

LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE OPERATIONS AND MANAGEMENT OF INTERNALLY DISPLACED PERSONS (IDPS) IN NIGERIA

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Abstract:

The phenomenon of internal displacement has been on the increase in recent years, and the trend continues to rise. The immediate past Secretary-General of the United Nations, Ban Ki-Moon stated in 2014 that displacement remains arguably the most significant humanitarian challenge facing the world. For instance, there were over 30 million Internally Displaced Persons (IDPs) in the world as of 2014, with about one-half of this figure in Sub-Saharan Africa alone, and Nigeria taking the lead. As the number of IDPs continues to skyrocket, attempts at management become more challenging for riddled countries such as Nigeria. This study discusses some of the applicable legal regimes and institutions responsible for the protection of IDPs and the extent to which they are being applied in Nigeria. This work is conceptual and doctrinal in approach; hence secondary sources of data were mainly consulted alongside with personal interviews with resource persons. The study found out that there is gross negligence by the country in the assistance and protection of IDPs as far as International law is concerned. In addition, there is gross violation of IDPs rights in Nigerian as the capacity of the institutions created to effectively manage their affairs are limited. The avalanche of IDPs requires improved management and preventive measures through more effective legal and regulatory regimes as suggested in this paper. Furthermore, the study recommends that internal conflicts should be prevented in such a way that people should not be forced to leave their homes.

Keywords: Conflict, Internal Displacement, Institution, International Law, Legal Framework, Legislation, Management, Nigeria.

Introduction

Internal displacement in Nigeria is a recurring decimal and large-scale phenomenon engulfing virtually every part of the country. The country has been through many waves of displacement, both small and large scale. Post-independence Nigeria had its share of IDPs. During Nigeria's civil war between 1967 and 1970, a good number of eastern Nigerians crossed Nigeria's border to become refugees in Cameroon, Chad, Niger, but the majority of south easterners were internally displaced within Nigeria. More recently, constant ethnic and religious clashes,

communal clashes due to boundary disputes, grazing land disputes between farmers and pastoralists and widespread flooding across states in Nigeria which became unprecedented in 2012, have all converged to bring the issue of internal displacement to the front burner of political discourse and federal government policy and consequent appropriation of funds.

Forced migration and internal displacement in and into Nigeria in the last 50 years of independence has been triggered by violent conflict, natural disasters and environmental degradation, generalized violence, inter-communal and inter-ethnic clashes, disputes over land, boundary conflicts between indigenous people and settlers, communal and ethno-religious clashes, electoral violence as well as other forms of human rights violations¹.

The highest recorded number in the last decade, however, was due to the insurgency in the northeast part of the country, where a spate of violent attacks since 2009 has left well over two million people displaced within and across the borders to neighbouring countries, especially over the past three years². Between July and October 2012, the National Emergency Management Agency (NEMA) estimated in a published report that a total of 7.7 million people were affected by the flood disaster across the federation. Out of the affected population, 2.1 million people were internally displaced (IDPs); 363 persons died and 18,282 people were treated for injuries they sustained during the flooding. As at the end of 2014, of the global 38 million forcefully displaced by armed conflict and generalized violence, Nigeria accounts for at least one million. As of January 2014, about 165, 000 people were displaced by both floods and conflict in IDP camps in Nigeria. In June 2015, the total number of IDPs identified in the Northeastern states of Adamawa, Bauchi, Borno, Gombe, Taraba, and Yobe stood at 1, 385, 298 IDPs³.

As of October 2016, the International Organization for Migration (IOM) in collaboration with the National Emergency Management Agency (NEMA) in its 12th round of Displacement Tracking Matrix (DTM) programme estimated the total number of Internally Displaced Persons (IDPs) at 2,155,618 across 13 states in Nigeria. As of December 2016, the DTM Round 13 Report estimated 1,770,444⁴ IDPs in the northeast alone⁵. It is important to emphasize at this juncture that the official displacement figures do not take into consideration those above a certain social class who live with relatives or have relocated with their means. To date, there is no

¹ Ladan, M.T. "Implementation Of International Humanitarian Law (IHL) Treaties In Nigeria: A Case Study Of The African Union(Kampala) Convention On the Protection and Assistance of IDPs in Africa (2009/2012)". A Presentation made at the ICRC Workshop for Legal Officers/Drafters in the Federal Ministries of Justice, Foreign Affairs, Defence and the National Assembly, Abuja, Nigeria. Organised by the International Committee of the Red Cross (ICRC), Rockview Hotel Royale, Abuja, 3 December 2015.

² Mohammed, Fatima Kyari. "The Causes and Consequences of Internal Displacement in Nigeria and Related Governance Challenges". Division Global Issues Stiftung Wissenschaft und Politik German Institute for International and Security Affairs. PDF.

³ Ladan, M.T. Op Cit.

⁴ Ibid. IOM Nigeria situation report 2016

⁵ Comprising of Adamawa, Bauchi, Borno, Gombe, Taraba, and Yobe states.

official registration center for displaced persons outside of those in official camps and some informal settlements in host communities.

Cognizant of the increasing trend in displacement and the fact that IDPs are amongst the most vulnerable populations, the Federal Government of Nigeria signed and approved the ratification of the African Union (Kampala Convention) for the Protection and Assistance of IDPs in Africa. Nigeria formally ratified the Convention on 17 April 2012⁶.

However, despite Nigeria being a signatory to the Kampala Convention and other international instruments, this has not been adequately reflected in national policy and strategies because most of these policies and strategies have either not been adopted into national legislation and/ or suffer from poor implementation. In the absence of a policy framework on internal displacement in Nigeria, the response to the plight of IDPs has remained largely fragmented and uncoordinated. Furthermore, the response to the root causes of internal displacement has been very poor and ineffective.

The protection of IDPs in Nigeria ultimately requires seeking durable solutions to address the challenges they face. The existing institutional arrangement keepers, although struggling to manage the situation particularly in the short term, are hindered by current policy deficits and the lack of a specific framework to adequately address the situation or cover medium to longer requirements for IDPs.

Statement of the Problem

Although the issue of internal displacement in Nigeria became a major concern during Nigeria's civil war, yet the Nigerian government appears to be overwhelmed and unprepared in the face of the mass displacement of persons in the North-East and other regions of the country. The national agency saddled with emergencies, the National Emergency Management Agency (NEMA) simply proved structurally, financially and administratively incapable of rising to the situation. The capability of Nigerian emergency agencies like NEMA, the Red Cross, and Red Crescent are overstretched due to their multiple involvements in numerous emergencies all over Nigeria, coupled with meager budgetary allocations⁷.

Additionally, efforts to combat the challenges arising from the IDP situation in the Country have oscillated between a national embarrassment in the eyes of the international community, to an unprecedented humanitarian crisis in the Country. The Nigerian national emergency agencies are

⁶Ladan, M.T. "Overview of International and Regional Frameworks on International Displacement: A case study of Nigeria. A paper presented at a two-day multi-stakeholder conference on international displacement in Nigeria". Organised by the Civil Society Legislative Advocacy Centre, Abuja, in Collaboration with IDMC and the Norwegian Refugee Council, Geneva. Held at Bolton White Hotels, Abuja, Nigeria, on November 21-23, 2011.

⁷ (Integrated Regional Information Network (IRIN, 2010).

used to small scale catastrophes in a place and at a time, and not all at once as is the case in recent times⁸.

Again, the absence of laws and policy framework has created ambiguity of roles and duties of the emergency agencies, ministries, departments and agencies of government involved in any response beyond the initial phase of displacement. By law, no specific agency is exclusively responsible for the protection of IDPs. As such, national emergency agencies tend to either stand aloof or compete with each other for limited funds budgeted for the protection and assistance of IDPs. This research attempts to investigate the legislative intervention efforts in national emergencies as it relates to internal displacement in the North-East. It examines how legislative instruments such as bills, motions, and resolutions has effectively been used to grapple with issues of internal displacement in Nigeria, and to identify the challenges faced by the National Assembly in tackling the problems of internally displaced persons and proffering solutions to those challenges⁹.

Basic needs are essential for the security of IDPs as neglecting their welfare will threaten national security. This emphasizes the need for effective implementation of the Kampala Treaty which aims at assisting and protecting IDPs in Africa. This treaty has addressed the basic necessity of IDPs ranging from foods, water, shelter, and other social necessities chiefly to give them a sense of belonging and love based on Maslow's pyramid of needs¹⁰. IDPs are vulnerable and can be easily recruited by insurgents if their basic needs are not met. More fundamentally, if the basic needs of IDPs are not properly addressed, the result will be more conflict and insecurity because at any moment the IDPs are frustrated they will be aggressive towards meeting their basic needs¹¹.

The existing legal and institutional frameworks for the operations and management of the Internally Displaced persons have been largely ineffective. Both the National Emergency Management Agency (NEMA) and National Refuge Commission (NRC) charged with the responsibility of managing the affairs of the internally displaced persons have not lived up to expectation either as a result of financial constraints or lacuna in the existing framework setting them. It is necessary to examine such frameworks to find measures aimed at repositioning and strengthening the relevant agencies for optimal performance.

Objectives of the Study

The main aim of the paper is to examine the legal and institutional framework for the operations and management of the Internally Displaced Persons in Nigeria. Other objectives include:

⁸ Ibid

⁹ Ibid

¹⁰ Maslow, A. H. A theory of human motivation. *Psychological Review*, 50(4), 1943, 370.

¹¹ Max-Neef, M. "On Human Needs and Human Scale Development". Available on <http://www.rainforestinfo.org.au/background/maxneef.htm>. Accessed on 25th June 2016.

1. To assess the extent to which NEMA and National Refuge Commission (NRC) have fared in the management of IDPs in Nigeria.
2. To critically examine the relevant legal instruments on internal displacement and their implementation by the Nigerian government on IDPs.

Research Questions:

This study is set to answer the following research questions;

1. Has Nigeria been able to address the plight of IDPs within the context of local, regional and international law?
2. To what extent has NEMA and NRC fared in the management of IDPs in Nigeria?
3. What are the gaps and opportunities in the legal and institutional frameworks for the operation and management IDPs in Nigeria?

Methodology

Research methodology refers to the sources of data on the research and the method of investigation used for this study. Also included are the methods of data analysis used by the researcher. This work is conceptual and doctrinal in approach as it involves an analysis of policies on the IDPs both at international and regional conventions. Hence, secondary sources of data were consulted in examining the trends of internally displaced person IDPs in Nigeria. The researcher adopted personal interviews with resource persons for more illustrative information about this trend which aids in the rigorous analysis as a form of a primary source of data. The secondary data used in the study were updated articles, news concerning the issue, textbooks, newspapers, and internet sources including relevant research papers and studies addressing this issue obtained from different sources.

Scope of the Study

The scope of this research work is limited to the legal and institutional issues surrounding the operation and management of IDPs in Nigeria. However other regional and international legal instruments were cited within the context of IDPs in Nigeria.

Concept of Internally Displaced Persons

The concept of internally displaced persons has become a highly disputed subject among scholars. A working definition by the United Nations Secretary-General in 1992 states that IDPs are persons or groups who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disaster, and who are within the territory of their own country¹².

¹² United Nations Commission on Human Rights, 1992: paragraph 17).

Under international law, particularly the Guiding Principles on Internal Displacement of the United Nations, internally displaced persons were for the purpose of the Guiding Principles defined as persons or groups of persons who have been forced or obligated to flee or to have cause to leave their homes or place of habitual residence in particular, due to or in order to stave off the effect of armed conflict, military engagement, violations of human rights, situations of generalized violence, natural or manmade disasters, to another place considered relatively safe within their own national borders¹³. In the same vein, the African Union Convention for protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention, 2009), adopted the above definition on Internally Displaced Persons.¹⁴

As such, IDPs are persons or groups of persons who because of armed conflict, systematic violations of human rights, internal strife, or natural or man-made disasters have been *forced* to flee their homes or places of habitual residence suddenly or unexpectedly, to another location but have not crossed an internationally recognized state border.

This definition typifies the circumstances faced by displaced persons as an unintentional move by persons within state borders. The explanation also covers persons absconding from armed conflict, internal strife and organized violations of human rights. IDPs were characterized as including persons displaced by natural disasters and sundry man-made calamities. There are many causes of displacement which includes: droughts, tsunamis, and tornadoes as well as occurrences such as oil spills, aircraft mishaps, military equipment explosion. In an attempt to fill the gaps and omissions in the above explication, the Guiding Principles on Internal Displacement was unveiled to the UN in 1998 and has huge acknowledgment for treating internal displacements in the world by various state and non-state actors, regional and sub-regional bodies. The definition presents this group as: - Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border¹⁵.

The foregoing conceptualization of “internally displaced person” is rather expressive or descriptive, rather than being an authorized or legal definition. The concept confers no special legal standing or status on internally displaced persons as the one given to “refugees” does. The argument and general position have always been that since internally displaced persons remain within their country as opposed to refugees, they should following established principles of International law enjoy the protection and assistance of their own home government. This is the position of the United Nations' Guiding principle on internally displaced persons. Indeed

¹³ Deng, F., "The guiding principles on internal displacement" United Nations (New York 21 August 2001) http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html 18 July 2017.

¹⁴ Ibid

¹⁵ Office for the Coordination of Humanitarian Affairs (OCHA), 2004: 6

government regularly insists that they are primarily responsible for ensuring the security and welfare of their citizens, and this does not exclude the displaced population amongst the citizenry¹⁶. The responsibility for protecting and assisting IDPs rests first and foremost with their national authorities. Also, because of the special situation, specific needs and the heightened vulnerability that flow from the condition of being displaced, IDPs are entitled to special protection and assistance.

Internally displaced persons are mostly victims of the brutality of man against man, various kind of injustices or violence confrontations, perpetrated either by their own government against them or by others, such as terrorism, communal clashes, religious conflicts, riots, natural disasters and so on¹⁷. Essentially, these internally displaced persons who live under very deplorable conditions are protected like every other citizen by various domestic and international laws and are entitled to fundamental rights which include the right to life, right to the dignity of the human person and such other rights as are provided. The extent to which these rights have been protected depends largely on the legal framework for the protection of internally displaced persons and the extent to which these instruments are implemented¹⁸.

It is important at this juncture, to also mention the difference between Refugees and IDPs. Under International law, it is the responsibility of the Government concerned to provide assistance and protection for the IDP's in their country. In situations of armed conflict, IDPs, like any other person benefits from international humanitarian law and the legal protection of international human rights law. However, while they continue to benefit from all of the international human rights instruments and legal protection available to other persons, they are excluded from the specialised protection of international refugee law because they have not crossed an international border.

Refugees on the other end, are granted legal status because they have lost the protection of their own country. They are therefore in need of international protection, which is not necessary for the IDPs who do not cross international borders, rather they remain citizens or habitual residents of their country and continue to be entitled to enjoy the rights available to the general populace.¹⁹ This indeed is what is expected, but in reality, the reverse is the case as internally displaced persons are tactically and unintentionally denied access to these rights or are at least not able to assert the said rights. This is largely because of the social and economic implications of

¹⁶ Ladan M.T. "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.

¹⁷ Michael, A. O., Mary A. A. & Matthew T. O. Crisis Induced Internal Displacement: The Implication on Real Estate Investment in Nigeria. *Journal of Economics and Sustainable Development*. Vol.5, No.4, 2014.

¹⁸Robinson W.C. (2003). Risks and Rights: *The Causes, Consequences, and Challenges of Development-Induced Displacement*. An occasional paper, 2003. The Brookings Institution-SAIS Project on Internal Displacement105. <http://www.academia.org>. Accessed 25th May 2016.

¹⁹ *ibid*

displacement which naturally put them in a disadvantaged position where they are unable to personal assert existing rights as provided under domestic and international laws.

Institutional Framework for the Management of IDPs

The security of lives and properties of the citizens constitutes the main objective of government, as amply provided under Chapter II of the Nigerian Constitution²⁰. This responsibility includes the protection of IDPs. The Federal Government of Nigeria in an attempt to manage the challenges of arising from displacements of persons set up institution such as National Emergency Management Agency (NEMA) to tackle the problems. NEMA is the main institution charged with the responsibility of protecting and providing for the welfare of IDPs in Nigeria.

It is one of such institutions of public character particularly charged with the management of disasters in all its ramifications. Established in 1997, the agency metamorphosed from the work of an Inter-Ministerial body set up by the Federal Government in 1990 to address natural disaster reduction strategies in line with the United Nations International Decade for Natural Disaster Reduction (IDNDR), now re-echoed by the Hyogo Framework of Action (2005-2015).²¹

The background to the establishment of the NEMA is traceable to the work of an Inter-Ministerial body, set up by the Federal Government in 1990, to address natural disaster reduction strategies, in line with the UN International Decade for Natural Disaster Reduction (IDNDR), now re-echoed by the Hyogo Framework of Action (2005-2015). This body was also tasked to address the limited scope of the then National Emergency Relief Agency (NERA), established in 1976, to collect and distribute relief materials to disaster victims. The Committees' report was followed up by the expansion of the scope of NERA to an Independent body under the Presidency, backed by decree 119 of 1993.

To brace up to the challenges ahead, the management of NERA, in 1997, organized a National Workshop involving major stakeholders in disaster management in Nigeria to deliberate on some issues which include the need to:

- i) Expand the functions of NERA, amend the decree setting up NERA and change the name of the Agency to National Emergency Management Agency (NEMA).
- ii) Structure the new Agency by putting into consideration appropriate Policies and Strategies; Search and Rescue resource mobilization capabilities; Information, Education and Prevention strategies; Administration, Finance and Logistics systems; Relief and Rehabilitation capabilities; Research and Planning.

²⁰ Constitution of the Federal Republic of Nigeria, 1999 (as amended)

²¹ Atala, T., 'An Appraisal of The Legal Framework of The National Emergency Management Agency (NEMA) In The Management of Internally Displaced Persons (IDPs) in Nigeria' (Seminar Presentation Ahmadu Bello University 2007)

iii) Appropriate budgetary allocation for the operations of the Agency. The acceptance of these recommendations led to the establishment of the National Emergency Management Agency (NEMA) to manage disasters in all its ramifications²².

NEMA was established via Act 12 as amended by Act 50 of 1999, to manage disasters in Nigeria. The mandates of the National Emergency Management Agency (NEMA) are well spelled-out in the National Emergency Management Agency Act, 1999, and other related policy documents. Its mission is to coordinate resources towards efficient and effective disaster prevention, preparation, mitigation, and response in Nigeria with the vision to build a culture of preparedness, prevention, and response and community resilience to disaster in Nigeria.²³

NEMA has formulated policies and laid down strategies as part of measures to effectively execute its functions²⁴. This includes contingency stockpiling. It establishes a warehouse in its six zonal offices and Abuja and stocks them with relief and rehabilitation items in a bid to ensure prompt and efficient response to a disaster.

This strategy as far as the NEMA policy is concerned is the closest to protecting internally displaced persons with the inclusion of the term "rehabilitation items." This is particularly so because one of the greatest challenges confronting displaced persons is that of rehabilitation and reintegration into the society having been exposed to various traumatic events before and during their settlement in the IDPs' camps and other settlements outside their homes and places of habitual residence.

The Agency is managed by a Governing Council which is chaired by the sitting Vice-President of Nigeria and has the Director-General of NEMA amongst others as members.²⁵ The NEMA establishing Act also established State Committees under section 8 of the Act.

Legal Framework for the Protection of IDPs in Nigeria

Several legal regimes exist for the operation and management of IDPs in Nigeria. This instrument ranges from domestic legislation, to regional and international laws, rules, and regulations.

The most important domestic legislation governing the management of IDPs in the country is the NEMA Act, which provides the primary legal framework for the protection of internally displaced persons in Nigeria. The Act provides the following as functions of NEMA:²⁶

²² NEMA Cap 34, Laws of the Federation, 2004.

²³ 'About Nema' (*National Emergency Management Agency (NEMA)*) [Www.Nema.Gov.Ng](http://www.Nema.Gov.Ng) Accessed 17 July 2017

²⁴ Ibid (n7)

²⁵ See Sections Section 1 and 2 of National Emergency Management Agency (Establishment etc.) Act

²⁶ Section 6(1) of the National Emergency Management Agency (Establishment etc) Act

- i) Formulate policy on all activities relating to disaster management in Nigeria and co-ordinate the plans and programmes for efficient and effective response to disaster at national level;
- ii) Co-ordinate and promote research activities relating to disaster management at the national level;
- iii) Monitor the state of preparedness of all organizations or agencies which may contribute to disaster management in Nigeria;
- iv) Collate data from relevant agencies to enhance forecasting, planning and field operation of disaster management;
- v) Educate and inform the public on disaster prevention and control measures;
- vi) Co-ordinate and facilitate the provision of necessary resources for search and rescue and other types of disaster curtailment activities in response to distress call;
- vii) Co-ordinate the activities of all voluntary organizations engaged in emergency relief operations in any part of the Federation;
- viii) Receive financial and technical aid from international organizations and non-governmental agencies;
- ix) Collect emergency relief materials to victims of natural or other disasters and assist in the rehabilitation of the victims where necessary;
- x) Distribute emergency relief materials to victims of natural or other disasters and assist in the rehabilitation of victims where necessary;
- xi) Liaise with State Emergency Management Committees established under section 8 of this Act to assess and monitor where necessary, the distribution of relief materials to disaster victims;
- xii) Process relief assistance to such countries as may be determined from time to time;
- xiii) Liaise with the United Nations Disaster Reduction Organization or such other international bodies for the reduction of natural and other disasters;
- xiv) Prepare the annual budget for disaster management in Nigeria; and
- xv) Perform such other functions which in the opinion of the Agency are required to achieve its objectives under this Act.

The response to IDPs' assistance and protection needs is generally addressed through disaster management mechanisms. As part of its functions, under Section 6(1) (j) NEMA is mandated to distribute emergency relief materials to victims of natural or other disasters and assist in the rehabilitation of the victims where necessary. By this enabling provision of the law, the Agency provides short-term assistance usually for the first two to four weeks of displacement but is also mandated to coordinate emergency relief operations. It works in collaboration with other federal, state and local agencies to carry out her functions as provided by the Act. In practice, IDP management is part and parcel of disaster management as IDP's are products of natural and human made disasters. All facets of the disaster management cycle – Prevention, Mitigation,

Preparedness, Response, and Recovery apply to IDPs and they constitute components of IDP management.²⁷

As regards regional and international legal instruments on the protection of IDPs in Nigeria, the two International legal Instrument which has been signed and ratified by Nigeria are; The Guiding Principles on the Protection of Internal Displacement and African Union Convention on Internally Displaced Persons in Africa (Kampala Convention). International Law for a long time focused on Refugee rather than IDP related issues. In 1998, the United Nations came up with the Guiding Principles on Internal Displacement as an international response to the plight of IDPs around the globe. This is not a Treaty, Convention or a Declaration; rather it deals on Human Rights and International Humanitarian Law architecture to manage IDP issues.²⁸

The significance of the adopted Guiding Principles includes the following:²⁹

- i) They provide clarity and specificity regarding the plight of IDPs.
- ii) They have shaped the development of legally binding principles (the framework upon which the Kampala Convention is based)
- iii) They help in broadening the understanding of the plight and phenomenon of IDPs.

The Guiding Principles would subsequently give birth to the Kampala Convention which was developed by the African Union on 12 October 2009 in Kampala. It is the first regional document on the protection of IDPs. Some of its objectives include:³⁰

- i) Promote and strengthen regional and national measures to prevent ormitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions;
- ii) Establish a legal framework for preventing internal displacement, and protecting and assisting internally displaced persons in Africa;
- iii) Establish a legal framework for solidarity, cooperation, promotion of durable solutions and mutual support between the States Parties to combat displacement and address its consequences;
- iv) Provide for the obligations and responsibilities of States Parties, concerning the prevention of internal displacement and protection of, and assistance, to internally displaced persons;
- v) Provide for the respective obligations, responsibilities, and roles of armed groups, non-state actors and other relevant actors, including civil society organizations, concerning the

²⁷ *ibid*

²⁸ *ibid*

²⁹ *ibid*

³⁰ Article 2, African Union Convention For The Protection And Assistance Of Internally Displaced Persons In Africa (Kampala Convention)

prevention of internal displacement and protection of, and assistance to, internally displaced persons³¹.

The international instrument and guideline are a constant source of reference in Nigeria and they informed the development of the framework of the National Policy Document on IDPs in Nigeria.

Management of IDPs in Nigeria

Generally, the main legal authority for coordination and integration of disaster management is the NEMA. The response to IDPs' assistance and protection needs is generally addressed through disaster management mechanisms. As part of its functions under Section 6(1) (j) NEMA is mandated to distribute emergency relief materials to victims of "natural or other disasters" and assist in the rehabilitation of the victims where necessary". They provide short-term assistance usually for the first two to four weeks of displacement, but are also mandated to coordinate emergency relief operations, the Agency works in collaboration with other federal, state and local agencies to this end, and perform other related responsibilities provided in the functions stated above. In practice basically, IDP management is part and parcel of disaster management as IDP's are products of natural and human made disasters.

All facets of the disaster management cycle – Prevention, Mitigation, Preparedness, Response, and Recovery apply to IDPs and they constitute components of IDP management. In theory, however, the NEMA Act does not specifically refer to the phase 'internally displaced persons'(IDPs) in Nigeria, rather it describes them as 'victims of disaster'. This is a major lacuna in the NEMA law that affects the Agency's legal capacity and authority in managing IDPs.

NEMA following the NEMA Act is mandated to carry out the following, among other functions;

- i) Formulate policy on all activities relating to disaster management in Nigeria and co-ordinate the plans and programmes for an efficient and effective response to the disaster at the national level;
- ii) Co-ordinate and promote research activities relating to disaster management at the national level;
- iii) Monitor the state of preparedness of all organizations or agencies which may contribute to disaster management in Nigeria;
- iv) Collate data from relevant agencies to enhance forecasting, planning and field operation of disaster management;
- v) Educate and inform the public on disaster prevention and control measures;

³¹Deng, F. "The guiding principles on internal displacement".New York: United Nations. 2011. Accessed 18th May 2016.

- vi) Co-ordinate and facilitate the provision of necessary resources for search and rescue and other types of disaster curtailment activities in response to distress call;
- vii) Co-ordinate the activities of all voluntary organizations engaged in emergency relief operations in any part of the Federation;
- vii) Receive financial and technical aid from international organizations and non-governmental agencies;
- viii) Collect emergency relief materials to the victim of natural or other disasters and assist in the rehabilitation

Unfortunately, there appears to be a lackadaisical attitude or inadequacy in the management and protection of Internally IDPs in the country. perhaps, the most hazardous consequences of IDPs in Nigeria was growing rate of insurgency in the northeastern part of the country which was the remote cause of displacement and which constitute a serious security threat to various IDPs camp in the region. In the absence of mechanisms to monitor IDPs' ongoing situations, it has been impossible to determine how many may have recovered and achieved a durable solution.

From an empirical point of view, the management and protection of this displaced population under international law has been problematic in many stances. Nigeria ratified Kampala convention in 2009 which became domestic law and which must be enforced as far as rights of IDPs are concerned. Kampala convention which Nigeria ratified specifically placed and obliged the state to protect all displaced persons within its territory in accordance to international humanitarian law. Article 5 of the convention provides thus³²;

1. States Parties shall bear the primary duty and responsibility for providing protection of and humanitarian assistance to internally displaced persons within their territory or jurisdiction without discrimination of any kind.
2. States Parties shall cooperate upon the request of the concerned State Party or the Conference of State Parties in protecting and assisting internally displaced persons. 111
3. States Parties shall respect the mandates of the African Union and the United Nations, as well as the roles of international humanitarian organizations in providing protection and assistance to internally displaced persons, following international law.
4. States Parties shall take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change.5. States Parties shall assess or facilitate the assessment of the needs and vulnerabilities of internally displaced persons and host communities, in cooperation with international organizations or agencies.
6. States Parties shall provide sufficient protection and assistance to internally displaced persons, and where available resources are inadequate to enable them to do so, they shall cooperate in seeking the assistance of international organizations and humanitarian agencies, civil society

³² Kampala Convention, 2009.

organizations and other relevant actors. Such organizations may offer their services to all those in need. 112

In spite of the foregoing legal instruments, however, there appears to be a massive violation of IDPs rights contrary to the extant provisions of these legal instruments and in spite of their domestication or ratification. Shedrack and Nuarrual for instance opined that the protection and assistance of IDPs is confronted by series of legal and policy issues that collectively deny IDPs the much needed protection and assistance given the interminable nature of internal conflicts in Nigeria³³. They further argued that Nigeria has ratified the Kampala Convention but up to this present time, there is no domestic legislation that mirrors the legal and institutional frameworks on IDPs protection ingeniously contemplated for states party following the provisions of the Convention³⁴. This suggests gross negligence by the country in the assistance and protection of IDPs as far as international law is concerned.

- i) Fundamentally, Nigeria has a Legal obligation to prevent any harm or threat of peace and violent conflict that may cause population displacement. Article 7 (5) of Kampala convention stated that members of armed groups shall be prohibited from
112 Carrying out arbitrary displacement;
- ii) Hampering the provision of protection and assistance to internally displaced persons under any circumstances;
- iii) Denying internally displaced persons the right to live in satisfactory conditions of dignity, security, sanitation, food, water, health and shelter; and separating members of the same family;
- iv) Restricting the freedom of movement of internally displaced persons within and outside their areas of residence;
- v) Recruiting children or requiring or permitting them to take part in hostilities under any circumstances;
- vi) Forcibly recruiting persons, kidnapping, abduction or hostage taking, engaging in sexual slavery and trafficking in persons especially women and children;
- vii) Impeding humanitarian assistance and passage of all relief consignments, equipment, and personnel to internally displaced persons;
- viii) Attacking or otherwise harming humanitarian personnel and resources or other materials deployed for the assistance or benefit of internally displaced persons and shall not destroy, confiscate or divert such materials; and
- ix) Violating the civilian and humanitarian character of the places where internally displaced persons are sheltered and shall not infiltrate such violations. 112

³³ Shedrack, E. & Nuarrual, H. M. D. "Legal Issues and Prospects in the Protection and Assistance of Internally Displaced Persons (IDPs) in Nigeria". *www.iiste.org* ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.49, 2016.

³⁴ Ibid

Nigeria's record has been very poor based on the above international obligations taking into cognizance the miserable status of IDPs in the country. For instance, the International Organization for Migration (IOM)' captured the vulnerability status of IDPs in Nigeria in this way:

Out of the 97 IDPs sites in Nigeria's the North Eastern States of Adamawa, Borno, Taraba and Yobe assessed by the IOM team which comprises of NEMA, IOM, and Nigerian Red Cross Society, 22 are located in open-air settlements called camps, 73 are in collective settlements (pre-existing structures) such as public schools and government buildings, while the remaining 2 sites are transitional center which only provides transient accommodation to IDPs³⁵.

This observation is a clear manifestation and testimony of gross violations of IDPs rights in Nigeria. There was a massive record of violation of these fundamental rights of IDPs in Nigeria including the bombing of an IDP camp by the Nigerian Air Force recently³⁶. This is in addition to the maltreatment displaced population received in various IDPs camps across the Country. Shedrack and Nuarrual, for instance, argued that camps are porous and not specially constructed to ensure adequate security to forestall a secondary attack on the victims. A large proportion of IDPs in Nigeria reside with their family and friends who at times are members of their host communities³⁷. This does not indicate hope that Nigeria will discharge its responsibilities to protect and assist IDPs in accordance or to conform to international law specifically Kampala convention which the country ratified back to 2012. The porosity of IDPs camps in Nigeria as envisaged by Shedrack and Nuarrual has no doubt exposed displaced population to security threats capable of re-displacing them again to a more secure environment.

The survival of IDPs in Nigeria thus lies on IDPs themselves or the host communities against the provision of both domestic and international law. Mbanugo identified state responsibilities in assisting and protection of IDPs contain in interventions as thus:

- i) Preventing displacement and minimizing its adverse effects;
- ii) Raising national awareness about the problem;
- iii) Collecting data on the number and condition of IDPs;
- iv) Supporting training on the rights of IDPs;
- v) Creating a legal framework upholding the rights of IDPs;
- vi) Developing a national policy on internal displacement;
- vii) Designating an institutional focal point on IDPs;
- viii) Encouraging national human rights institutions to address internal displacement;

³⁵International Organization for Migration (IOM) Nigeria: Data Tracking Matrix Round IX-UNHCR Emergencies, Report, April, (2016):1-10, <http://data.unhcr.org/SahelSituation/download.php?id=1942>. Accessed on June 25th, 2016).

³⁶Adefisoye, T., An Assessment of Nigeria's Institutional Capacity in Disaster Management, *Scientific Research Journal*, Volume 3, No. I, 2015, pp. 37-48.

³⁷ Shedrack, E. & Nuarrual, H. M. D. op cit

- ix) Ensuring that IDPs participate in decision making;
- x) Supporting durable solutions;
- xi) Allocating adequate resources to address internal displacement and
- xii) Cooperating with the international community when national capacity is insufficient³⁸.

From these points outlined by Mbanugo, it can, therefore, be argued that the Nigerian institutional mechanism lacks essential requisite to address the plight of IDPs to conform to these international conventions. The most essential ingredients of an autonomous state thus are, the protection of its citizens as enshrined in the constitution. Moreover, the international convention specifically UN guiding principles on IDPs and Kampala conventions serve as a complementary role to the functions of the state to protect its citizens especially displaced ones and offer a solution for their resettlement.

Challenges of Internal Displacement Management in Nigeria

The effective management of IDPs in Nigeria is being hampered by several challenges, the most common cause of which is corruption. The National Assembly has made efforts to ensure that the IDPs are well protected and assisted. However, there are numerous drawbacks in tackling internal displacement. Redressing internal displacement points to lack of sincerity on the part of the managers, as observed by Odufowokan³⁹. Billions of Naira are appropriated to cater to the IDPs, but government official uses the process of procurement to enrich themselves. It is not only from state actors, contracts are being awarded to cronies and friends but they do not translate to realities⁴⁰.

The humanitarian crisis has now been turned into a humanitarian industry where people make a profit. The situation of the North-East internal displacement has been turned to "cash cow" with people profiting from the agony of IDPs⁴¹. For instance, Zorro posits that the absence of strong central regulatory or coordinating agencies on internal displacement is occasioned by the following challenges to tackling internal displacement in North-East⁴²:

- i) Too many actors with varied and often conflicting roles in the field.
- ii) Lack of coordination and monitoring mechanisms by stakeholders.
- iii) Absence of a road map or approved policy regulatory framework for IDPs.
- iv) Delays in the passage of bills.
- v) Refusal to implement bills and resolutions from the National Assembly on matters relating to internal displacement by the Executive.

³⁸ Mbanugo, O. The State of refugees and internally displaced persons in Nigeria: A legal review. *Journal of Law, Policy, and Globalization*. Vol. 3, 2012.

³⁹ Odufowokan, D. "IDPs: Where are the Donor Funds?" *The Nation*, Sunday, June 26, 2016, Vol. 10, No. 3624, pp.7.

⁴⁰ Ojiabor, O. Senate and IDP's Humanitarian Crisis. *The Nation* Sunday, January 22, 2017, pp. 40.

⁴¹ Imasuen, E. Insurgency and Humanitarian Crises in Northern Nigeria: The Case of Boko Haram. *African Journal of Political Science and International Relations*, 9(7), 2015, 284-296.

⁴² Zorro, M.S. Brief of Argument on a Bill for an Act to Repeal the National Commission for Refugees Act Cap. N21 LFN, 2004 and enact the National Commission for Internally Displaced Persons, Refugees and Migrants Bill, 2016.

- vi) Absence of top government functionaries as advisers or managers of IDPs
- vii) Mismanagement of resources meant for IDPs/Misappropriation of funds to national emergency agencies, and sundry corruption.
- viii) Ineffective legislative oversight
- ix) Lack of synergy between the National Assembly and emergency agencies.
- x) Lack of transparency and accountability from the emergency agencies.

The foregoing challenges have failed in the National Assembly to enact a law and adopt a policy on internal displacement⁴³.

Conclusion:

The capacity of the Institutions created by the Government to effectively manage internally displaced persons is limited. There are huge gaps in the Institutional mandates in giving clear authority to specifically handle internal displacement issues, as well as the absence of a National Legal Framework or policy document on the Assistance and Protection of Internally Displaced Persons thus creating a constrained national response. Nigeria has displayed a high level of negligence to the protection and assistance of internally displaced persons. It has conformed to neither international conventions nor state obligation to protect its displaced citizens. Specifically, it is discovered that Nigeria lacks an institutional framework to address the plight of IDPs in conformity to international law notably Kampala convention which Nigerian was a party to. It is a settled principle that under International law, States parties to a particular international convention are expected to conform to its principles.

Recommendations

Nigeria is known to be the country's highest number of IDPs on the African continent due to a host of causes, which includes natural and human disasters. It is argued that conflicts such as insurgency and terrorism have caused more displacement in the country than other factors such as natural disasters. Thus, this paper recommends the followings;

- i) Internal conflicts in Nigeria should be prevented in such a way that people should not be a force to leave their home. This is categorically stated in the Kampala convention where the state has a responsibility to prevent the conflicts that may cause population displacement.
- ii) Emphasis should be placed on conformity and implementation of all relevant legal frameworks, including national and international laws on the protection of IDPs.
- iii) The institutional framework in Nigeria should be strengthened and defined specifically to address the plight of IDPs in the country. Lack of these institutional mechanisms in Nigeria has hampered the efforts of the government to conform to international laws on the protection and assistance of IDPs.

⁴³Adeejat-Kubra, A. K. Towards the Evolution of Legal and Institutional Frameworks for the Protection of Internally Displaced Persons (IDPs) in Nigeria. *International Journal of Sustainable Development*, Vol. 6, No. 5: 2013, pp.141-153.

iv) There is a need for rigorous monitoring of the implementation of Kampala convention by Nigeria where the incident of displacement is recently rampant, as this will enable the IDPs to be armed with social and political security.

v) Properly designated camps with necessary facilities should be provided to ensure that IDPs are not further exposed to other vices that could aggravate their difficulty in terms of safety, security and general welfare.