "Nigeria: Thousand Flee Violence, Hundreds Suspected Dead", (22 May 2009).

36 IDMC (note 23), p. 7.

37 The Movement for the Emancipation of the Niger Delta is an umbrella group formed in 2005 to represent a number of militant factions.

called off its ceasefire.³⁸ The amnesty programme has been described as inadequate in addressing the root causes of the problem in the region which includes underdevelopment and poor governance.³⁹ It is not certain if IDPs have achieved durable solution as provided for in the Kampala Convention.⁴⁰ A Government report indicated that some 250,000 persons displaced from the Niger Delta as at January 2011 was being hosted by Edo State.⁴¹

3. Political Violence, Boko Haram Attacks and Counter Insurgency Operations.

The presidential election in Nigeria for the current tenure that will end in April, 2015 was held in 2011 with the President *Goodluck Ebele Azikiwe Jonathan* emerging as the winner. This led to widespread protests by supporters of the main opposition candidate soon after the results were released by the Independent National Electoral Commission (INEC). This subsequently degenerated into violent riots and sectarian killings which led to the displacement of some 65,000 persons across the northern states.⁴² There was no monitoring as to whether these internally displaced persons were prevented from exercising their franchise in the subsequent gubernatorial elections but many of them were reported not to be willing to return to the villages where they registered.⁴³ Again, in the Northern part of Nigeria civilians were killed and others displaced and their belongings destroyed in the violent attacks linked to the members of Boko Haram.⁴⁴ Boko Haram means “Western Education is forbidden” in Hausa language. This sect was founded over a decade ago in Maiduguri, the north eastern part of Nigeria.⁴⁵ The sect gained prominence in 2009 after launching attacks against the government in several parts of northern Nigeria leaving not less than 800 persons dead. Their demand is for the strict implementation of the Sharia law and ideology not widely supported in the country.⁴⁶ The sect has been growing in ambition and capability. Originally, they targeted the northern States of Bauchi, Borno, Yobe and Kano. Later in

38 Amnesty International “Annual Report 2011: The State of the Worlds Human Rights” (2011).

39 IDMC (note 23), p. 7.

40 Article 11 (3) Kampala Convention, 2009.

41 IDMC (note 23), p. 7.

42 Internal Displacement Monitoring Centre (IDMC), Global Overview 2011: People Internally Displaced by Conflict and Violence – Nigeria” (19 April 2012), <http://www.refworld.org/decid/4f97fb582b.html> (accessed 10 September 2014).

43 Human Rights Watch “Post Election Violence Killed 800” (May 2011).

44 IDMC, *supra* note 42.

45 Internal Displacement Monitoring Centre (IDMC) “Nigeria: Increasing Violence Continuous to Cause Internal Displacement” (June 2012), <http://www.internal-displacement.org> (accessed 23 August 2014), p. 6. See also Human Rights Watch “Nigeria: Boko Haram Targeting Schools; Attacks, Threaten Children, Undermine Right to Education” (March 2012).

46 Integrated Regional Information Networks (IRIN) “Nigeria: Timeline of Boko Haram Attacks and Related Violence” (January 2012).

2010, it extended its operations to Jos and since then had moved further south.⁴⁷ In December, 2011, the sect carried out a series of attacks that led to the death of over 100 persons and displacing over 90,000.⁴⁸ This led to the declaration of a state of emergency in some parts of northern Nigeria and the deployment of the Joint Task Force (JTF) to the affected areas.⁴⁹ In January 2012, the Ibo leaders in the South East called on the Ibo families to leave the north and head south for safety after the sect issued a warning to Christians living in Hausa dominated north to leave or face retributions. The Ibo leaders in facilitating this movement offered free shuttle bus services.⁵⁰ These crises have been on for sometimes now with no end in sight as the sect keeps attacking villages, churches and other facilities intermittently. In 2013 and 2014 the attacks became intensified with the sect capturing some villages. This has led people to believe that the intensity has met the threshold of common Article 3 conflict in Nigeria but the International Committee of the Red Cross (ICRC) in 2012 observed that although there is a situation of violence giving rise to casualties and displacement in Nigeria it has not yet met the threshold of an internal or non-international armed conflict.⁵¹ This article supports the view of the ICRC as the conflict has not grown beyond what the Nigerian government can handle internally.

4. Inter-Communal Violence

Communal violence fuelled by widespread poverty and disputes over resources has been on across the country. In 2010, inter communal violence in Jos displaced thousands. New clashes broke out in 2011, killing 20 persons and displacing 4000.⁵² A resettlement pro-

47 The sect claimed responsibility for the bombing of the Police and UN headquarters in Abuja in August and June of 2011. Their initial targets were police stations and government facilities and churches they later extended to schools, motor parks and relaxation sports in 2012. By 2014, they had sacked a lot of villages and kidnapped school girls who are yet to be rescued as at the time of writing this paper in 2015. They have also adopted the strategy of using females and children as suicide bombers from 2014 to date. This February 2015, a female suicide bomber killed nine persons in Yobe State not to mention the school boy who detonated his bomb killing himself and about one hundred other school children during the morning assembly in his school in 2014.

48 International Crises Group (ICG) "Crises Watch Data Base" (January 2010).

49 *Ibid.* See also the Economist "Violence in Nigeria: The West Yet" (January 2012).

50 IDMC, *supra* note 45, p. 6.

51 Article I (2) of Additional Protocol II of 1977. See also common Article 3 to the four Geneva conventions of 1949 which provides that an armed conflict exists when there is a "protracted armed violence" the group must be organized and have a hierarchy of authority, occupy a part of the territory to enable them carry out a sustained and concerted military operation and must be able to implement the Protocol. Furthermore, the group must be under a responsible command. Anything short of these criteria provided for in the Additional Protocol II is termed "Other Situations of Violence" and do not qualify as armed conflict. See ICRC "How is the Term 'Armed Conflict' Defined in International Humanitarian Law (March 2008). See also in ICRC "Nigeria: Responding to Multiple Situations of Violence" (Jan 2012).

52 IDMC, *supra* note 42.

gramme was initiated by the National Emergency Management Agency (NEMA) and the Bauchi State government in 2010 for the IDPs who were unwilling to return to Jos; by January 2011, NEMA reported that about 5000 IDPs had been resettled in Bauchi.⁵³ It may be interesting to note that the most significant cause of communal violence in Nigeria is the entrenched division between the indigenes and the settlers in an area. Even where settlers have lived in an area for hundreds of years, they are regarded as non-indigenes and are discriminated against in terms of land ownership, control of commerce, jobs, and education.⁵⁴ In Bauchi and Akwa Ibom states respectively, long standing land disputes have degenerated at the beginning of 2011 into inter-communal clashes, forcing many residents, especially women and children to flee.⁵⁵

5. *Government Policies*

It can be assumed that the highest contributor to internal displacement in the country is the Nigerian government. This includes the federal and state governments. It is important to note that since the emergence of the democratic government in 1999, the rate of internally displaced persons in Nigeria have grown beyond measure with unfavourable government policies, notably the demolition of houses, streets, villages and even entire communities without providing any alternative to the teeming population.⁵⁶ Reports have it that over two million urban dwellers especially the slum-dwellers and other marginalized people were forcibly evicted from their homes in Lagos, Abuja and Port Harcourt.⁵⁷ These Government approved evictions were carried out in the name of security and urban renewal programmes without adequate consultations, notices, compensation or offers of alternative accommodation.⁵⁸ These arbitrary displacements have given rise to violation of other human rights such as the right to health care, education and livelihood opportunities. These incidences of displacements have left thousands homeless.

53 *Ibid.*

54 In predominantly Christian Plateau State, the majority of settlers belong to the northern Hausa-Fulani ethnic group, nomads who have gradually moved southwards as the expanding Sahara desert has dried up their traditional grazing lands. Hausa-Fulani Muslims have long complained that predominantly Christian farmers steal their cattle and prevent them from grazing, whilst the farmers counter that cattle's encroach on their land. At the same time, there are indigenous Muslim ethnic groups fiercely opposed to the perceived expansionist tendencies of the Hausa- Fulani. See Global IDP Project, note 19.

55 IDMC-Global Overviews, note 42.

56 *Hamzat, A. D.* Nigeria: Internally Displaced Persons and the Society, <http://www.googlelegmanager.com/ns.html?id> (accessed 23 July 2014).

57 IDMC, note 25, p. 7.

58 This is clear breach of Article 12 (2) of the Kampala Convention 2009.

V. An Overview of the Kampala Convention 2009

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).⁵⁹ This made the African Union the first continental body to provide a policy framework that is legally binding for the protection of IDPS in Africa and developing responses to internal displacement.⁶⁰ In 2012 Nigeria ratified the Kampala Convention.⁶¹ In May 2012, Nigeria became the 12th country to deposit its instrument of ratification with the African Union Commission.⁶² 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’⁶³ and that the chairperson of the AU Commission shall notify Member States of the coming into force of this Convention.⁶⁴ 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.⁶⁵ The Convention has five core objectives⁶⁶ which include to:

- a. promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for 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 preventing of internal displacement and protection of, and assistance to internally displaced persons;
- e. provide for the respective obligations, responsibilities and roles of armed groups, non-state actors and other relevant actors, including civil society organizations, with respect

59 *Adeyokun*, note 15, p. 2.

60 *Ibid*, p. 2.

61 IDMC, Global Overviews, note 55.

62 *Adeyokun*, note 15, p. 2.

63 Article 17 (1) Kampala Convention.

64 Article 17 (2) Kampala Convention.

65 The Convention has been ratified by Benin, Burkina Faso, Central African Republic, Chad, Gabon, the Gambia, Guinea-Bissau, Lesotho, Niger, Nigeria, Sierra- Leone, Togo, Uganda, Zambia and Swaziland. Thirty seven other AU Member countries have signed the Convention but are yet to ratify it.

66 Article 2 (a)-(e) Kampala Convention, 2009.

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.⁶⁷

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 country⁶⁸ 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.⁶⁹

The principle that should guide durable solutions for Nigeria and any State party includes:⁷⁰

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;⁷¹
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 option to return, 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;

67 Inter-Agency Standing Committee (IASC) Framework on Durable Solutions for Internally Displaced Persons, Bern, 2010, p. A1.

68 *Ibid.*

69 *Ibid.*, p. A2.

70 *Ibid.*, p. A2.

71 See also Article 5 (1) of Kampala Convention, 2009.

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.

To achieve this right based support for the IDPs, the national and local authorities and other humanitarian actors need to work together to effectively support IDPs there need to be an effective record keeping to keep track of IDPs and ensure their safety. To effectively deal with the problems associated with IDPs, the Convention places an obligation on States Parties to incorporate the Convention into domestic law by enacting or amending relevant legislations on the protection of, and assistance to, internally displaced persons in line with their obligations under international law.⁷² State parties are also under obligation to adopt measures, including strategies and polices on internal displacement at national and local levels taking into account the needs of the host community.⁷³

Incorporating international laws into our local legislation is one difficult task facing Nigeria. There are so many treaties ratified by Nigeria but yet to be domesticated. Section 12 of the Nigeria Constitution as amended is to the effect that no treaty between the government of Nigeria and any other country shall have the force of law until it has been re-legislated upon by the National Assembly. By virtue of this provision, international treaties must be domesticated before they become enforceable in Nigeria. The attitude of our lawmakers is nothing to write home about as tax payers funds are spent on them for no justifiable reasons. They spend their time fighting in the house and discussing issues that have little or no relevance to the welfare of the masses. There are pending cases of corrupt practices involving some lawmakers and these have affected law-making processes in Nigeria. One would not be surprised if it takes Nigeria a decade or more to domesticate the Kampala Convention.

Article 4 (1) provides that States parties shall respect and ensure respect for their obligations under international law including human rights and humanitarian law, so as to avoid conditions that might lead to the arbitrary displacement of persons.⁷⁴ To respect and ensure respect means that the States would be held responsible for failure to observe the rules laid down in the Convention and also for failing to put the necessary mechanism for ensuring compliance with the treaty provisions. Observing and ensuring the observance of treaty provisions also means that all state institutions and all other agencies or individuals under their authority must observe and follow the rules of the Convention.

To “ensure respect” primarily relates to the obligation of third States that are not affected by internal displacement, i.e. the international community should intervene if the situa-

72 Article 3 (2) Kampala Convention, 2009.

73 Article 3 (2) Kampala Convention, 2009.

74 Article 4 (1) Kampala Convention, 2009.

tion becomes overwhelming on the affected State. This is known as the “duty of due diligence”. It also means that there is a duty on the international community to ensure that the affected State observe and respects the provisions of the Convention it has ratified.

Another key objective of the Convention is to establish a legal framework for solidarity, mutual cooperation and support between States and a legal framework preventing internal displacements and also protecting internally displaced persons.⁷⁵ This can be interpreted to mean that States are expected to have legislative and institutional framework to help them cope with the problems of internal displacement. The extent of Nigeria’s compliance in this regard will be discussed in this paper.

In summary the Convention specified some general obligations relating to State parties and they include: obligations of State parties relating to protection from internal displacement;⁷⁶ obligation relating to protection and assistance;⁷⁷ international organizations and humanitarian agencies;⁷⁸ protection and assistance to internally displaced persons in situation of armed conflict;⁷⁹ obligation relating to African Union;⁸⁰ obligation of States parties relating to sustainable return;⁸¹ issues concerning payments and compensation;⁸² registration and personal documentation;⁸³ monitoring and compliance;⁸⁴ etc.

Article 13 on registration and documentation is particularly important as it is crucial to achieving a durable solution to IDPs. Article 9 of the Convention relating to the obligation of States parties with regard to protection and assistance during internal displacement is quite instructive.

Article 9 (2) (6) provides that:

...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.

The extent of compliance with the above provision in Nigeria is questionable; issues have arisen lately to raise doubts in the minds of millions of Nigerians as to the commitment of

75 Article 2 (b) (c) Kampala Convention, 2009.

76 Articles 3, 4, and 5 Kampala Convention, 2009.

77 Article 5.

78 Article 6.

79 Article 7.

80 Article 8.

81 Article 11.

82 Article 12.

83 Article 13.

84 Article 13.

the government towards ensuring that IDPS are properly catered for. Few days before the 2014 Christmas celebration, the government was shown on national television distributing food items to IDPs in the camp at Abuja. Upon careful examination, the unsanitary condition of the camp was very glaring as the camp is congested although the National Emergency Management Agency (NEMA) has indicated that the IDPs will be relocated to a better environment. The IDPs thanked the government for their effort but insisted that they would love to go back to their communities and be reunited with their families. They complained that they do not receive adequate medical and health services, their children no longer attend schools and are not entitled to other social services.

Also, it has been reported that some of the IDPs that are eligible to vote may not be able to exercise their franchise in the forthcoming 2015 election as they have not been issued with permanent voters card (PVC) and may not likely go back to their communities before the elections.

NEMA which was established in 1999 is primarily responsible for the management of disasters in Nigeria. In addition, they are also responsible for the coordination of emergency relief operations as well as assisting in the rehabilitation of victims of such disasters. They have also been at the forefront of supporting the IDPs in the emergency stage of a crisis but lack the resources to assist the IDPs for a longer period. They also do not have the facilities to assist returnees to reintegrate into their communities. This violates the provision of the Convention which requires State parties to seek lasting solutions to the problems of displacement by promoting and creating satisfactory conditions for voluntary return, local integration or relocation on a sustainable basis and in circumstances of safety and dignity.⁸⁵ In many cases of internal displacement in Nigeria government assistance does not go beyond emergency responses. For instance, *Partners for Development* reported that when thousands of IDPs who were living in camps in Benue State due to the Tiv-Hausa crises in Nassarawa were assisted to return to their home areas, they were only assisted with transportation.⁸⁶ It should also be placed on record that the Bauchi State government in 2004 achieved some tangible result with reintegration of returnees when they provided land for building new homes for over 2,000 displaced families. This is quite commendable.

One key problem that has been identified as a setback for the national response is the lack of experience in dealing with IDPs problems and this has manifested in inefficiencies and gaps in the support given to the affected people. There seem to be an issue with the mandate of taking care of IDPs between NEMA and the National Commission for Refugees (NCR) which was unofficially mandated to cover IDPs in 2002. This deadlock needs to be resolved in the interest of the affected people. There must be clear cut roles for these agencies to avoid conflict of interest. NEMA appears to be an operational agency while NCR

85 Article 11 (1) and (2) Kampala Convention 2009.

86 Partners for Development, "Final Report of the IDP Crisis in Benue State".

has been occupied with policy issues but at the same time trying to operate as an operational agency.⁸⁷

Realizing the dream of protecting the IDPs using the Kampala Convention may be a tall dream in Nigeria for some obvious reasons. The Convention was ratified in 2012 but not yet domesticated in accordance with the provisions of the Constitution of Nigeria. This is crucial as the non-domestication of the Convention in line with section 12 of the Constitution renders the Convention inapplicable. With the Convention yet to be domesticated, one wonders how the government has been handling the issues associated with IDPs. The National Policy on IDPs which was drafted in 2006 is yet to become a legal and binding instrument. The draft policy has been undergoing serves of revisions. The draft was revised three times between 2009 and 2010-11. Since 2012 the further revised draft is yet to be adopted by the federal government. This is 2015 and the nation is grappling with serious cases of displacement without adequate legal framework.

In January 2015, the Director General of NEMA announced that there are currently 981,416 IDPs in the country.⁸⁸ He noted that the NEMA figures were based on quantitative and qualitative data collected by NEMA in collaboration with the International Organisation for Migration (IOM), the State Emergency Management Agencies, the Nigeria Red Cross Society and traditional rulers. He further explained that out of the figure, 107,997 were living in IDPs established camps, while 804,732 live with the host communities and relations.⁸⁹

A breakdown of the figures reveals that about 66,087 of the IDPs were displaced by natural disasters while 915,329 were affected by the insurgency in the north eastern part of Nigeria. It was further noted that there were 20 IDPs camps across the northern part of the country. NEMA together with UN agencies is currently providing medical equipment to health facilities treating victims of the insurgency attacks in all three States of emergency.⁹⁰ NEMA has stationed ambulances at strategic locations to support and evacuate victims to hospitals and to provide first aid where necessary.⁹¹ On the situation in Baga town, (one of the towns affected by insurgency), NEMA is providing comprehensive humanitarian support to 3,200 IDPs from Baga at its secure facility in Madiguri, the Teacher's Village Camp.⁹²

87 This was clearly shown in its comprehensive plan of action for resettlement, reconciliation, reconstruction and reintegration programmes for the Plateau State IDPs. See National Commission for refugees Report of the Fact-Finding Mission of NCR: IDPS in Bauchi, Nassarawa and Plateau States", May 27, 2004.

88 *Muhammad Sani-Sidi*, "981,416 IDPs in Nigeria", <http://www.vanguardngr.com/2015/01/weve-981416-internally-displaced-persons-nigeria-fg/#sthash.iUvuiBdc.dpuf> (accessed 24 February 2015).

89 *Ibid.*

90 *Ibid.*

91 *Ibid.*

92 *Ibid.*

This article posits that managing such numbers of IDPs without an adequate framework could be very challenging for the agencies that are saddled with such responsibilities. There is then need for the government to work hard and bring out the National Policy which would help to curtail if not prevent internal displacements in the country. The National Commission for Refugees, Migrants and Internally Displaced Persons (NCFRMI) have announced that as an agent of the government, they are working towards the production of a National Policy that would clearly prohibit arbitrary displacement either by the action or policies of government at all levels or by non-state actors.⁹³

VI. Other Relevant Legislations

All hope may not be lost as there are other legal instruments that ensure the safety and protection of IDPs in Nigeria and these will be discussed.

1. *The Constitution of the Federal Republic of Nigeria*

The Constitution of Nigeria as amended⁹⁴ ensures the protection and promotion of the rights which are guaranteed under it. Such rights include the right to life, personal liberty, human dignity, fair hearing, privacy and family life, freedoms of expressions, religion, assembly, association, movement, and freedom from non-discrimination and to acquire and own immovable property.⁹⁵ The issue of arbitrary displacement can also be indirectly inferred from the Constitution of the Federal Republic of Nigeria that the primary purpose of government is to ensure the welfare and security of the people.⁹⁶ Chapter 2 of the Constitution also provides for the progressive realization of the fundamental, political, social, economic, and environmental rights but this chapter is tagged ‘Directive Principles of State Policy’ and the provisions are not enforceable in any court in Nigeria. Within the resources available, the government is encouraged at all levels to attend to the needs of the IDPs and also protect them to the largest extent possible until durable solutions are achieved.

2. *African Charter on Human and Peoples’ Rights*

The African Charter on Human and Peoples’ Rights⁹⁷ has been domesticated and is enforceable in Nigeria. It is the first regional instrument to guarantee the political, civil, so-

93 NCFRMI, “Internal Displacements”, http://www.ncfrmi.gov.ng/index.php?option=com_content&view=article&id=145&itemid=536 (accessed 24 January 2015).

94 Constitution of the Federal Republic of Nigeria 1999 as amended 2011, CAP C20 LFN 2004.

95 Chapter 4 of the Constitution. See sections 33-43.

96 NCFRMI. *Supra* note 93.

97 African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act, CAP A9, Laws of the Federation of Nigeria (LFN), 2004.

cial, economic, environmental and developmental right.⁹⁸ These include the right to education, health, housing, food, employment, social security, adequate standard of living, safe environment, cultural life and development. IDPs in Nigeria are guaranteed the above rights although some of the rights may not be achieved immediately but they are entitled to them and the government should ensure that these rights are enjoyed by the IDPs.

3. *The Guiding Principles on Internal Displacement.*

The Guiding Principles on Internal Displacement is designed to meet the needs of internally displaced persons. It should be noted that the principle is not a legally binding instrument and imposes no sanctions on States for non-compliance. The principles contained therein reflect and are consistent with current international rules. The Guiding Principles on Internal Displacement stipulates in Principle 6 that “displacement shall last no longer than required by the circumstances”. Drawing on existing international law the right of internally displaced persons to a durable solution is articulated in Principles 28-30.

The Guide contains the right of IDPs and the responsibilities of State or national authorities. Principle 1 states that IDPs are entitled to “enjoy full equality the same rights and freedoms as other persons in their country and shall not be discriminated against due to reasons of their displacement”. Principle 3 stipulates that the national authorities have the primary duty and responsibility to provide protection and assistance to IDPs within their boundaries and this is what NEMA has been doing in Nigeria. Principle 4 (2) recognizes the need of some special categories of IDPs and this is in tandem with the provisions of the Kampala convention which is the effect that States parties shall:

“provide special protection for and assistance to internally displaced persons with special needs, including separated and unaccompanied children, female heads of households, expectant mothers, mothers with young children, the elderly, and person with disabilities or with communicable diseases.”⁹⁹

It should be pointed out that the Guiding Principle emphasized on the protection, assistance and reintegration needs of women and children. This is not surprising as the two categories make up the largest numbers of internally displaced persons. They are the most vulnerable groups in any event or emergency situations. The Guiding Principle contains very laudable principles/provisions, but, as noted earlier, the Guide is not a binding instrument and does not have the force of law. The principles are merely persuasive but Nigeria can make use of the Guiding Principle and use it as a foundation for the National Policy document on internal displacements.

98 These rights are contained in Article 2-24 of the Charter.

99 Article 9 (2) Kampala Convention.

4. *International Humanitarian Law*

For the purpose of International Humanitarian Law (IHL), IDPs in States that are in armed conflict are treated as civilians and are protected by the Fourth Geneva Convention,¹⁰⁰ Additional Protocol I¹⁰¹ and II¹⁰². The fourth Geneva Convention and the Additional Protocol I will apply where the armed conflict is international in character while Protocol II and common Article 3 will apply in times of internal conflict. This distinction is important because it indicates the threshold of application of these laws. In Nigeria particularly, we have conflicts that have not met the threshold for the application of the conventions. These conflicts are classified as other situations of violence although it has led to the displacement of thousands of persons in Nigeria as noted earlier in this article, for the purpose of such internal conflicts, Article 3 common to the four Geneva Conventions becomes applicable in addition to the human rights laws and other national laws. Common Article 3 applies because it is customary international law.

Civilians are also protected from the effects of military operations.¹⁰³ Particularly, the protocol prohibits the forced movement of civilians unless imperative military reasons so demands or where their security is threatened. Civilians must be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.¹⁰⁴ Article 48 of Additional Protocol I sets out in great detail the protection given to IDPs. The provisions common Article 3 is reinforced by the provisions of Article 4 (1) and (2) of Additional Protocol II. This Article forbids collective punishments, acts of terrorism and pillage. It prohibits outrage upon personal dignity such as rape, enforced prostitution and any form of indecent assault. Persons deprived of their liberty are also protected,¹⁰⁵ and judicial guarantees are ensured.¹⁰⁶ The wounded and the sick including those caring for them are to be protected and respected.¹⁰⁷ Women and children are also given special protection.¹⁰⁸

Nigeria has ratified and domesticated the Conventions and the Protocols have also been ratified. The provisions of these laws are very relevant and should be relied upon in protecting IDPs. The Protocol further provides that whenever civilians are deprived of supplies es-

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

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

102 Protocol Additional to the Geneva Conventions of 12 AUGUST 1949, AND Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977. <http://www.icrc.org>.

103 Article 13-16 Additional Protocol II.

104 Article 17 Additional Protocol II.

105 Article 5 Additional Protocol II.

106 Article 6 Additional Protocol II.

107 Article 7-12 Additional Protocol II.

108 Article 4 (3) Additional Protocol II.

sential for their survival, relief actions of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction are to be undertaken with the consent of the State concerned.¹⁰⁹

VII. Conclusion

This article critically assessed the problem and protection of internally displaced persons in Nigeria using the Kampala Convention. It established that there are cases of internally displaced persons in Nigeria as a result of several factors that had been discussed. The most prevalent being situations of violence by armed groups. The article observed that although the Kampala Convention has been ratified by Nigeria in 2012, the country is yet to domesticate it thereby rendering the law unenforceable, and inapplicable to the situation of IDPs presently.

The NEMA which currently is the operational agency is not having it easy in their operations. This is due to the fact that the NEMA Act of 1999 is silent on the roles of other bodies or agencies like the local government in disaster or crises management. One would have expected that there would be a role for local governments as they constitute or make up the government at the grass root and closer to the people. The 1999 Constitution although contains human rights provisions which IDPs are entitled to on one hand but on the other hand failed to include disaster and emergency matters and the federal government lacks the ability to impose any structure or directives on the states or local governments. This is a big challenge as the federal government cannot on its own address all the issues concerning IDPs.

The UN Guiding Principles are quite laudable but lacks the force of law. Efforts should be made to raise the status of the principles into hard law or treaties that will be binding and enforceable on States that have ratified them. The African Charter is another commendable piece of legislation but the Nigeria government is still struggling to come to terms with its implementation. One cannot deny the fact that the government is making efforts towards the protection of the IDPs in the country but the governments seems far from achieving disaster resilience for vulnerable and affected communities. For example commitment to disaster reduction is still very low. The government is making little or no efforts in tackling the root cause of violence and disasters in Nigeria. There are also no mechanisms to warn the population early enough about the outbreak of violence or natural disasters. This article noted that the National Policy on Disaster Management is yet to be approved and adopted by the government. It is trite to note that there are sufficient laws on ground to be interpreted and applied and duplication of efforts and resources may not likely solve the problem.

The government should domesticate the Kampala Convention, strengthen and empower the relevant agencies by providing funds and materials needed to make the agencies effective and functional. Finally all the existing laws should be revised to bring them in line with

109 Article 8 (2) Additional Protocol II.

the current trend in disaster management particularly; these laws must conform to the Kampala Convention and the UN Guiding Principles on IDPs. All the relevant agencies such as the humanitarian organizations, the civil society groups should cooperate with NEMA to effectively manage the situations of IDPs in Nigeria. NEMA alone may not be able to prevent and/or mitigate the incidence of internal displacement, rather a collective action of everybody; both, state and non-state actors including individuals are needed to tackle the situation. Where there are government policies (at any level) that would give rise to arbitrary displacement, such actions of government should be challenged by the masses and where it is imperative that the population should be displaced, the government should provide alternative settlements for such populations and pay adequate compensation to the affected people.