

# TOWARDS THE EVOLUTION OF LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE PROTECTION OF INTERNALLY DISPLACED PERSONS (IDPS) IN NIGERIA

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**Abstract:** The Refugee Convention (RC) 1951 and its 1967 Protocol (the current international legal regime on the protection of refugees) do not guarantee any legal protection for the category of persons who have been forced to migrate outside the boundaries of their countries due to incidences of inclement weather, famine, flood, earthquake and other natural disasters. To come under the protection of the RC, a person must have been forced to leave his home country "...owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion..." Persons who have been forced to leave their homes, homesteads, towns, cities, farms and familiar terrains due to incidences of inclement weather, famine, flood, earthquake and other natural disasters; but are trapped or displaced within the boundaries of their countries are often in more dire situations. These persons usually referred to as "Internally Displaced Persons" (IDPs) do not come under the protection or welfare of any internationally binding agreements. Apart from the 1998 UN Guiding principles on Internally Displaced Persons which is at best regarded as guiding and not binding and the recently adopted AU Kampala Convention, there is no internationally binding legal framework for the protection of IDPs. Unfortunately, most states have no municipal law to cater for their wellbeing. In Nigeria, for example, this category of persons is left to the whims and caprices of a local regulatory agency; the National Emergency Monitoring Agency (NEMA). This agency more often than not is not proactive in the welfare of such persons. The effect is mass human rights abuse often suffered by this class of persons most especially the children and the womenfolk as they often become beggars and objects of pity in the locality which they have been forced to migrate to. The recent and continuing incidents of flooding experienced in Lagos, Bayelsa and Kogi States of Nigeria, which has

displaced millions of the inhabitants of such states from their homes coupled with loss of lives and damages to properties brings to the fore, the urgency of the need for legal and institutional framework for the protection of these persons in Nigeria. This paper assesses the emerging trend of legal protection for internally displaced persons in the African continent especially the very recently adopted African Union Kampala Convention on Internally Displaced Persons. It observes that the obligations imposed by the Convention on its member states is not limited to guaranteeing the welfare of IDPS only but also legislating and taking necessary administrative and incidental steps towards eradicating the causes of internally displacement in the African continent. The overarching objective of the paper is to prove that the non justiciability of economic, social and cultural rights as well as environmental rights in Nigeria is both a causal factor as well as one of the factors militating against adequate protection of IDPS in Nigeria. The paper demonstrates that the non justiciability of economic, social and cultural rights as well as environmental rights in Nigeria continues to impede good governance and sustainable development in the nation. The international implication is that this type of forced migration is a direct flow towards mass migration outside the boundaries of the country of origin of the IDPs. The effect is thus rebounding on nations' international neighbours. The resultant effects task the social, economic and political resolve and foreign policy of such neighbours. The paper seeks out some recommendations and public policy implications which may be of international acceptance for addressing this issue within and outside Nigeria.

**Keywords:** African Union, Climate Change, Economic, Social and Cultural Rights, Internally Displaced Persons, Kampala Convention, Nigeria, Refugees

## Introduction

In recent times, the plight of internally displaced persons (IDPS) has become a global issue. Perhaps this is due to the fact that there had been an upsurge in highly violent conflicts resulting from internal strifes, ethnic clashes, civil wars, acts of terrorism by state and non state actors and generalized violence. This in turn has led to displacement of more persons within their countries' boundaries.

According to the report of a monitoring conducted by the IDMC in 2011, the number of IDPS increased globally from 21,400,000 in 2001 to 26,000,000 in 2011. The African region, witnessed more violent clashes in 2012 than at any other time since 1945. (IDMC: 2012). The African sub Saharan region especially has about 10.400,000 (Ten Million, Four Hundred Thousand) of its citizens living in displacement; a figure which represents almost one third of the total global figure on IDPS. (IDMC: 2012).

Although there is no authoritative data on the number of IDPS in Nigeria, Nigeria has had its extra share of internal displacement since the civil war of 1967-1970. The incessant ethnic and religious clashes, communal clashes due to boundary disputes, right of grazing land disputes between pastoralists and farmers, perennial floods which became unprecedented in 2012, post election violence which has characterized most elections in Nigeria since return to civil rule in 1999 and the ongoing insurgencies and terrorist activities of the *Boko Haram* sect in Nigeria have led to an upsurge in the number of IDPS in the country at least in the last one decade. The Nigerian official agency responsible for the welfare of persons affected by disasters and emergencies; the National Emergency Management Agency (NEMA) in a report by its Director General quoting the 2012 Post Disaster Needs Assessment report disclosed that over 3,871,530 persons were displaced by the flooding which occurred in Lagos, Kogi and Bayelsa states of Nigeria, between mid-July 2012 and September 2012. (Punch Newspapers online 11-19-13) This figure of IDPS is alarming enough without adding the numbers of IDPS generated by the other causes as highlighted above.

The objective of this paper is thus to examine the immediate causes of internal displacement and its consequences on the IDPs, to assess the status of IDPS under international law and also the emerging trend of their legal protection particularly under the African Union's Kampala Convention. Taking

Nigeria as a case study, the paper argues that the obligations imposed by the Convention on its member states is not limited to legislating towards guaranteeing the welfare of IDPS only but also taking necessary legal, institutional, administrative and incidental steps towards the eradication of the root causes of internal displacement in the African continent. The overarching objective of the paper is to prove that the non-justiciability of economic, social and cultural rights as well as environmental rights in Nigeria is both a causal factor as well as one of the factors militating against adequate protection of IDPS in Nigeria. The paper thus demonstrates that the non justiciability of economic, social and cultural rights as well as environmental rights in Nigeria continues to impede good governance and sustainable development in the nation.

## Internally Displaced Persons: Available Legal Instruments

Despite the large number of IDPS globally, the international humanitarian community however is yet to provide an internationally binding legal document prescribing the norms on the status, rights and duties of IDPS. In the years past recourse had often been made to the norms on refugees as being adequate or analogous for the protection of IDPS. The traditional definition of refugees as contained in the Refugee Convention (RC) 1951 and its 1967 Protocol describe refugees as persons who have been forced to flee his country of origin by "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion..." and is unable or unwilling to avail himself of the protection of his country of origin due to such fears. This definition apparently does not cover persons who have been forced to migrate outside the boundaries of their countries due to environmental challenges such as climate changes, natural disasters such as incidences of inclement weather, famine, flood, earthquakes. The Convention and its Protocol therefore do not offer any guarantee of legal protection for that category of persons who have been displaced or evacuated either permanently or semi-permanently from their homeland, town or state by reason manmade disasters such as violent conflicts, acts of terrorism, state or non state actors' gross violation of human rights and state championed development projects.

It has been argued that the refugee is more deserving of international protection than an IDP. This argument is often based on the reason that whereas a refugee must have fled his country of origin and has lost the protection of his country of origin, an IDP is

still within his country of origin and ideally should be able to enjoy all the rights his compatriots enjoy and is thus not entitled to an international protection. Recent trends have however shown that although IDPs remain or are trapped within the boundaries of his country but far away from his home, locality, social cum cultural extraction. IDPS are thus vulnerable and often suffer severe hardship through physical and psychological deprivations. Coupled with this is discrimination often faced by IDPs from the host communities. Not unlike refugees in this instance, IDPs are often perceived by such host communities as economic and security risks. Up till 1993, the legal regime at the international level does not have any norm or code for the protection and wellbeing of IDPs or similar category of persons. In that year however the Commonwealth of Independent Nations took the step to address the issue of refugees and forced migrants. This was through the adoption of the Treaty on the Support for Refugees and Forced Migrants. **(CIS Treaty 1993 Support for Refugees and Forced Migrants)** Technically speaking refugees are different from forced migrants as the latter are forced to flee or are evacuated forcefully from their homestead perhaps as part of a state or non state actor's ethnic cleansing. In another vein they might have been forced to migrate in order to "escape persecution, conflict, repression, natural and human-made disasters, ecological degradation, or other situations that endanger their lives, freedom or livelihood." ( **IOM: 2012**). It is in this last respect that IDPs and Forced Migrants share a common fate. The similarity however ends there, because a forced migrant as contemplated under the 1993 CIS Treaty has crossed an internationally recognized state boundary, internal displacement occurs within the boundary of the IDPs' home country. Thus the CIS Treaty cannot be said to have catered categorically for the needs of internally displaced persons.

In 1998, however the United Nations recognizing the need for the protection of IDPs adopted the Guiding Principles on Internally Displaced Persons (**UN Guiding principles on Internal Displacement 1998**). These principles "identify the rights and guarantees relevant to the protection of IDPS at all stages of displacement" (**Foreword to the Guiding Principles**). The principles however remain at best merely guiding and not binding on any of the UN member states up till date. However since the acceptance of the Guiding Principles, a number of regions and countries have taken steps to adapt the

principles into resolutions, regional and national laws for use in their regions. Whereas some regions and subsequently countries took steps to adopt legally binding norms recognizing the need for the protection of IDPs, most of such regions merely adapted recommendations on how the Guiding Principles may be implemented. At the regional level, the Council of Europe adopted a series of recommendations, for instance Rec/ 1569 of 2000, Rec/1631 Of 2003; the latest being Recommendation 2006(6) adopted on the 5<sup>th</sup> of April 2006 the protection of IDPs. The Great Lakes Region Pact on Security, Stability and Development in the Great Lakes Region was supported by a Protocol on the Protection and Assistance to Internally Displaced Persona in November 2006. It also added a Protocol on the right to Property of returning persons. **(Brookings Education Institute: 2012)**

In Latin America, the Brasilia Declaration on the Right of Refugees and Stateless Persons declared in November 2010, though not IDP specific was applied also to IDP. The General Assembly of the Organisation of America States (OAS) adopted a Resolution (AG/ RES/2417; XXXVIII-0/08) in June 2008 to re-establish its earlier Resolution of 1971 on the rights of IDPS.

The African Union however took the first step to adopt a regionally binding legal norm; the Convention for the Protection and Assistance of Internally Displaced Persons in Africa also popularly known as the "Kampala Convention". This Convention adopted in October 2009 came into force on the 6<sup>th</sup> of December 2012. It addresses the rights and guarantees for persons or groups of persons who have been forced to leave their homes, homesteads, towns, cities, farms and familiar terrains due to incidences of inclement weather, famine, natural disasters, armed conflicts and situations of generalized state of violence; but are trapped or displaced within the boundaries of their countries. **(Brookings Education Institute: 2012)**

At the municipal level, unfortunately, most states have no law to cater for the wellbeing of IDPS. For example in the African Continent, out of the fifty-four (54) member states of the African Union, only seven (7) have laws and/or policies relating to IDPS. These are Angola, Burundi, Kenya, Liberia, Sierra Leone, Sudan and Uganda. **(Brookings Education Institute: 2012)** Specifically in Nigeria, there is no law either at the local, state or federal level which caters for the well being of this category of persons.

### **The Problem of Definition: Who is an Internally Displaced Person?**

There is no generally accepted definition of who an IDP is. The most common and often cited and applied definition of an IDP is the one coined by a former Representative of the UN Secretary-General; Francis Deng who was instrumental to the compilation of the UN Guiding Principles on Internal Displacement. This is the definition contained in the 1998 UN Guiding Principles on Internal Displacement which defines an internally displaced person as: ... a person or groups of persons who have been forced or obliged to flee or leave their homes or places of 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 State border. **(Para. 1, UNGP on IDP 1998)**

The AU Kampala Convention (2009) adopts word for word, the definition of IDPS as given by the UN Guiding Principles but goes further to define internal displacement as: “the involuntary or forced migration, evacuation or relocation of persons or groups of persons within internationally recognized State border.”

Flowing from the above definitions of IDPS and internal displacement are two elements of peculiarities of internal displacement and attaining the status of an Internally Displaced Person. First, internal displacement is an involuntary movement. It is a forced migration of persons or groups of persons who often do not have a choice in the matter of their migration other than the option to leave the affected zone. Second there is an element of being trapped within the country of origin but displaced from the habitual or familiar surroundings. Thus unlike refugees who have crossed internationally recognized state borders, IDPS are supposedly still under the legal protection of their country of origin. While a refugee has attained the status of enjoying or being able to enjoy certain rights under international laws, an IDP is deprived of such status and in fact at international has no legal status. This is so because an IDP simply is still subject to the same rights and privileges cum obligations which his compatriots enjoy or are able to enjoy. The dire need for international protection for an IDP is therefore underscored by the fact that though an IDP is still within his country's territory, more often than not he has been displaced to another locality, state or region of his country where he is unable to participate in any of the economic, social and cultural activities of that

locality, state or region for reasons such as ethnic, religious or cultural differences. More often than not IDPS are unwelcome by the host community as they are often perceived as economic, social and security risks.

Moreover although IDPS are supposedly under the protection of their country of origin they may not be able to enjoy that protection where the government is unable to afford such protection as a result of internal strife between constituted authority and rebel groups. The government of the day might have been the cause of the internal displacement and may be unwilling to assist the IDPS.

### **Is the African Region creating more IDPs?**

Indeed statistics available from the Internal Displacement Monitoring Centre (IDMC) suggest that; the African region alone produces one third of the world's figures on IDPs. **(IDMC: 2012)** The reasons for this are not farfetched. The first major reason was the struggle for political power and ideological domination. At the beginning of the 1990s there was the renewed surge for democracy in the African region; which nations had experienced military rule almost since independence. By the end of that decade however, most nations in Africa became embroiled in one violent crisis or the other. Struggles for political power, ethnic and ideological domination in Rwanda led to a chain of events starting from the genocide of Tutsis by the Hutus in Rwanda between April and June 1994 to the “African Civil War” (in which Rwanda, Congo, Zimbabwe, Namibia and Angola were embroiled in five years of violent conflict on the soil of Congo) which ravaged Congo between 1998 and 2003. The IDMC puts the figure of IDPs generated within the Congolese territories between that period and as of date at 2.6Millions of persons. **(IDMC: 2013)**

The second reason which underlies the first reason is the struggle for the domination of natural resources. For instance, the Sierra Leonean Civil War began in 1991 over the control of the diamond rich Kono districts. When it ended in 1999, the figure of the IDPs was close to half of the country's population of 4.5Million. **(Eric Johnson: 2002)**

The third reason is the often perennial inter-communal violence usually linked to land and boundary disputes between ethnic groups. Examples can be made of the *Ife/ Modakeke* towns in the West and the *Umuleris* and *Aguleris* communities of the Eastern region of Nigeria. Apart from inter communal feuds violent clashes concerning ownership of land, there were also clashes between

“settlers” and “original inhabitants” or “indigenes” on the use and extent of possession of land. Every violent clash in Nigeria has either a political or religious undertone. In 2012, about 40,000 persons were displaced from their homes in the Middle Belt of Nigeria which is basically the crossroad between the predominantly Muslim Northern Nigeria and the predominantly Christian Southern Nigeria. This was due to clashes between the nomadic Muslim pastoralists and the Christian indigene farmers. **(IDMC: Country Profile/Nigeria July 2013)**

Fourth, since the early 2000s there was a steady sudden and slow-onset of climate change linked to Man’s industrial developments in the developed countries but which has ripple effects on the developing countries. The Industrial Revolution in the 19<sup>th</sup> C contributed immensely to large scale use of industrial fossils such as oil, fuels, natural gases which in turn led to the large emission of carbon dioxide, nitrous oxide and methane. These chemicals combine to have harmful effects on the environment thus leading to global warming and the consequent environmental hazards. In some places, deforestation for use as energy sources has led to desertification which in turn catalysed natural disasters such as earthquakes, volcano eruptions and typhoons. Africa on the one hand has been blessed with the least incidences of natural disasters. However the continent has had to contend with its share of natural hazards such as floods which also forced people to flee their homesteads. Between 2009 and 2010, almost all the states in the West African sub region experienced flooding which displaced a sizeable number of their populations. **(RELIEF WEB: 2013)**. The effect of desertification is also apparent on farmlands which can no longer produce enough food for subsistence thus leading to famine in the African Sahel region.

For decades now, incidences of floods became rampant and perennial in Nigeria especially in the lowlands and river basins. According to IDMC data, the most devastating of all floods in the last 40 years occurred between July and September 2012. **(IDMC: 2012)**. States worst hit are Lagos, Kogi, Benue, Niger and Bayelsa. Available data from NEMA though hazy suggests that about 3,871,530 have been displaced due to the resulting floods. **(NEMA: Post Disaster Assessment Report 2012)**. The resultant loss and damages is estimated as worth over N2.29tn. This figure is equivalent to one quarter of the total Gross Domestic Product of the Country just in three months!

Fifth, there has been occasion of forced evictions by government of the day in the pursuit of development projects such as construction of roads and infrastructures etc. In Nigeria for instance, forced evictions of indigenous settlers were carried out in the areas and expanse of land now forming the Federal Capital Territory, Abuja, between in the 1990s through 1999. In Lagos, Rivers and Ogun states to mention but a few there had been forced eviction of people from their homesteads in the name of security and development projects etc. Thus from the old indigenous *Karu*, *Bwari* and *Gbagy* ethnic groups in the FCT, Abuja to the *Abonema* Waterfront residents in Rivers state to the inhabitants of the slums and shanties of *Maroko*, *Makoko* and *Ijora Badia* in Lagos state, thousands of persons have been rendered homeless and displaced in Nigeria through forced evictions by federal or states governments in Nigeria often without adequate provision for resettlement or compensations. This had in turn led to displacement as each group seeks to re-establish homesteads in unfamiliar places either in the urban or rural settings.

Sixth, terrorism is not new to Africa. Example can be made of Nigeria which is currently in the throes of terrorism unleashed on the citizen by the *Boko Haram* sect. in the last four years. The states worst hit are the Northeastern states of *Adamawa*, *Bauchi*, *Borno* and *Yobe* states. A counter terrorism attacked coordinated by the Nigerian Joint Task Forces against the sect in April 2013 resulted into so many civilian casualties that left the town of *Baga* in *Borno* state desolate as hundreds of persons were displaced from that town and its environ. A reprisal attack was launched by the sect against the civilian population of *Bama* town of same state in May 2013 resulting in further displacement of persons. **(IDMC quoting AFP: April 2013)**. The federal government declared a state of emergency for six months in those states in May 2013 and also extended the state of emergency rule in November 2013 as events unfolding show no sign of a ceasefire by the sect despite the amnesty proposal of the federal government.

Seventh, international boundary disputes have often caused displacement especially after resolution of same. A case in point is the Nigerian- Cameroon boundary dispute over the *Bakassi* Peninsula which has resulted into thousands of persons being forced to migrate from that Peninsula to some of the neighbouring towns in Akwa-Ibom State. They remained displaced from

The intriguing fact is that, the above factors continues in a vicious circle round and round the African

continent as little or nothing is done by governments in Africa to quash or stem the root causes and impacts of these factors. No wonder Africa continues to generate IDPs as no other region in the world in the last two decades! (IDMC: 2012).

### **The challenge of Internal Displacement and IDPs' Welfare in Nigeria**

Since the end of the Nigerian Civil War in 1970, the issue of internal displacement became a cause of concern to the government. Government was faced with the twin problems of resettling the thousands of persons that have been displaced by the civil war and the task of rebuilding the war torn cities. Coupled with this was the increasing numbers of violent conflicts ranging from communal, ethnic, religious and political clashes. Nigeria being an amalgam of multi ethnic, multi language and multi religious nations and nation states is always tottering on the brink of one violent clash or the other. While the South West (wild, wild, West!) is dominated by strifes and feuds for political power, the landlocked South East is reknowned for its communal clashes over land and boundary disputes. The North is notorious for religious riots and clashes. The latest of which is the *Boko Haram* insurgency; a phenomenon which has claimed which almost always claim hundreds of lives, loss of properties and internal displacement.

The case of the returning Bakassi Peninsula dwellers is an apt case study of internal displacement in Nigeria. The Nigerian- Cameroon relationship had been soured by the claims and counterclaims of both countries to the oil rich Bakassi Peninsula which had been occupied and dominated by generations of Nigerians. The fall out of the claims was the suit instituted by Cameroon and the ICJ (World Court) decision of 10<sup>th</sup> October 2002 granting sovereignty over the Peninsula to the Cameroon. Upon the intervention of the UN, the Green Tree Agreement was signed by both countries. This Agreement stipulated two options for Nigerians on the Bakassi Peninsula; to remain on the peninsular or to return to Nigeria. For those who choose to stay they might stay as Nigerian citizens but are subject to Cameroonian laws or to naturalise to Cameroonian citizenship. Nigeria handed over the territory to Cameroon in August 2006. Most Nigerian dwellers chose to stay on the peninsula on the promise of the Cameroon government to see to their wellbeing. However recent events the official ceding over of the territory to Cameroon has shown that Nigerians were subject to incessant attacks raids, rapes of women and young girls and gross violations of their human rights by the Cameroonian Gendarmes. Thus began the return of

the Bakassi dwellers to towns and villages of Akwa Ibom and Cross River states of Nigeria since 2008. Between 2004 and 2008 about 150,000.00 residents of Bakassi had become displaced within several riverine states in Nigeria. As recent as 7<sup>th</sup> March, 20013 a batch of 3,000 Bakassi dwellers returned to Nigeria following an early morning attack on their dwellings on the Bakassi peninsula by Cameroon gendarmes. (RHEMA-CARE: 2013)

Under international humanitarian law, these returnees are not refugees in Nigeria. For the same reason and other reason still they are not migrants. We submit that since these dwellers formerly resided in a Nigerian territory before their forced return to the Akwa Ibom and Cross River states of Nigeria where they have been forced to migrate in order to avoid gross violation of human rights, they have met the definition of IDPs as contained in both the UN Guiding Principle and the AU Kampala Convention.

### **Impact of Displacement on IDPs**

A common thread binding all IDPs is vulnerability. IDPs belong to that special group of human beings whom the international humanitarian law has labeled as being vulnerable. This vulnerability stems from a number of factors. First is that more often than not IDPs are forced to leave their homestead for unfamiliar terrains without any valuable goods or means of procuring livelihood. This is true for all IDPs whether displaced by flood, communal conflicts climate change or any other natural or manmade disaster. For example, one of the passionate appeal of the Bakassi returnees is for government to provide them with means or tools of trade (fishing tools) to enable them earn their livelihood. (RHEMACARE: 2013)

Second, IDPs are often herded together in unhealthy and unhygienic conditions or inhospitable environments called camps. Under such circumstances, there have been reports of breakout of epidemic and widespread of diseases among them often resulting into deaths especially of children and women due to lack of healthcare facilities.

Third the often insecure nature of camps provided makes IDPs especially vulnerable to subsequent attacks. Thus IDPs who have been displaced by communal clashes would live with fear and may often go into hiding for fear of being attacked again. This is especially true of IDPs who have been displaced by the *Boko Haram* insurgency in the Northern part of Nigeria. (RHEMACARE: 2013)

Fourth, women and young girls are especially open to sexual attacks even by their so called keepers (the

security personnel put on camps) and since most of them might have lost the father figure in their household, the sense of loss is much pronounced in such circumstances. **Durosaro and Ajiboye: 2011** conducted a study on adolescence living in IDP camps as at June 2010 after displacement by the 2010 Jos ethno/ religious clash and reported that under such conditions adolescence quickly become hardened to the inhumane conditions and adopted the coping strategy of repression. The result is that the female adolescence having suffered sexual molestations in turn are ready to offer themselves as commercial sex workers to make ends meet while the male would readily put up themselves for recruitment for armed conflicts. With this seeming hardening of minds through repression, internally displaced populations, and especially groups like children, adolescence and women often experience profound psychosocial distress related to displacement.

Fifth, there is no doubt that destruction of communities by armed conflict is often the hallmark of internal displacement. Once communities have been destroyed, the social strand would have been torn to shreds schooling for children and adolescents may be disrupted. This is true for the internally displaced children and children of the host community as in Nigeria, there are no specially designated facilities for camps and IDPs are often camped in primary schools of host communities and other ad-hoc government buildings.

Sixth, where the IDPs have been forced to migrate to areas where local inhabitants are of different ethnic group or inhospitable host community, this may increase the risk to internally displaced communities who may face not only language barriers but also are perceived as pest or parasites on the host community. Their condition of seeming dependence on the host community may lead to their abuse by the host community or other armed combatants. (**IDMC: 2012**)

According to Prof M.T. Ladan, (**LADAN: 2013 A**), the major challenge to IDPs in Nigeria is that there is no dedicated government policy on IDPs. A legal framework which has been proposed since 2006 is yet to see the light of the day. Further there is no IDP specific agency in Nigeria until 2008 when the NCFR was re-commissioned as the National Commission for Refugees Migrants and Internally Displaced Persons. According to IDMC, there is usually a challenge in collating figures of internal displacement in Nigeria as there are no mechanisms put in place by government to achieve this. Meanwhile the numbers

of IDPs keep growing in leaps and bounds within the last one and half decades.

Available data or statistics on the year in year out turn out on internal displacement which has occurred in the country since the civil war shows that the figures are alarming enough. The displacement caused by the Lagos Bomb Blast and the Hausa/ Yoruba ethnic clash in Lagos in January 2001 and February 2002 respectively has been put at over 6,000 persons (**Bamgbose 2009**).

A pilot survey carried out in 2007 by the National Commission for Refugees (NCFR) which shows that between 2001 and 2007, communal clashes between indigenes and settlers resulted into the internal displacement of about 1, 200,000 persons in the South Eastern states of *Delta, Bayelsa, Akwa Ibom, Cross River*, the Middle Belt *Benue* state and the North Eastern *Taraba* state. (**NCFR: 2007**) In a fact finding survey, the figure of displacement due to ethno-religious violence in the Northern states of *Adamawa, Kano, Kaduna, Kwara, Plateau, and Taraba* in 2007 alone was put at 678,000. (**NCFR: 2007**). Similarly communal conflicts over boundaries between neighbouring communities (*Ife/ Modakeke* in Osun State, *Umuleri* and *Agwuleri* in *Anambra* state, the dispute between *Taraba* and *Plateau* over *Mambilla Hills* etc has claimed not less than 780,000 persons now living in displacement. Natural cum manmade hazards such as soil erosion, desertification, bush fire, floods has led to about another 780,000 persons who are now living in displacement in *Abia, Anambra, Jigawa, Gombe, Kebbi* and *Yobe* states. (**NCFR: 2007**)

Between 2007 and 2011, post electoral violence in Nigeria resumed as if woken up from the embers of the "Wild Wild West *operation wet e!*". It became the order of the day in Nigeria. One of the key findings of a Human Rights Watch Project is that political fighting is the only cyclical violence identifiable and this was during the Presidential elections of April 2007 and April 2011. (**Nigeria Watch: 2011**)

Reuters also estimated about 65,000 (Sixty Five thousand) of persons displaced in the post 2011 Presidential elections violence especially in the Northern states of *Bauchi, Kano, Kaduna, Niger, Katsina* and *Sokoto* states. (**Reuters : 2012**)

Figures of internal displacement due to the *Boko Haram* insurgency are very difficult to come by. We are in agreement with the opinion of the Nigeria Watch researcher; (Marc-Antoine, Pérouse de Montclos) when he opined that given the context of

the global war on terrorism since 2001, religious conflicts are a very sensitive issue, especially when Muslim and Christian communities are involved. In Nigeria, casualty figures (and we add internal displacement figures) thus became part of a political game...to alert or not to alert the international community. From a scientific point of view, the problem is that reports on religious violence do not rely on any database and cannot be cross-checked. **(NIGERIAWATCH 2011)**

Be that as it may, IDMC while conceding that there is no trustworthy or reliable data on IDPs in Nigeria puts the unofficial figures of those who have fled to the borders of neighbouring countries of Niger, Chad and Cameroon at over 9,000. While those who are displaced and living in hiding are unknown.

NEMA 2013 Post Disaster Assessment Report authoritatively puts the number of persons displaced by the 2012 unprecedented floods at about 3,871,530, while the number of persons displaced by the *Boko Haram* terrorists is largely undetermined **(NEMA: 2013)**

Thus despite the conflicting and uncoordinated reports and statistics on IDPs in Nigeria as shown above, it is glaring that the available figures are alarming enough to create government awareness to the plight of IDPs in Nigeria. IDPs: Need for Legal and Institutional Framework in Nigeria

#### **Legal and Institutional Responses so far**

The exposition above shows that since Nigeria's independence there has always been the issue of internal displacement. Successive government in Nigeria however has been unable to adopt a credible policy for the management of IDPs. It is pertinent to note that while Nigeria was unable to cater for its own internally displaced, Nigeria was in the fore front of peacekeeping in Liberia, Sierra Leone and the protection of refugees from those countries.

We must point out that Nigeria has not been totally blind to the plight of IDPs. However it has been what IDMC calls "fragmented, uncoordinated and grossly inadequate" **(IDMC 2012)**. Nigeria has adopted the United Nations' Guiding Principle on Internal Displacement and the African Union Convention on the Assistance to Internally Displaced Persons (Kampala Convention) which came into force in December 2012. It is pertinent to state that Nigeria however has not domesticated the said Convention.

The legal response so far on IDPs has been channeled through some other Acts of its National Assembly. The relevant Acts being: (1) The National Emergency Management Agency (NEMA) Act 1999 (Decree No.

12 of 1999 now Cap. N. 34 LFN 2004) which created the National Emergency Management Agency (NEMA) by its S. 1.

By 6(a) of the Act, NEMA is mandated to formulate policy on all activities relating to disaster management in Nigeria and coordinate the plans and programmes for the efficient and effective response to all disasters at national level. Further by its paragraph (j) "to distribute emergency relief materials to victims of 6(2) "natural or other disasters" means includes any disaster arising from any crisis, epidemic, drought flood, earth, storm, train, roads, aircraft, oil spillage or other accidents and mass deportation or repatriation from any other country. **(See also S. (6(a-o)) of the Act for other functions of the Agency)** The agency is to also charged with the duty of assisting in the rehabilitation of victims. By S. 8 of the Act each of the 36 states of the federation and the FCT is expected to reciprocate that Act as its Law and create an agency in the name of State Emergency Management Agency (SEMA) for similar purposes as the federal NEMA.

We submit that there is no doubt that the NEMA Act is not an IDP specific Legal Framework and the agency is also not an IDP specific institution. Further the mandate is to provide emergency relief within the first two-four weeks of the emergency leading to the displacement. Be that as it may we must point out that NEMA has been instrumental in providing camps and camping facilities for IDPs. It is however handicapped in providing durable solutions by the twin challenge of funding and its limited time mandate. We must point out that most of the SEMAs are nonfunctional or have become moribund due to lack of or poor funding by the state governments. (2) The National Commission for Refugee (NCFR) which was established by an Act of National Assembly; National Commission for Refugee Act 1989. Decree No. 52 of 1989, Cap.244 LFN 1990 now Cap. N. 21 LFN 2004.

By the provision of S. 4 of this Act the Commission is a refugee specific body. Further to its function as outlined under S. 4 (1) (c) "to consider and act on all matters as may be sent to it from time to time by the Secretary to the Federal Government" it was mandated in 2008. (following the resettlement of Liberian refugees in their country of origin) to add Migrants and IDPs to its list of beneficiary groups. The Commission is expected to take charge of the plight of the IDPs with the intention of providing durable solutions after the emergency period of their displacement i.e. when NEMA/SEMA is deemed *functus-officio*. To that end, NCFR is supposed to see to their voluntary return to their homestead or



resettlement within the host community. Where neither of the above is impossible for the time being, the NCFR must map out work plans for the development of facilities for use by migrants and IDPs.

Again we submit that the NCFR is not a specific institution for IDPs and thus lacks the basic mandate to cater for the plight of IDPs

It is pertinent to note that Nigeria hosted the first regional conference on Internal Displacement in April 2006. In that conference far reaching decisions were taken as to the imperative need for legal and institutional framework on IDPs in the West African sub region as well as the need to tackle the root causes of displacement. (Report of the First Conference on Internal Displacement in West Africa : 2006)

### CONCLUSION

From the above it is apparent that the plight of the IDPs in Nigeria is therefore bedeviled with major challenges. First is that there is no enduring policy for the proper protection of these persons as required under the UN Guiding Principle and the AU Kampala Convention as there is an absence of a legal framework which is supposed to give the road map on "...how to coordinate the activities of the federal, states and LGAs, relevant ministries, departments and agencies in the affairs of IDPs...". A draft proposed in 2006, reviewed in 2007, 2008 and 2009 and further reviewed 2010 and 2011 and subjected to stakeholders in 2012 is yet to be given life by the appropriate authorities (**LADAN: 2013(B)**)

Second is the lack of an IDP specific institutional agency to cater for the welfare of IDPs which puts their care in the hand of uncoordinated, unspecialized agencies, public spirited persons and NGOs. This has led to what IDMC calls "a fragmented and inadequate" response to the plight of IDPs (**IDMC: 2012**).

Third is the lack of reliable data which stems from lack of professional expertise in the policy implementation of IDP welfare in Nigeria. To that end we make the following humble contributions.

#### **Evolving a Legal and Institutional Framework for IDPs in Nigeria**

#### **Recommendations on drafting the Legal Framework**

Notwithstanding the fact that a draft proposal is in place, this study is however compelled to add the following recommendations as they are germane to the full, efficient and effective promotion and protection of the rights of IDPs in Nigeria: (1) The

United Nations Guiding Principles on Internal Displacement is the first international document on Internal Displacement and on IDPs. Notwithstanding its non binding nature, recourse must always be made to the Principles by any nation desirous of enacting a domestic law on Internal Displacement and IDPs. The Principle addresses the specific needs of IDPs, identifies their rights and guarantees relevant to them for their protection and assistance during their displacement as well as during their return or resettlement and reintegration. These rights include civil and political rights as well as economic, social and cultural rights. (**KALIN:2008**) (See Section III: Principles 10-23 and Annotations to same). The Principles have been the basis of domestic laws in some African nations such as Angola, Kenya, Liberia, Sierra Leone, Sudan and Uganda. A study carried out on the management of IDPs in Nigeria concluded with the findings that Nigeria though has approved the UN Guiding Principles has not implemented any of the Principles in practice. (**OLAGUNJU: 2006**) Nigeria must take steps to adopt these principles as the binding norms for its large number of IDPs. (2) The AU Convention represents the binding regional norm for the region which produces almost one third of the total IDP population in the world. Nigeria ratified the said Convention on the 17<sup>th</sup> of April 2012. First, the obligations placed on the state parties include the adoption of a domestic law to provide legally binding norms for the protection and ensuring the enjoyment of assistance by IDPs. Second, the Convention places on the states parties the obligation to create an IDP specific institution or body to coordinate activities for rendering assistance to IDPs throughout the phases of their displacement. Third, state parties must fund such agency for the purpose of rendering assistance to IDPs. Fourth and which is an innovative obligation added by the Kampala Convention is that the needs of the host community must be taken into consideration by the agency. This will ensure that the feeling of hostility by the host communities often displayed towards IDPs (perceived as pest or economic risks) would be eliminated within the host community. Fifth, state parties to the Convention must take steps towards the elimination of or tackling the root causes of internal displacement.

We submit that the obligations listed hereunder must be given life to in any draft of an Act to cater for the welfare of the IDPs in Nigeria. (3) Any draft of a Legal Framework on the Rights and Welfare of IDPs must carefully reflect on the existing rights of IDPs as citizens of Nigeria as enshrined under the 1999

Constitution of the Federal Republic of Nigeria (Cap.C.23 LFN 2004). By the provision of Chapter 4 of that constitution, every Nigerian citizen is entitled to the various civil and political rights encapsulated therein. These rights can be found under the provisions of S. 33 to 44 of the constitution. The Nigerian Bill of Right guarantees the right to life, dignity of human person, personal liberty, fair hearing, private and family life, freedom of thought, conscience and religion, freedom of expression, right to peaceful assembly and association, freedom of movement, freedom from discrimination, right to acquire and own property and right to compensation upon compulsory acquisition of property. We submit that since IDPs are Nigerian citizen they are equally entitled to the enjoyment and protection of these rights as do their compatriots irrespective of the circumstances of their displacement. We note that one of the major challenges often faced by IDPs in the host community is the issue of discrimination. Thus once host communities are factored into the assistance of IDPs there will be less feeling of threat to their own livelihood. (4) A major issue that the Nigerian state must address urgently is the issue of the non justiciability of the economic, social and cultural rights of its citizen. Chapter Two of the Nigeria Constitution encapsulates economic, social and cultural rights but tags them as Fundamental Objectives and State Policy. By the provisions of S.6(6) of the 1999 Constitution, economic, social and cultural (ESC ) rights are not justiciable in Nigeria, thus making a mockery of rights to education, right to work, to standard remuneration, right to healthcare delivery etc. The argument often adduced is that the realization of those rights according to Article 2 of the International Covenant for Economic, Social and Cultural Rights (ICESCR) is progressive and dependent on the resources of each state party. Nigeria is a developing country, but is also one of the largest supplier of crude oil. With a GNI of \$ 2,069 per capital, Nigeria is wealthy enough to guarantee ESC rights to its citizenry. **(HDI: 2012)** (5) We submit that Nigeria ought to take steps to make justiciable economic, social and cultural rights of the citizen. (6) We submit further that the non justiciability of ESC right is one of the root causes of internal displacement in Nigeria. It is observed and noted that the feelings of high inequality in the distribution of national wealth and development is often perceived by minority communities in Nigeria especially the oil producing states of the Niger Delta and this has led to violent agitations in that area of Nigeria. In other communities also, communal clashes are often predicated on tensions which are

built up on the lack of confidence in the government to provide infrastructural facilities for the common good. Similarly, the lack of guarantee for economic, social and cultural rights has led to mass unemployment and consequent idleness on the part of the mass of the educated youth. Without stating the obvious economic implication of this on the Nigerian nation's sustainable development, it has fuelled some of the tensions often displayed during ethno/ religious clashes as these youths become willing tools for such clashes and have been catalytic for the increase in the number of internally displaced. It is our contention herein that the justiciability of ESC right would not only serve to reduce some of the tensions often displaced during violent clashes but would have reduced the causal factor in cases of internal displacement caused by other factors such as floods, erosions and other such preventable or manageable causes of internal displacement. Further, justiciability of ESC right translates to empowerment which translates to employment and good standard of living.

#### **Recommendations on Implementations of the Legal and Institutional Framework**

It has been observed that Nigeria is not lacking in good laws; what is lacking is the political will to implement such laws. On the other hand is the lack of continuity in policy implementation in Nigeria. It is therefore imperative that a paper such as this gives recommendations as to implementation of the Legal and Institutional Framework. We humbly recommend as follows: (1) The Nigerian government must design a policy framework on IDPs based on the legal framework to accommodate the implementation of same by governmental and non-governmental agencies or non state actors alike. **ZEENDER: 2005** .The task will thus not be solely on the government, alone as the contributions of such non governmental bodies will support and partner the activities of government on IDPs. To that end we suggest that the institutional framework must make provision for the recognition of the role played and still being played by non-governmental bodies and engender their inclusion in the new legal framework. (2) Government however must coordinate the activities of all stakeholders on the IDP issue to ensure a comprehensive approach to internal displacement that avoids the duplication of efforts and the inefficient use of resources. The present situation where there are uncoordinated efforts by NEMA, SEMA, NCFR, Red Cross etc such that too many spoil the broth will therefore cease. (3) Government must ensure that such non governmental bodies or agencies have safe and unhindered access to internally displaced

populations requiring protection and assistance promptly to prevent further harm to the internally displaced. The current state of events whereby government agencies “monopolises” access to IDPs without the wherewithal to care for them is undesirable. (4) Academic institutions in Nigeria must be involved to collaborate on and improve on the methods of gathering and analyzing data on the location, condition and needs of IDPs and the communities in which they live. The current situation on the data of IDPs in Nigeria today smacks of high incompetence as the figures are so uncoordinated and thus unreliable as has been noted above. The injection of professional skills into the methods of collation data analysis on IDPs will further strengthen the implementation of any legal framework on IDPs. (5) The challenge of internal displacement in Nigeria needs to be tackled from the root. As has been advocated above, government activities should be developed to prevent and tackle the root causes of internal displacement. A way to this is to ensure the justifiability of ESC rights as advocated above. Another way is to ensure that poverty alleviation programmes are put in place to ensure the economic empowerment of the people in disaster prone areas. (6) The institutional framework must include the creation of institutions for arbitration or mediation at the grassroots. Such bodies would be proactive in settling issues before they gravitate to violence. In the same vein, children must be taught the basic rudiments of civic life such as tolerance, patience and non aggressive method of settling disputes. Curricular studies must be developed to include such teachings such that we may catch them young at peaceful reconciliation and peace-building within the community. (7) A *Yoruba*<sup>1</sup> adage says that “No one can take any decision without the presence of the concerned parties”. Decision-making processes and the implementation of programs on internal displacement should involve the active consultation and participation of the IDPs themselves. IDPs should also have the opportunity to take part in deliberations on internal displacement at all levels. This therefore underscore the importance of consulting with IDPs during their displacement, during the process of their return or re-integration and/ resettlement. The effect of such consultation is that it strengthens confidence in the legal and institutional framework.

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<sup>1</sup> The *Yoruba* is an ethnic group in Nigeria

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