



## ***An Analysis of the Rights and Protection of Internally Displaced Persons under the Nigerian Constitution and the Kampala Convention***

***Abdulrasheed Isah Barau<sup>1</sup>, Garba Danlami<sup>1</sup> Hassan  
and Habila Isa Barau<sup>2</sup>***

*<sup>1</sup>Lecturer, A. D Rufa'I College for Legal and Islamic Studies, Misau, Bauchi State. <sup>2</sup>Lecturer, Faculty of Law, Bauchi State University, Gadau, Bauchi State.*

### ***Abstract***

*Internal displacement has become an issue of global concern. In Africa, the rate of internal displacement is alarming as a result of series of internal crises happening on the African soil. In Nigeria for example, particularly in the North Eastern Nigeria, the rate of internal displacement can better be imagined. Many Nigerians are forcefully driven out of their homes, towns and villages and are forced to seek for refuge elsewhere. This has caused a lot of untold hardship to the persons affected, central of which are the aged, women and children. While displaced, IDPs are faced with a lot of challenges ranging from forced labour, violence, sexual molestation, deprivation and others. One may be forced to ask the question, has IDPs got some rights? What are those rights and who is responsible for the protection of such rights and many more. This article attempted to analyse the rights of an Internally Displaced Person as enshrined in the Constitution of the Federal Republic of Nigeria 1999 (As Amended) viz-a-viz the protection of IDPs under the Kampala Convention. Relevant Constitutional provisions as they affects the rights of IDPs are brought out and analysed, so also the relevant Articles of the Kampala Convention as they relates with the protection of IDPs. At the end of this work, conclusions were drawn and recommendations proffered.*

***Keywords:*** *Persons, Constitution, Nigeria, Kampala, Convention.*

## ***Introduction***

The plight of displaced persons has in recent years become a formidable problem of global significance and implications (Ladan, 2001). The total number of displaced persons is currently estimated around fifty million worldwide, with the majority of these people in Africa and Asia. Displacement across the country is a common result of both communal violence and internal armed conflicts. While some of the conflicts appear to be caused by religious or ethnic differences, benefits of a political, social and economic nature are generally behind the violence in the country with endemic poverty, low levels of education and a huge and alienated youth population. Nigeria regularly experiences displacement as a consequence of natural disasters such as flooding or soil erosion. Nigeria has been affected by recurrent internal conflicts and generalized violence since the end of military rule and the return of democracy in 1999. The systematic and overlapping patterns of inequality in the country have been described as “breeding grounds” for conflict (Okpeh, 2008; CRISE, 2007). As a result, the country is faced with the ongoing challenge of responding to fluctuating but always sizeable internally displaced population. Nigeria is made up of a web of ethnic, linguistics and religious, social groupings. Conflicts have been triggered by disputes over access to

land, kingship, cultural, residual citizenship and broader questions of identity. Identities have been particularly important in the shaping of both the political and social arena in Nigeria both during colonial and post-colonial times. Under British colonial rule, religious, ethnic and regional differences were given prominence, which eventually exacerbated divisions between Muslims and Christians, Northerners and Southerners, and Hausa – Fulani, Yoruba and Igbo groups (Okpanachi, 2010). Such differences, particularly between people considered indigenous to an area and those regarded as settlers, became instrumental after independence in the manipulation of identities for political ends (Jega, 2000).<sup>1</sup> As a result of the crisis in the World, particularly in the North Eastern Nigeria, measures were taken by both national and international institutions in order to prevent and control internal displacement and to protect and assist IDPs. Some of the glaring measures include the creation of legal frameworks for the protection and assistance of refugees. For instance, the UN Guiding Principle, the Kampala Convention etc were created for the protection and assistance of IDPs.

In Nigeria, there are some bundles of rights which are provided to be enjoyed by every citizen irrespective of his tribe, religion, gender or geographical location. These rights are inalienable to every

Nigerian. These rights are enshrined in the Nigerian Constitution under Chapter ii and iv of the 1999 Constitution FRN. However, it is worthy to note that these rights are of general application to all Nigerians. There are no special rights promulgated for the benefit of only the IDPs. Being Nigerians, IDPs are just entitled to these rights and not for bring internally displaced. The preceding discussion on rights of the IDPs will therefore be a general discussion on rights as provided under the Constitution of the Federal Republic of Nigeria 1999 (As Amended).

## **CONCEPTUAL CLARIFICATION OF TERMS**

### **Who is an IDP**

#### **Internally Displaced Person**

These are persons or group of person who due to reason of either armed conflict, development projects or natural disasters and other causes are been forced to leave their houses and communities to seek shelter elsewhere but does not cross international border...Ladan (2004)

#### **Refugee**

Article 1 of the 1951 UN Convention and the 1977 OAU Convention for the Protection and Assistance of Refugees defined among other things, refugees as person who because of a well-founded fear of persecution has left their country of origin to seek refuge in another country. Usually, for a person to qualify as a refugee, such a person must have crossed an international border.

#### **Difference between an IDP and a Refugee**

Going by the above analysis of who an IDP and who a refugee is, the main fundamental difference between an IDP and a Refugee is, an IDP is displaced and has remained within his country of origin or residence and has not cross an international border. Whereas, refugee has crossed an international border...Ladan (2004).

#### **What is Right**

### **RIGHTS OF IDPS UNDER THE NIGERIAN CONSTITUTION**

Human rights are universal, indivisible and inalienable rights of every human being, these rights ensure the sacredness and dignity of the human person while preventing inhumanity and injustice.

The constitutions of the Federal Republic of Nigeria, since from independence made consistent provisions that protect and guaranty the rights of their citizens. The Constitution of the Federal Republic of Nigeria 1999 (As Amended) was a product of

the Military Government of Gen. Abdulsalami Abubakar GCFR and came into force in 1999.

Our discussion will be centred on Chapter II and IV, the civil and political rights respectively. Chapter four<sup>1</sup> contains provisions of fundamental human rights and these includes;

- Section 33 - Right to Life
- Section 34 - Right to dignity of human person
- Section 35 - Right to personal liberty
- Section 36 - Right to fair hearing
- Section 37 - Right to private and family life
- Section 38 - Right to freedom of thought, conscience and religion
- Section 39 - Right to freedom of expression and press
- Section 40 - Right to peaceful assembly and association
- Section 41 - Right to freedom of movement
- Section 42 - Right to freedom from discrimination
- Section 43 - Right to acquire and own immovable property anywhere in Nigeria
- Section 44 - Compulsory acquisition of property

It is important to note that as important and beautifully captured these rights are, critical analysis of such provisions show that such rights are often not respected and instead of making life more meaningful, it is creating more stress and pains to people. For instance, right to life guaranteed under Section 33<sup>2</sup> is meaningless without the means of livelihood, right to life can only be guaranteed if there is free access to medical facilities, food, and shelter.

Similarly, right to freedom of movement, freedom of expression and the press and right to peaceful assembly and association<sup>3</sup> are all worthless without the quality education to know what to say and how to say, when to say and to whom to say. Right to dignity of the human person and right to personal liberty<sup>4</sup> make no meaning to a person living below the minimum standard of living. Justice Bhagwati had this to say<sup>5</sup>:-

***“..... the large majority of people who are living in almost sub human condition of abject poverty and for whom life is one long unbroken story of want and destitution, nations of individual freedom and liberty, though representing some of the most***

---

<sup>1</sup> 1999 Constitution of the Federal Republic of Nigeria (as amended)

<sup>2</sup> Ibid

<sup>3</sup> Ibid sections 39, 40 and 41

<sup>4</sup> Ibid, sections 34 and 35

<sup>5</sup> In his work “A new perspective in law and justice in Nigeria, presented at the National Institute for Policy and Strategic Studies, Kuru, Distinguish Lecture Series, October 25, 1986.

*cherished values of a free society would sound as empty words bandied about in the drawing room of the rich and well to do”*

Right to fair hearing and right to private and family life enshrined in the constitution<sup>6</sup> are not realistic to any Nigerians. We humbly adopt the opinion of Dr. Aguda when he states that;-

*“To think that a very poor person can have a meaningful day in court in the pursuit of his right, real or imaginary is to live in a fool’s paradise”<sup>7</sup>*

The right to freedom of thought, conscience and religion also make no meaning to the poor, because they can move without the necessary resources to pay for transportation. These rights can only be meaningful and realistic when government is honest with her responsibilities.

A number of provisions in Chapter 2 (Fundamental Objectives and Directive Principle of State Policy) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) may also be relied upon to protect the rights of the IDPs. In particular, the state must direct its policies towards ensuring, inter alia:

1. Section 16(2)(a)-On right to have access to suitable and adequate shelter and food for all citizens;
2. Section 17(2)(a)-On the right to access to adequate medical and mental health facilities for all citizens;
3. Section 17(2)(c)-On the protection of young persons and children from exploitation.

Section 13, Chapter 2 makes clear that ‘‘it shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution’’.

## **PROTECTIONS OF IDPS UNDER THE KAMPALA CONVENTION**

Considering the consequences of internal displacement, International Governmental and Non-Governmental Organizations and Countries tried to find ways of preventing, protecting and managing internal displacement. The UN has created the UN Guiding

---

<sup>6</sup> Ibid note 9, sections 36 and 37.

<sup>7</sup> Justice T.A. Aguda, A new perspective in Law and Justice in Nigeria. A distinguished lecture series at NIPSS, Kuru 1986.

Principle on Internal Displacement as a guide to nations on how to prevent and/or manage internal displacement. However, Africa under the African Union was the first and only International Institution, regional or otherwise to have enacted an instrument on IDPs, the Kampala Convention.

The Kampala Convention was adopted by the African Union on 23<sup>rd</sup> October, 2009. It is the first independent legally binding instrument in the World that imposes on States, the obligations to protect and assist IDPs. The Convention entered into force on 6<sup>th</sup> December, 2012 after it has been ratified by 15 countries. Since then, ongoing efforts to ensure additional ratification by member-states has brought Angola, Malawi, Mali and Rwanda on board.

Formally, the Kampala Convention is known as African Union Convention on the Protection and Assistance of Internally Displaced Persons in Africa, it is the first of its kind that imposes obligation on member-states to take reasonable steps to prevent arbitrary displacement and to protect IDPs in cases of displacement. Basically, the Kampala Convention is built on International Humanitarian law, International Human Rights Law, as well as the UN Guiding Principles on Internal Displacement. This work presents an overview of the efforts that many countries in Africa are making to formulate a human rights standard which can be utilised in a legislation drafted to protect IDPs.

The Kampala Convention is not particularly inclined to the statement and declaration of special rights to IDPs. However it provided for some mechanisms which when fully observed by member states of the AU, the incidence of displacement will be greatly reduced and where such displacement became inevitable, the Convention provided for remedial measures to see to the protection and assistance of IDPs and to make sure that the root causes of the displacements are addressed and IDPs are assisted to in resettlement. The Convention places on State members, some duties which in turn may be viewed as the rights of the IDPs. Some of the most important obligations the Kampala Convention placed on State members are extensively discussed below:

#### **a. Obligation and Responsibilities for Protection**

The convention is arranged mainly in terms of obligations relating to state, international and humanitarian organizations and Africa Union. While categorically stating in the preamble that states parties have the primary responsibility and commitment to respect, protect and fulfil the right to which internally displaced persons are entitled, without discrimination of any kind' Humanitarian Access and Assistance: Although the primary responsibility of the protection and assistance of IDPs lies with state, the Kampala convention holds governments responsible for allowing humanitarian and assistance where necessary. The convention commits state 'parties

to ensure assistance to internally displaced persons by meeting their basic needs as well as allowing and facilitating rapid and unimpeded access by humanitarian organizations and personnel (Article 3 (J)).

The Kampala convention goes further in terms of guarantees in the area of humanitarian assistance. It refers to the sphere standards for monitoring and evaluation the effectiveness and impacts. Humanitarian Charter and Minimum standards in Disaster for Humanitarian Assistance (Article 9 (2) (M)). According to the Kampala Convention, state parties shall assess or facilitate the assessment of the needs and vulnerabilities of internally displaced persons and of host communities (Article 5 (5)) in cooperation with International Organisations or agencies; the state parties shall cooperate with each other upon the request of the concerned state party or the conference state parties shall respect the mandates of Article 2 (2); and the state parties shall respect the mandate of the African Union and the United Nations as well as the Rules of International Humanitarian Law in providing protection and assistance to IDPs in accordance with International Law Article 3 (3). In case of inadequate resources to respond to a particular disaster states are to cooperate in seeking the assistance of International Organisation and Humanitarian agencies, civil society, organisations and other relevant actors. Such organisations may offer their service to all those in need Article 5 (6). State parties shall:

1. Take necessary steps to effectively organise a relief action, that is, humanitarian and impartial in character and to guarantee security. State parties shall allow rapid and unimpeded passage of all relief consignments, equipment and personnel of IDPs .
2. Enable and facilitate the role of local and international Organisations and humanitarian agencies, civil society organisations and other relevant actors, to provide protection and assistance to IDPs.
3. Have the right to prescribe the technical arrangement under which such passage is permitted Article 5(7). To uphold and ensure respect for the humanitarian principle of humanitarian actors Article 5(8). Put in place measures for monitoring and evaluating the effectiveness and impact of the humanitarian assistance delivered to the IDPs in accordance with the relevant practices, including the sphere standards Article 9(2)(m).

#### **b. Communities with special attachment to lands**

The Kampala Convention seeks to protect communities with special attachment to, and dependency on, land due to their particular culture and protection against displacement, except in compelling and overriding public interest Article 4(5), consistent with the provisions of International CCPR 1996, ACHPR 1981 and the UN Guiding Principles (Article 4(1)(c)).

### **c. Genocide, War Crimes and Crimes Against Humanity**

According to the Kampala Convention, acts of arbitrary displacement that amount to genocide, war crimes or crimes against humanity are punishable by law

#### **a. Protection of IDPs and Addressing Root Causes**

In its Preamble, the Convention re-affirms the commitment of the member states of the AU To the shared common vision of providing durable solutions to situations of IDPs by establishing an appropriate legal frame work for their protection and assistance. In the same Section, the Convention also expressed determination to ‘adopt measures aimed at preventing and putting an end to the phenomenon of internal displacement by eradicating the root causes, especially persistent and recurrent conflict, as well as addressing displacement caused by natural disaster...’ It expresses determination to ensure that internally displaced persons are provided with an appropriate legal frame work to ensure their adequate protection and assistance, as well as durable solutions.

The convention talks about putting an end to the phenomenon of internal displacement by “eradicating the root causes”, especially persistent and recurrent conflict (Preamble).

#### **b. Prohibition and Prevention of Arbitrary Displacement**

Some of the provisions on prohibition and prevention of arbitrary displacement are directly related to those on displacement induced by projects. The Kampala Convention contains the rights to protection from arbitrary displacement. In Article 3(a), state parties commit to “refrain from,. Prohibit and prevent arbitrary displacement of population”. These provisions are re-enforced by the attached UN Guiding Principle which go further in the definition on specific prohibitions. Principle 5 of the UN Guiding Principle states that “ all authorities and international actors shall respect and ensure respect for their obligations under International law, including human right and humanitarian law, so as to prevent and avoid conditions that might lead to displacement of persons”. The whole Principle 6 of the UN Guiding Principle is dedicated to protection against, and prohibition of arbitrary displacement.

Article 4(4)(a) of Kampala Convention extends the scope of prohibition to “principles aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population”, and qualified situations of armed conflict, large scale development project and disasters, Article (4(4)(a-h)) actually defines a broad scope of categories of displacement that the Convention covers.

#### **c. Displacement Induced By Projects**

In its section on “ displacement induced by project”, (Article 10), the Convention commits state parties to “as much as possible.....preventing displacement caused by projects carries out by public or private actors” (Article 10(1)). Additional, feasible alternative should be explored with full information and consultation of potential evictees, having done a prior “socio-economic and environment impact assessment” of the project. Article 12 of Kampala Convention is entitled “compensation” and is related to Article 10 in that it commits state parties to establish “ just and fair legal frameworks” to manage issues of property, compensation and other forms of preparations for IDPs for “damage incurred as a result of displacement”, even in cases of displacement”, even in cases of natural disasters.

**d. Responsibilities of Non-State Actors (Including Armed Groups)**

The measure part of the Convention is the provision for the respective “obligations, responsibilities and roles of armed groups, non-states actors and other relevant actors, including civil society organisation, with respect to the prevention of internal displacement and protection and assistance to IDPs” Article (2 (e)). Non-state actors including multinational companies and private military or security companies shall be called to accountability of non-state actors involved in the exploration and exploitation of economic and natural resources leading to displacement (Article 3(h & i)).

**e. Individual Criminal Responsibility for Act of Arbitrary Displacement**

The Article 3(a) of the Kampala Convention says that state parties undertake to “ensure individual responsibility for acts of arbitrary displacement, in accordance with applicable domestic and international criminal law”.

## CONCLUSION

Internal displacement has caused a lot of hardship to IDPs around the globe, more especially the aged, women and children. The total number of displaced persons is currently estimated around fifty million worldwide, with the majority of these people in Africa and Asia. IDPs are not provided with a special set of rights like refugees. Refugees enjoy some rights which are applicable only to them, as contained under the 1951 Convention and OAU Convention 1985. IDPs in Nigeria enjoy the same set of rights enjoyable by other Nigerians as contained under Chapter ii and iv of the Constitution of the Federal Republic of Nigeria (As Amended).

The Kampala Convention was the first and only International instrument on the protection of IDPs. The instrument did not provided bundles of rights like under the Chapter ii and iv of the 1999 Constitution, however, the instrument placed responsibility on member states to make sure that all the necessary steps are being

taken to prevent internal displacement and in the event it occurred. The member states are enjoined to take all possible steps to remedy its consequences. The Kampala Convention, therefore, became a panacea to the plights of the IDPs and prevention of further occurrences. The Kampala Convention has place on the government and non-governmental bodies, the obligation to prevent arbitrary displacement and the provision for protection and assistance in situation of displacement. Despite the enormous importance of the Kampala Convention, Nigeria is only a signatory to it, but the Convention has not been ratified and domesticated pursuant to Section 12 of the Constitution of the Federal Republic of Nigeria. As such the Convention is not applicable in Nigeria. Nigerians are being deprived of the benefits to be enjoyed from the Convention and the plights of our brothers and sisters, especially Children and women, remain unsolved, which can otherwise be solved.

### **RECOMMENDATION**

1. The National Assembly should as a matter of urgency deliberate and pass the Bill for the domestication of the Kampala Convention pending before it for years.
2. There should be established, an institutional framework specifically to cater for the IDPs in Nigeria. The like of National Commission for Refugees should be created for IDPs.
3. There is the need for the government at all levels and other stake holders to increase their participation in providing humanitarian assistance to the IDPs.
4. Human rights bodies, NGOs and Private Lawyers should invest more in the provision of pro bono legal services and counselling to IDPs, more especially women, who are always victims of gender-based crimes

### **REFERENCE**

- Ladan M.T. (2012). Impact of insecurity in the north on internally displaced people and migration flows between Nigeria and neighbouring countries. working group on migration and development. EU meeting room 1, (Portakabin) 21 Constitution Avenue, CBD, Abuja. May 31, 2012.
- Ladan, M.T. (2006). Migration, Trafficking, Human Rights and Refugees Under International of Africa, Ahmadu Bello University Press, Zaria, Nigeria p9. 1
- Ladan, M.T (2001). Introduction to International Human Rights and Humanitarian Laws, A.B.U Press, Zaria.
- Draft National Policy on Internally Displaced Persons in Nigeria ([http://www.internal-displacement.org/static\\_content/law-and-policy/nigeria/2012-nigeria-draft-IDP-policy.pdf](http://www.internal-displacement.org/static_content/law-and-policy/nigeria/2012-nigeria-draft-IDP-policy.pdf) the)

- Legal Rights and the Protection of Internally Displaced Persons in North-Eastern Nigeria. Training Manual, Organised by Human Rights Bar Committee of England and Wales in collaboration with the Nigerian Bar Association, from 12-16 February, 2018 at Abuja, Nigeria. Page 21.
- Report of the Special Rapporteur of the Human Rights of Internally displaced persons on his mission to Nigeria” A/HRC/35/27/Add. 1 (12 April, 2017) available at <https://documents-dds-ny-un.org/doc/UNDOC/GEN/G17/091/PDF/G1709125.pdf?openElement>
- Amnesty International “Nigeria: Justice Impossible Unless Boko Haram Suspects Gets Fair Trial” (11 Oct. 2017) available at <https://www.amnesty.org/en/press-releases/2017/10/nigeria-justice-impossible-unless-boko-haram-terror-suspects-get-fair-trials/> “Boko Haram: Nigerian Troops Arrest 400 Linked to Extremist group, including women and children” ABA News(16 Dec 2017)
- UNICEF “Current Status-progress: Refugees and Internally displaced persons, (Updated May, 2017) available at <https://data.unicef.org/topic/child-migration-and-displacement/displacement>.
- Abbah, T. (2009). How to solve Jukun/Kuteb Crisis. Daily Trust, January 4.
- Abubakar, A. (2004). The challenges of security in Nigeria. NIPSS Guest Lecture, November 26, Kuru, Plateau State.
- Adekoya F. (2012, February 8, 2012). Security challenge and Nigeria's quest for FDIs. The Guardian Newspaper. Retrieved from Ake, C. (1999) Why Humanitarian Emergencies Occur, The United Nations University WIDER. Research for Action No. 3 1 .
- Angya, C.A. & Doki, G.A. (2006). Women participation/involvement in conflict management in Benue State: A review. In Gyuse T.T. & Ajene, O. (eds) Conflicts in the Benue Valley. Makurdi: Benue State University Press.
- Azuonwu, G. (2002). Understanding group dynamics: effective tool for conflict resolution in Nigeria. Ibadan: Evi-Coleman Publication.
- Bahati, J. (2009). Impact of Small Arms proliferation Africa. Africa Faith Justice Network; June, 2.
- Bamidele O. (2012) Boko Haram catastrophic terrorism development in Nigeria. Journal of Sustainable Development in Africa. Bloch A: Methodological Challenges for National and Multi Refugee Studies 2007, 20(2)
- Best S. G. (2006). The Political Dimensions of Conflicts in the Benue Valley. In Gyuse, T. T. & Ajene O. (eds) Conflicts in the Benue Valley. Makurdi: Benue State University Press.
- Black, A. and Muddiman, D. (1997). Understanding community librarianship: the public library in post-modern Britain. Aldershot: Avebury.

- Branch, A. (2013). Gulu in War ... and Peace? The Town as Camp in Northern Uganda. *Urban Studies*, 50(15), 3152-3167.
- Centre on Housing Rights and Evictions and Social and Economic Rights Action Centre (2008). *The myth of the Abuja Master Plan. Forced evictions as urban planning in Abuja, Nigeria*, Geneva, Swi
- Chukwu, U. (2008), *A Supplementary Memorandum Presented by Ezza-Ezillo People to the Peace*