

## **DOMESTICATION OF THE KAMPALA CONVENTION: ANALYSING THE GAPS IN THE LEGAL FRAMEWORK FOR THE PROTECTION OF IDPs IN NIGERIA**

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### **Abstract**

*Simply put, internal displacement is a state of affairs where people are forced to leave their original settlement as a result of natural or man-made factors. One of the major problems the world is facing in this century is how to control the triggers for displacement and forced migration. There are alarming statistics showing the magnitude of the problem. The demographic characteristics of these populations indicate high number of women and children. Although there are global efforts to contain the phenomenon of displacement and forced migration, the problem seems to defy the solutions. The focus of this paper is to examine the problem of internal displacement in Nigeria; identify the existing legal framework relevant to the protection of internally displaced persons; to assess whether these norms adequately cover the displaced persons' needs for protection and assistance and to suggest the potency of the Kampala Convention as a possible solution. The methodology employed to achieve the above set of objectives is a desk top review of the existing laws and policies for the protection of*

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*internally displaced persons both at the national and international levels. The findings in this paper revealed that internal displacement and forced migration has taken a centre stage in the global arena and is directly affecting global political, social, environmental and economic dynamics. In Africa particularly, the problem has engendered dire consequences for many countries as a result of persistent internal conflicts. This paper recommends that the Kampala convention has provided enhanced protection and assistance for IDPs and Nigeria should domesticate and operationalise the Convention in order to secure a solid prevention and protection framework for the huge number of displaced persons in IDP camps scattered all over the country.*

**Keywords:** Internal displacement, Forced Migration, IDPs, Kampala Convention, United Nations, Nigeria

## 1.0 Introduction

Massive displacement and other forms of forced migration are no doubt global problems that have attained alarming magnitude especially in the 21<sup>st</sup> century.<sup>1</sup> Global statistics have shown a rising wave of forced displacement due to persecution, conflicts, violence, human right violations or events seriously disturbing peace and order.<sup>2</sup> At the end of 2021, 89.3 Million got displaced worldwide.<sup>3</sup> Statistics have shown that over 70 million children, women and men were forcefully displaced from their homes in 2018 as a result of wars, violence and persecution.<sup>4</sup> The most worrisome part however is that these numbers are rising astronomically as the growth in displacement continued to outpace the rate at which solutions are being found for

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<sup>1</sup>Global statistics are becoming alarming. See the current statics <https://www.unhcr.org/africa/global-trends>

<sup>2</sup>United Nation High Commissioner for Refugee

<sup>3</sup>*Ibid, n1*

<sup>4</sup>Andrian Edwards - <https://www.unhcr.org/news/stories/2019/6/5d08b6614/global-forced-displacement-tops-70-million.html> accessed on the 8th of November, 2019

people who become displaced. In Africa alone, more than 17 million persons are suffering from forced displacement occasioned by majorly internal conflicts within the African countries.<sup>5</sup> Internal displacement of people has become a significant concern in different African countries including Nigeria. Since the beginning of the Boko Haram insurgency in the Northeast, more than two (2) million people have fled their homes because of the fear of the dreaded group. Millions more have been displaced by other causes, including natural disasters and development projects. The statistics of victims is not a stable one.<sup>6</sup> Internal displacement is a phenomenon that uproots people from their social, economic, cultural and educational environment and turns them into wanderers within the territory of their country.<sup>7</sup> It is a situation that breeds cyclic and wanton difficulties in various forms. Internal displacement do not also respect age, or sex or condition of the victims, once people are displaced from their homes and communities, they immediately lose their social cohesion and family ties. They also lose their source of livelihood and their belongings. The youths are uprooted from school and the other formative programs in their communities.<sup>8</sup> The serious human rights deprivations engendered by internal displacement cannot be overemphasized.

The aim of this article is to examine the problem of internal displacement in Nigeria, identify the existing legal framework relevant to the protection of internally displaced persons, and to assess whether these norms adequately cover their needs for protection and assistance. The article will therefore focus on the relevant provisions of the

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<sup>5</sup> Most times the people that suffer most are the women, the children and other vulnerable groups within the society. The women for instance are worst hit because they depend on either husband or male children for their sustenance. Similarly the sick are affected by displacement and most times it results to death or abandonment.

<sup>6</sup>OchiakaUgwu, ‘Rising Nigeria IDPs: What solution?’, People’s Daily, July 8, 2015,<<http://www.peopledailyng.com/rising-nigeria-idps-what-solution/>> accessed 16 November, 2019

<sup>7</sup>Ezeanokwasa; Kalu &Okaphor: ‘A Critique of the Legal Framework for Arresting the Threat of Internal Displacement of Persons to Nigeria’s National Security’ NAUJILJ 9 (2) 2018

<file:///C:/Users/NCC/Documents/KAMPALA%20CONVENTION/168826-434224-1-SM.pdf> accessed on the 15<sup>th</sup> November., 2019.

<sup>8</sup>*Ibid*;

constitution and other relevant laws which pertain to protection of displaced persons and ultimately suggest some pathways to securing comprehensive protection and assistance for IDPs in Nigeria.

## 2.0 Definition of some Key Terms

One of the terms that need to be defined is the concept of Internally Displaced Persons (IDPs). *The UN Guiding Principles on Internal Displacement* gives a definition of the term that is very widely accepted. It defines Internally Displaced Persons 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 border.

The above definition is all encompassing as it essentially covers the reason of displacement as well the territoriality of origin. While people may be obliged to leave their homes in situations of impending violence and threats of violence, there are circumstances where people are left with no option but to flee most times in a rush to save their lives especially in times of war or natural disasters. In other words the definition acknowledged that escape in this regard could be by fleeing or by planned departure in anticipation of any of these conflicts, wars or disasters.<sup>9</sup> It is also important to note that in this definition, aspect of territoriality is considered in two ways: On one hand, whenever persons are displaced and are able to escape the impending violence or disaster, their destination must be within the recognised borders of the nation where the problem emanates from.<sup>10</sup> The concept of

<sup>9</sup> The definition recognized that people can be displaced not only by sudden or expected conflicts but also by situations of generalize violations of human rights like was the case in Burma, Ethiopia and Iraq, where the displacement of populations was not a spontaneous event but an organized state policy implemented over years or even decades.

<sup>10</sup> That in fact is the hallmark of the difference between a Refugee and an IDP. See E. Mooney, 'The Concept of Internal Displacement and the Case for Internally

displacement covers both refugees and IDPs and the territorial disparity in their destination ultimately determines their status in international law as well as the obligation of responsibility<sup>11</sup> of their care, prevention and protection.<sup>12</sup> On the other hand, the definition also suggests that a person does not need to have been a home-owner before he could be an IDP. It is enough that the disaster caused him to leave from his habitual residence. This implies that non-natives or even non-citizens who reside in a community or country respectively could be IDPs.<sup>13</sup>

### **3.0 International Governance for the Protection of IDPs**

Displacement has been one problem that received a lot global attention in this century and hence there has been strong international governance especially in relations to refugees and other victims of forced migration. Although much has already been done by the United Nation system regarding the sustenance of effective and timely response to the needs of vulnerable populations, the issuance of the Guiding Principles on Internal Displacement in 1992 was a huge step forward in providing strong coordination and a clearer division of institutional responsibilities as well adequate support for operational agencies such as the UNHCR.

As mentioned earlier, the fulcrum of international efforts regarding the protection of IDPs are both international humanitarian law as well as international human right law and hence there is no doubt that the guiding principles are hinged on the existing humanitarian law and

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*Displaced Persons as a Category of Concern* [2005] (24)(3)Refugee Survey Quarterly, 10 ‘quoted in Ezeanokwasa; Kalu & Okaphor: ‘A Critique of the Legal Framework for Arresting the Threat of Internal Displacement of Persons to Nigeria’s National Security’ *op cit*; 1

<sup>11</sup> That is why the care, prevention and protection of IDPs are primarily the municipal responsibilities of the State where it occurs whereas the care and protection of refugees are the burdens of the international community. This reality is critical to the arguments canvassed in this paper.

<sup>12</sup> Refugees and distinguished from IDPs in many ways. See UN Human Rights Office, ‘Questions and Answers about IDPs’ <http://www.ohchr.org/EN/Issues/IDPersons/Pages/Issues.aspx#5> accessed 17 November, 2019

<sup>13</sup>Ezeanokwasa; Kalu & Okaphor: *Op cit* p. 2

human right instruments.<sup>14</sup> The gamut of international governance is therefore aimed at serving as guidance to governments and international organisations regarding international standards and best practices in the provision of assistance and protection to IDPs.

#### **4.0 Protection of IDPs in Nigeria: The Existing Framework**

##### **4.1 The 1999 Constitution**

The basis for the obligation of governments to respond to the human right needs of the IDPs does not only emanate from the international humanitarian law and international human rights norms but also in the Nigerian Constitution. To start with, the preamble of the Nigerian constitution reads *inter alia ...And to provide for a constitution for the purpose of promoting the good government and welfare of all persons in our country, on the principles of freedom, equality and justice..*<sup>15</sup>

Similarly, the power given to the Federal Executive by section 5 to execute and maintain this Constitution<sup>16</sup> includes seeing to it that the human rights of IDPs, particularly as enshrined in Chapter IV, are protected.<sup>17</sup> The lives, properties and basic rights and freedoms of Nigerians are guaranteed and by implication that prevents displacement in the first place and protects the persons that internally displace by one reason or the other. Another constitutional safeguard that is found in Chapter II of the constitution provides for the Fundamental Objectives and Directive Principles of State Policy. The directive principles set out strategic policy direction for the state in the realisation of a democratic, just and egalitarian society.<sup>18</sup> The directive principles outline policy priorities in relation to economic, political,

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<sup>14</sup>The two streams of International Humanitarian Law and International Human Right Law are often coterminous and both relevant in looking at issues of internal displacement and forceful migration

<sup>15</sup> See the Preamble of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

<sup>16</sup> See the provisions of 5(1)(b) of the 1999 Constitution (as amended)

<sup>17</sup>Chapter IV of the constitution (sections 33 to 46) provides for fundamental human rights.

<sup>18</sup> This spans from section 13 to section 24 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

social and environmental concerns. In preserving social order, the Constitution mandates the state to direct its policy towards all citizens.<sup>19</sup> In addition, it specifically recognises the need to protect children, young people and the elderly.

The constitution therefore provides a sort of general normative protection to displaced persons a section of Nigerians but these generic statements are grossly inadequate in protecting the rights of internally displaced Nigerians and other vulnerable groups. In spite of these rights contain in the Nigerian Constitution, Tasiu<sup>20</sup> concluded that IDPs are invariably and tactically denied access to these rights or are not enjoying the rights available to the general citizens. And the fact that chapter two is itself non- justiciable makes the provisions a mere cosmetic swathe that can neither prevent no protect the IDPs.<sup>21</sup>

#### **4.2 National Policy on IDPs**

Another effort worth mention is that Nigeria adopted the National Policy on Internally Displaced Persons (IDPs) in 2012 as a manifestation of particular concern for the IDPs which is geared towards responding to their human rights needs.<sup>22</sup> With these extensions, the hitherto National Commission for Refugees became National Commission for Refugees, Migrants and Internally Displaced Person (NCFRMI). Yet the needed amendment to the original Act to reflect these changes in scope has not been made. Without this amendment the activities of the Commission in the area of internally

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<sup>19</sup> s. 17 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

<sup>20</sup>Tasiu M., Mohammad Z. A, and Laila Suriya B. A. ‘Assessing the Legal Frameworks for the Protection of Internally Displaced Persons (IDPs) in the North-Eastern Nigeria’ Asian Research Journal of Arts & Social Sciences 7(4): 1-10, 2018; Article no.ARJASS.45550

<sup>21</sup>But the problem of entrenching protection for internally displaced persons in the directive principles is that its provisions are non-justiciable and as such, they cannot be legally asserted in a court of law.

<sup>22</sup> The statutory mandates of National Commission for Refugees established in 1989 were extended in 2002 through a Presidential fiat to cover migrants and in 2009 to embrace IDPs protection and assistance.

displaced persons remain outside of law. Thus, Ekpa and Dahlan<sup>23</sup> opined that a change in the name of this Commission to reflect the newly ceded mandates remains a mere window dressing in the absence of appropriate legislative amendment, and thus it is preposterously akin to ‘new wine in an old bottle’. Hence, there is no particular statute regulating internal displacement in Nigeria. However, it is interesting to note that the National Policy itself gave a nuanced direction to the need for a specific legislation to provide for the comprehensive protection of the IDPs of the “Nigeria’s human rights and humanitarian law obligations pursuant to the Nigerian Constitution, statutes and relevant sub-regional, regional and international treaties which Nigeria has either ratified or domesticated”<sup>24</sup> The most intriguing aspect of this is that these regional and international treaties include the Kampala Convention (which Nigeria has ratified) and the UN Guiding Principles on IDPs (which incorporate the rights of individuals and groups in both peace and armed conflict situations).

As an imperative need to bolster the legal framework for the protection and assistance of IDPs in Nigeria, the Nigerian government undertake to implement the following policy actions:<sup>25</sup>

- a) Domesticate the Kampala Convention on the Protection and Assistance of IDPs ;*
- b) Comply with its international obligations under the Kampala Convention and other relevant human rights and humanitarian law instruments;*
- c) Ensure, monitor and evaluate the progressive implementation of the Kampala Convention (as domesticated);*
- d) Amend the existing laws of relevant national institutions to accommodate IDPs or enact a separate domestic law on the protection and assistance of IDPs; and*
- e) Liaise with local and state governments to enact relevant laws on the protection and assistance of IDPs having regard to*

<sup>23</sup> OS Ekpa and NHM. Dahlan, ‘Legal Issues and Prospects in the Protection and Assistance of Internally Displaced Persons (IDPs) in Nigeria’ (2016) *Journal of Law, Policy and Globalization* (49) 110

<sup>24</sup> See Chapter 5.6 of the National Policy on IDPs in Nigeria.

<sup>25</sup>*ibid*

*respective legislative competences under the Nigerian Constitution.*

There is no doubt that the policy expresses a good intention of the Nigerian government to show commitment to the protection of the IDPs and to achieve durable solutions.<sup>26</sup> And consequently, the policy suggested some criteria to help determine and gauge the level of achievement of durable solutions to IDPs problem. The biggest drawback of this policy is its response model; the poor handling of IDPs in Nigeria has been attributed to the ineffectiveness of the collaborative model employed by the policy.<sup>27</sup> In spite of all this however, the policy remains a policy direction and does not in practical terms, become a legal instrument.

#### **4.3 National Emergency Management Agency (NEMA)**

This is an institution saddle with the responsibility to manage disaster with all its repercussions. The agency was established in 1997 and it develops from the work of inter-ministerial body was established by the Nigerian government in 1990 to deal with natural disaster reduction strategies in conformity with the United Nations International Decade for Natural Disaster Reduction (IDNDR).<sup>28</sup> The main objectives of NEMA are to manage human and material resources to achieve effective disaster prevention, training, alleviation and resilience to disaster in Nigeria. However, the NEMA Act produces an essential legal framework for IDPs protection in Nigeria. Nevertheless, NEMA Act does not mention “internally displaced persons”, but they have been recognized as the victims of disaster. This is considered as the major gap of the Act. In fact, it was opined that the Agency in its operation adopts a *vulture*

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<sup>26</sup> Durable solution, according to the Inter-Agency Standing Committee (IASC) Framework on Durable Solutions for Internally Displaced Persons, is achieved when internally displaced persons no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement. See Ch. 5. 2 of the Policy.

<sup>27</sup>Ezeanokwasa; Kalu & Okaphor: *Op cit p. 2*

<sup>28</sup> It was created through Act 12 as amended by Act 50 of 1999 to handle a disaster in Nigeria.

*concept* approach instead of *eagle concept* approach.<sup>29</sup> The vulture concept is defined as and entails a state of inertia pending the occurrence of disasters after which there is a flurry of activities that gradually dies out and another disaster is awaited to galvanize the institution; while eagle concept is a more proactive method of intervention through forecasting and early warning signals. Adopting the eagle approach would have helped in circumventing, preventing or at least mitigating large scale displacements and catastrophes.<sup>30</sup>

## 5.0 Anaysing the Gaps in the Legal Framework and the Need for Action

To appreciate the adequacy or otherwise of the existing framework for the prevention, assistance and protection of IDPs in Nigeria, it is necessary to breakdown the needs of internally displaced persons; restate general principles of protection in more specific detail and highlight clearly the different protection gaps.

Generally speaking, we have seen above that in many aspects relating to the right to life, the prohibition of torture, the prohibition of hostage taking, the prohibition of contemporary forms of slavery, subsistence rights and many aspects of human rights, there is some form of protection existing or flowing from international law instruments. There are different types of these international norms that seem to protect most of the specific needs of internally displaced persons. If these rights are violated frequently, the reason then does not lie in inadequate legal protection; but rather in the unwillingness of States and/or (in the case of non-international conflicts) of dissident forces such as the Boko Haram, to observe binding obligations.

As we see in the analysis of the constitutional protection of IDPs in the Nigerian constitution, certain general protection may exist but a need of a more direct or specific legislation may be required to address the

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<sup>29</sup> B Ayeni, "Challenges to Mainstreaming Disaster Risk Reduction into the Development Process in Nigeria" in Mainstreaming Disaster Risk Reduction into Sustainable Development in Nigeria. Volume II (Abuja: NEMA Publications, 2007) p.58 in Mbanugo, O. 'The State of Refugees and Internally Displaced Persons in Nigeria: A Legal Review' NAUJILJ 2012, pg. 104

<sup>30</sup>*Ibid*;

relevant and specific needs of the IDPs. Let us now analyse some examples more closely to highlight the gaps.

### **5.1 Freedom from Discrimination**

While as mentioned above, the constitution has provided that every person should not be discriminated against on the basis of age, sex, race or gender, etc<sup>31</sup> the list does not include the status of an internally displaced person as another vulnerable class. As it is therefore, the constitution and the international instruments prohibiting discrimination are grossly inadequate in protecting IDPs from discrimination on the basis of their status.

### **5.2 Prohibition of Gender-specific Violence**

Regarding gender-specific violence, the constitution and relevant instruments under international law, in principle, provides protection against gender violence targeted at women in IDP camps or other situations warranted by internal displacement. A specific measure however, is required to ensure the protection of the specific needs of internally displaced women and others with second-tier vulnerability<sup>32</sup>.

### **5.3 Freedom from unlawful detention**

There is nothing in the Nigerian law that prohibits closed camps or other conditions in IDP camps that relates to detention of IDPs. There is need to restrict the preconditions for lawful detention of internally displaced persons in closed camps. The responsibility of governments to ensure the safety and protection of internally displaced persons should not be seen as a justification for resorting to forced detention.

### **5.4 Freedom from forcible recruitment**

In the existing international humanitarian law, there are guidelines for which Nigeria is a signatory regarding to the forcible recruitment of refugee children especially in arm conflict situations, there should be

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<sup>31</sup> S. 41 of the Constitution of the Federal Republic of Nigeria, 1999

<sup>32</sup> I used this term to refer to persons that have more than one status or level of vulnerability e.g. a child that is also an IDP. By being a child alone he is in a vulnerable level until he attained maturity and so when a child becomes an IDP, that puts him in a more precarious situation.

specific provisions concerning forcible recruitment of internally displaced children. As internally displaced adults are especially vulnerable to discriminatory conscription practices, their special needs should also be addressed specifically.

#### **5.5 Provision of Basic, subsistence needs**

There is no doubt that many aspects of the rights to food, water, clothing and housing in situations of non-international armed conflict remain unclear; The efforts that have been made are based on humanitarian grounds and hence no specific and clear -cut legislation relating to the IDPs exists except for the general provisions relating to the mandate of the National Emergency Management Agency (NEMA) under the NEMA Act

#### **5.6 Provision of Medical care**

The special needs of internally displaced women in the areas of reproductive and psychological healthcare, as well as those of displaced disabled persons in camps have been not guaranteed in our laws.

#### **5.7 Free movement**

Internally displaced persons need specific guarantees concerning the right to go to a safe place inside their country or seek asylum abroad in all situations or to return voluntarily and in safety to their place of residence. They also need a specific guarantee against forced return to places dangerous to their health and/or safety.

#### **5.8 Provisions of a framework for family related needs**

The question of family reunification needs in situations of non-international armed conflict needs to be clarified; adequate safeguards must be put in place.

#### **5.9 Protection of the use of one's own language**

The specific language-related need of internally displaced persons who are in areas where another language is dominant is a very sensitive aspect of their needs. There is no existing framework to address that.

### **5.10 Safeguards regarding Religion**

It would be useful to address the specific religious needs of internally displaced persons.

### **5.11 Work and other endeavours to earned Livelihood**

The special needs of internally displaced women and of internally displaced persons in general to seek equal opportunity for employment and to be freely involved in other economic activities with the area must also be guaranteed.

### **5.12 Education**

The bearing of this guarantee on internally displaced persons in any situation of displacement needs to be clarified. The right to education must include internally displaced populations.

### **5.13 Political Participation and Association**

It is necessary to stress that internally displaced persons do not lose their right to political participation because they had to leave their homes, and the means for their participation, including access to voter registration procedures, must be safeguarded.

### **5.14 Access to International Assistance**

Whereas existing international law recognizes the right of internally displaced persons to request and receive protection and assistance from their government and, to a certain extent, the right of international actors to offer humanitarian services on their behalf to affected Governments and authorities, a corresponding duty of States to accept offers of assistance by humanitarian organizations and to grant and facilitate free passage of relief is not guaranteed.

### **5.15 Forced Disappearances**

It should be clarified that disappearances of internally displaced persons in any situation, including armed conflict, are prohibited and that this prohibition applies to all parties to the conflict; a legislative backing to this obligation is therefore needed.

### **5.16 Safeguards against Arbitrary Detention**

Internally displaced persons are lacking safeguards or protection in situations of non interactional armed conflict; they therefore become vulnerable and open to arbitrary detention.

### **5.17 Regarding needs for Personal Identification**

Documentation and registration of IDPs should be articulated; specific duties of States or non-governmental actors to meet such needs in the context of displacement need to be specifically provided for in the national framework.

### **5.18 Property-related needs**

The right to restitution of property lost as a consequence of displacement or to compensation for its loss is not fully recognized; there is a clear gap in situations of armed conflict, whether internal or international regarding compensation.

### **5.19 Protection of relief workers and organizations**

Humanitarian law does not offer adequate protection to the transports and relief supplies of relief workers. This gap should be addressed in the national framework.

## **6.0 Normative Advances by the AU: Why Kampala Convention is the answer**

The AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa otherwise known as the Kampala Convention is the first regional convention to comprehensively address internal displacement, including prevention, response and durable solutions.<sup>33</sup> It explicitly protects the rights of people displaced by natural disasters, armed conflict, generalised violence, human rights violations and development projects. It reiterates existing international

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<sup>33</sup> See 'Making the Kampala Convention work for IDPs Guide for civil society on supporting the ratification and implementation of the Convention for the Protection and Assistance of Internally Displaced Persons in Africa' A publication of The Economic, Social and Cultural Council (ECOSOCC) of the African Union, July 2010.

and AU law, including human rights and international humanitarian law standards. By reinforcing these norms and bringing them together into one instrument, it offers a unique legal framework to address the specificities of internal displacement on the African continent, and provides a clearer and stronger legal basis for IDPs' protection.

The uniqueness of the Kampala convention is that it recognised, reiterated and laid out measures to prevent and put to an end to the phenomenon of internal displacement by eradicating the root causes of displacement such as recurrent cases of conflicts and natural disasters which impact on life, peace, stability and development.<sup>34</sup> It has also recognised the inherent rights of internally displaced persons as provided for and protected in international human rights and humanitarian law and as set out in the existing international and regional instruments.<sup>35</sup>

The objectives of the convention are wide in scope and coverage and also holistic in approach. For instance, the conventions provide solid bases for promotion and strengthening of regional and national measures to prevent and eliminate root causes and also provide durable solutions. The Convention establishes a legal framework for preventing internal displacement and protecting IDPs in Africa as well as for solidarity and cooperation of state parties. This is because the convention demands that states adopt laws and policies or amend their legislation in line with its provisions. Doing so helps them gain international credibility and serves to encourage other states to do the same. The decision to adopt an instrument on displacement is a mark of national responsibility, because it signals the government's recognition of the problem and its view on how to resolve it.<sup>36</sup> Ultimately, the objective of the convention is to provide accountability of state parties, armed groups and other non - state actors including non-state actors including Civil Society Organisations (CSOs) in respect to the prevention of displacement and the protection of IDPs.<sup>37</sup>

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<sup>34</sup> See the preamble of the Kampala Convention.

<sup>35</sup>*Ibid*,

<sup>36</sup> Workshop Report - Kampala Convention: from ratification to domestication and operationalisation 30 November - 2 December 2015 Addis Ababa, Ethiopia

<sup>37</sup> See Art 2 of the Kampala convention.

One striking achievement of the Kampala convention is laying down a regime of state obligation regarding the most sensitive aspects of prevention of displacement and protection of displaced persons in the region. Interestingly, most of the gaps highlighted above are adequately covered by placing obligation on state parties to ensure respect for the convention in relation to prohibiting and preventing arbitrary displacement;<sup>38</sup> preventing political, social, economic exclusion and marginalisation to IDPs on the basis of social identity, political or religious opinion; ensure respect to humanity and the dignity of human rights of IDPs; ensure assistance to IDPs by meeting their basic needs of food, shelter and allowing humanitarian organisations access to IDPs<sup>39</sup> as well as promoting self-reliance and sustainable livelihoods for IDPs.<sup>40</sup>

Interestingly, the convention further provides for modalities for carrying out the above obligations by state parties which include the enactment or amendment of relevant legislation on the protection of IDPs;<sup>41</sup> designating a body to coordinate the activities aimed at protecting IDPs; adopting strategies and policies on IDPs both at the national and local levels and provide the necessary funds needed. For the Kamplala convention, prevention is key. State parties are further expected to device early warning mechanisms in areas of potential displacement and establish disaster warning mechanism and disaster management measures.<sup>42</sup> In any case, all IDPs are protected against arbitrary displacement no matter the type or form of the displacement.<sup>43</sup> Protection also must be given to communities with special attachment and dependency on land due to culture or spiritual values.<sup>44</sup>

To reiterate the obligation of state parties to IDPs, the Kampala convention did not leave any gap in relation to responsibility. The state parties are squarely responsible for protection and assistance of IDPs

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<sup>38</sup> See Art 3 (1) b of the Kampala Convention

<sup>39</sup> See Art 3 (1) e of the Kampala Convention

<sup>40</sup> See Art 3 (1) k of the Kampala Convention

<sup>41</sup> This can be found in Article 3 (2) a – e of the Kampala Convention

<sup>42</sup> See article 4 of the Kampala convention

<sup>43</sup> Art 4 (d) of the convention

<sup>44</sup> Art 4 (5) of the convention

especially in relation to cooperating with international organisations and respect for the mandates of UN and AU with regard to protection and assistance of IDPs.<sup>45</sup> Even the international organisations are obligated to, using the principles of humanity and neutrality; ensure conformity with international law and the law of the country where they operate as well as the human rights of IDPs.<sup>46</sup> While the Kampala convention is not conferring any legal status to armed groups, it nonetheless places an obligation on them not to violate the rights of the IDPs under national and international law.<sup>47</sup> Such groups are also prohibited from forcibly recruiting persons from the IDPs including children, kidnapping abduction or hostage taking, sexual slavery or trafficking in persons especially women and children.<sup>48</sup> The AU's mandate according to the convention is to support the efforts of state parties by strengthening the institutional framework, coordinate the mobilisation of resources and collaborate with international organisations, humanitarian agencies and CSOs.<sup>49</sup>

Like a double edge sword, the Kampala convention is no doubt a comprehensive document that proactively provides for the prevention, protection and assistance to IDPs. For instance once displacement occurs, the state parties are enjoined to protect the rights of displaced persons by refraining from any form of discrimination among the IDPs in enjoyment of any right or freedom, genocide, war crimes, arbitrary killing, arbitrary detention, abduction, torture, enforced disappearance and other forms of cruel and inhuman treatment.<sup>50</sup>

## 7.0 Conclusion

<sup>45</sup> See generally Article 5 of the convention

<sup>46</sup> See Article 6 of the Kampala convention

<sup>47</sup> The convention strictly prohibited the armed groups from carrying out arbitrary displacement and otherwise hampering the protection of IDPs or denying the the right to live in satisfactory conditions of dignity, security, sanitation, food, water, health and shelter.

<sup>48</sup> Article 7 of the convention

<sup>49</sup> See generally Article 8 of the kamplala convention

<sup>50</sup> Article 9 listed many offences including sexual and gender-based violence such as rape,prostitution, sexual exploitation, starvation, forced labour etc.

Unlike the United Nations Guiding Principles on Internal displacement and National Policy on IDPs discussed above, the Kampala Convention has elevated the conversation on IDP protection and assistance beyond humanitarianism by laying binding legal obligations on state parties which comes with corresponding accountability. The convention offers the IDPs a normative platform to ventilate and assert legitimate claim to their protection and assistance in the national legal systems.<sup>51</sup> That will put an end to hitherto era of IDPs protection and provision of assistance that is mostly undertaken by agencies of government on an ad hoc and reactive basis.<sup>52</sup>

The Kampala Convention is no doubt a good and well thought out IDPs protection and assistance framework. In spite of the huge stride achieved in that direction, the convention is facing the problem of effective implementation.<sup>53</sup> The effective implementation of the Kampala Convention is still a mirage. The increased protection provided to IDPs under the Kampala Convention will merely remain an illusion without widespread national enforcement. The full and effective implementation of the convention requires a well-tailored implementing legislation and strong support for the institutions charged with the responsibility of enforcing the provisions. Much has been done by international bodies such as UNHCR to galvanise interest and provide support to African governments not only to ratify the Kampala convention but to also put in place a national legislation that will translate the various obligations to reality. The pace however, is actually slow while the menace of forced displacement is getting worse by day.<sup>54</sup> As we commemorate a decade of the Kampala

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<sup>51</sup>Romola Adeola ‘Kampala Convention and the Protection of IDPs in Nigeria’ Punch Online Newspapers 28<sup>th</sup> April, 2016.

<sup>52</sup>Bagoni Alhaji Bukar ‘Nigeria needs to take responsibility for its IDPs’ at [www.fmreview.org/copyright](http://www.fmreview.org/copyright) accessed on the 23rd of November, 2019.

<sup>53</sup>Mike Asplet and Megan Bradley ‘Strengthen Protection for Internally Displaced Persons (IDPs) in Africa: The Kampala Convention Comes to Force’ American Society of International Law, December 6, 2012.

<sup>54</sup> Round 26 Displacement Tracking Matrix (DTM) assessment by the International Organization for Migration (IOM) aims to improve the understanding about the scope of internal displacements, returns and the needs of affected populations in conflict-affected states of north-eastern Nigeria. The report covers the period of 20 October 2018 to 20 January 2019 and reflects trends from the six states most affected

convention, it is imperative to restate the call for Nigerian government to proactively engage and take the necessary step to pass a comprehensive IDP protection law as the existing legal framework is grossly inadequate as shown above. The 9<sup>th</sup> Assembly has a challenge to leverage on the previous effort of the 8<sup>th</sup> National Assembly and pass the IDPs protection and assistance law and the state assemblies of conflict-affected states to also hastily follow the federal legislature in that regard. By March next year, Nigeria should present a good account of itself in the regional meeting of state parties regarding assessment of their progress in implementing the provisions of the Kampala convention.<sup>55</sup> Nigeria is already embarrassingly left behind as countries that have lower rates of IDPs have already operationalised the Kampala convention and have secured a solid prevention and protection framework for the displaced.

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by displacement: Adamawa, Bauchi, Borno, Gombe, Taraba and Yobe. As a result, 1,948,349 individuals were recorded as being displaced in the affected states

<sup>55</sup> March 2024 meeting.