

## HUMANITARIAN LAW AND INTERNAL DISPLACEMENT IN NIGERIA: AN URGENT NEED FOR LEGAL FRAMEWORK.\*\*

### Abstract

*The problem of internal displacement in Nigeria is more of a reality than a mirage. Over the years, the issue of internal displacement was not a matter of national concern until displacement threats from the Boko Haram insurgency became a reality. Millions of Nigerians are currently in the status of internally displaced persons especially due to Boko Haram insurgency, Niger-Delta attacks, Fulani herdsmen attacks, natural disasters and so on, thus creating an urgent need for legal protection. This is the central focus of this paper. This paper is a desk-based research, it relied on primary and secondary data which were subjected to contextual analysis. The paper identified the causes of internally displacement in Nigeria. The paper further appraised the legal framework for the protection of the rights of internally displaced persons in Nigeria. The paper identified that there is no specific legislation in Nigeria for the protection of internally displaced persons and it is recommended that National Assembly needs to specifically and urgently legislate on this area. Also, there is the need for Constitutional amendment to adequately protect the rights and interests of internally displaced persons in Nigeria.*

### Key Words

Internal Displacement, Humanitarian Law, Constitutional Amendment, Nigeria.

### 1.0 Introduction

The internal displacement of people has become a significant concern in Nigeria. More than two million people have fled their homes because of the Boko Haram insurgency in the northeast.<sup>1</sup> In a February 2016 report, about 2.3million people, consisting of about 335.000 households have been displaced in Nigeria due mainly to Boko Haram insurgency occupying several camps and camp-like sites.<sup>2</sup> Millions more have been displaced by other causes, including natural disasters and developmental projects.<sup>3</sup> The rise in the problem has led to calls for concrete rights-based

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1.RomolaAdeola, Nigeria's Constitution Holds the Key to Protecting Internally Displaced People, available at <http://theconversation.com/nigerias-constitution-holds-the-key-to-protecting-internally-displaced-people-60971>

<sup>2</sup> International Organisation for Migration/National Emergency Agency Report 2016

<sup>3</sup>RomolaAdeola, (note 1 above)

solutions to protect and assist internally displaced persons. This is why the absence of a national legal framework for dealing with the crisis is receiving increased attention.

According to the African Union Convention for Protection and Assistance of Internally Displaced Persons in Africa,<sup>4</sup> the term “Internally Displaced Persons” is defined 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 border”.<sup>5</sup>

In the absence of a legal framework on internal displacement in Nigeria, the response to the plight of internally-displaced persons has remained largely fragmented and uncoordinated; and the response to the root causes of internal displacement, has been very poor and ineffective.<sup>6</sup> To this effect, internally-displaced persons have remained largely vulnerable and susceptible to all forms of exploitation, abuse and neglect across the country.<sup>7</sup>

## 2.0 Causes of Internal Displacement in Nigeria

In Nigeria, most of the incidences of internal displacement occur as a result of violent conflicts with ethnic religious and/or political undertones.<sup>8</sup> Thousands are internally displaced annually, as a result of natural disasters,<sup>9</sup> including flooding in the North and West, erosion in the East, oil spillage and developmental projects in the Niger Delta (South-South).<sup>10</sup> Some incidences also occur because of clashes between Fulani herdsmen and farmers and between government forces

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<sup>4</sup>Kampala Convention, 2009

<sup>5</sup>Article 1 (k)

<sup>6</sup>Ladan M.T. (2011)“ Overview of International and Regional Frameworks on International Displacement: - A case study of Nigeria. A paper presented at a 2-day multistakeholders 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 on November 21-23, 2011, at Bolton White Hotels, Abuja, Nigeria.

<sup>7</sup>Alobo E and Obaji S, “Internal Displacement in Nigeria and the Case for Human Rights Protection of Displaced Persons” Journal of Law, Policy and Globalization vol51 (2016) 26

<sup>8</sup> Ibid at pp 1-2; See also the Draft National Policy on IDPs in Nigeria

<sup>9</sup> IDMC, ‘Nigeria: Multiple Displacement Crises Overshadowed by Boko Haram’ available at [www.internal-displacement.org](http://www.internal-displacement.org) accessed 12<sup>th</sup> January, 2017

<sup>10</sup>United Nations Environment Programme (UNEP) Nairobi, Kenya (2011): - Report on Environmental Assessment of Ogoni land, Niger Delta region, Nigeria.

and armed groups.<sup>11</sup> This is in addition to the over 400,000 Bakassi returnees<sup>12</sup> that were internally displaced from the oil rich Bakassi Peninsula that was handed over by Nigeria to Cameroon in 2008 resulting from the 10th October 2002 ruling of the International Court of Justice.<sup>13</sup>

Analysts have always expressed fears that the level of conflict and with it the level of internal displacement, may increase each time general elections<sup>14</sup> year draws nearer. These fears were confirmed when the National Emergency Management Agency (NEMA) reported that about 65,000 persons were displaced internally due to post-election violence which spread across six Northern states including Bauchi, Kaduna, Kano, Niger, Katsina and Sokoto.<sup>15</sup> A study<sup>16</sup> has also shown that people's vulnerability to internal displacement in Nigeria is not only due to natural and human-made disasters, armed conflict, ethno-religious-political conflicts but also worsened by extreme poverty, lack of equal access to socio-economic resources and balanced development, high unemployment rate among able-bodied and frustrated youths as well as development and environmental-induced displacements.

The problem of internally displacement is now a reality that requires urgent intervention from the government and other stakeholders rather than a matter to be politicized. It however appears that the international community is more proactive in the welfare of internally displaced persons than the municipal government, hence there are more international legislations on internal displacement than domestic legal framework. Some of these legislations are considered below.

### **3.0 The Kampala Convention**

In October 2009, the African Union Heads of States and Government adopted the Convention for the Protection and Assistance of Internally Displaced Persons at a Special Summit on Refugees,

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<sup>11</sup>OmwumiEyekpimi, 'History of Fulani Herdsmen and Farmers in Nigeria' Info Guide Nigeria available at [www.infoguidenigeria.com](http://www.infoguidenigeria.com) accessed 12<sup>th</sup> January, 2017

<sup>12</sup>Tony Nyong: 'Bakassi returnees overwhelm Akwa-Ibom', in Sunday Vanguard, Lagos, 31st August 2008

<sup>13</sup>United Nations, 'International Court of Justice Gives Judgment in Camerron-Nigeria Boundary Dispute' ICJ/603 10<sup>th</sup> October, 2002 – International Court of Justice

<sup>14</sup>Ladan M.T. and Aisha I.K. (ed.) (2005): - Election Violence in Nigeria. AFSTRAG – Nigeria, Lagos with support from the Ford Foundation. For the analysis of the factors responsible for pre, during and post election violence in Nigeria.

<sup>15</sup>Management of Internally Displaced Persons in Africa – [www.afrevjo.net](http://www.afrevjo.net) accessed 12<sup>th</sup> February, 2017

<sup>16</sup>Ladan M.T., (2009-10) Introduction to ECOWAS Community Law and Practice: Integration, Migration, Human Right, Peace and Security in West Africa (2010); ABU Press, Zaria, Nigeria

Returnees and Internally Displaced Persons held in Kampala, Uganda. This instrument (also known as the Kampala Convention in reverence of the city in which it was adopted) was developed with the primary objective of providing sustainable solutions to the issue of internal displacement in Africa. In the processes leading up to the development and adoption, a central resonant theme was the need for the Kampala Convention to serve as a normative framework for countries in Africa in the protection of internally displaced persons and in providing humanitarian assistance to them. At the Special Summit, African leaders recognised the plight of the internally-displaced persons in Africa and the dire situation that these persons are often thrust into, largely in view of the fact that they remain within the borders of their own countries.

At the time of the adoption of the Kampala Convention, the conflict situation in the Horn and central parts of Africa and the protracted displacement from these conflicts justified the regional intervention. While displacement threats from the Boko Haram insurgency were in a state of infancy in Nigeria at the time, pockets of ethno-religious tensions and clashes which resulted in displacements within the country precipitated the need for normative guidance in the internally-displaced person protection as with the lingering effects of conflicts in Liberia, Sierra Leone and Uganda.

At the Special Summit, Nigeria was among the first set of 17 countries to sign the Kampala Convention alongside countries like Burundi, Congo, Djibouti, Equatorial Guinea, Ethiopia, Liberia, Namibia, Rwanda etc.<sup>17</sup> It must however be noted that a treaty does not have the automatic force of law merely by a nation being a signatory to the treaty.<sup>18</sup> A treaty must be ratified by signatory nations,<sup>19</sup> and for countries that practice dualist system like Nigeria, such treaty must be domesticated. In Nigeria for instance, Section 12 of the Constitution provides that international treaties only become part of Nigerian law if it has been domesticated by the National Assembly. This constitutional provision was reaffirmed in *Abacha v. Fawehinmi*<sup>20</sup> where the Supreme Court emphasized the necessity of domesticating international treaties and conventions for it to be applicable and operative within the Nigerian legal system.

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<sup>17</sup> ACHPR, Press Release on the Ratification of the African union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, available at [www.achpr.com](http://www.achpr.com) accessed 12<sup>th</sup> January, 2017

<sup>18</sup> Babalola Abegunde, (2009)'Public International Law' Petoa Educational Publishers, Ado-Ekiti, p74

<sup>19</sup> *ibid*

<sup>20</sup> (2001) 51 WRN 29

On April 17, 2012, Nigeria became the 12<sup>th</sup> African country to ratify the Kampala Convention<sup>21</sup> and since ratification, the Convention has not been domesticated in Nigeria, thus making the legal application of its provisions within Nigeria still subject to the constitutional embargo of Section 12 of the Nigerian Constitution.

The Kampala Convention is very relevant to the protection of Internally Displaced Persons in Nigeria. The Convention offers enforceable guidance on the protection and assistance of internally displaced persons unlike the United Nations Guiding Principles on Internal Displacement that is basically on humanitarianism. The Kampala Convention places the issue of internal displacement in the realm of binding legal obligations which makes the issue of accountability very germane. Another cogent point in the Kampala Convention is that it offers internally-displaced persons the normative platform to assert a legitimate claim to their protection and assistance which national courts can enforce in instances of non-compliance or non-performance by relevant institutions.

#### **4.0 International Humanitarian Law (The Law of Geneva)**

Humanitarian rules are as a result of a value judgment taking into account the intrinsic tensions between humanity and military necessity.<sup>22</sup> In this way humanitarian law strikes a realistic balance between military necessity and the requirement to act with humanity.<sup>23</sup> International humanitarian law provides the maximum possible protection for people in armed conflicts and the law has been drafted so as to take this fully into account. The result is that a certain amount of humanitarian law may not seem very humanitarian to human right lawyers but it does have the advantage of being precise and realistic.<sup>24</sup> Thus, an army cannot invoke the fact that it is losing the war, for example to stop complying with the law, because violation of the law will not serve any military purpose which might reverse the situation but only unnecessarily cause extra suffering. The obligations under international humanitarian law are independent of the cause of armed conflict, the reason for resorting of force or any claim made by one party on the other

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<sup>21</sup> Romola Adeola, (note 1 above)

<sup>22</sup> See ICRC, Customary Humanitarian Law, Rule 156 – Definition of War Crimes available at [www.icrc.org](http://www.icrc.org) accessed 23 July, 2016

<sup>23</sup> Adedeji L., "Maintaining the Balance between Military Necessity and Humanity" *The Lawyers Chronicle* available at [www.thelawyerschronicles.com](http://www.thelawyerschronicles.com) accessed 23 July, 2016

<sup>24</sup> Robert A. and Guelff R., (2009) "How Does Law Protect in War?" *Training on Human Rights and Humanitarian Action*, International Committee of the Red Cross, p653

party<sup>25</sup>. There is also a principle of equality among the parties to an armed conflict with respect to humanitarian obligations and also the principle of non-discrimination.<sup>26</sup> The policy consideration of the United Nations on international humanitarian law has been that the issue of national sovereignty versus humanitarian considerations, human rights and humanitarian law are two overlapping international legal systems with similar objectives: to protect lives and dignity of human beings from the abuse of power.<sup>27</sup>

Popoola opined that international humanitarian law derived its source from the basic premise that the individual is entitled to certain minimum rights whether in peace or war. The individual is entitled to protection, security and respect.<sup>28</sup> Umzurike however viewed international humanitarian law and human rights law as two sides of the coin, one operates in situation of war or armed conflict while the other operates in time of peace.<sup>29</sup>

The basic principles of international humanitarian law are: the distinction between civilians and combatants; the prohibition of attack on those *hors de combat*; the prohibition to inflict unnecessary suffering; and the principles of proportionality.<sup>30</sup> Sassoli and Bouvier defined international humanitarian law as part of international law that limits the use of violence in armed conflict by:

- i. Sparing those who do not or no longer directly participate in hostilities,
- ii. Limiting the violence to the amount necessary to achieve the aim of conflict which can be independently of the causes fought for only to weaken the military potential of the enemy.<sup>31</sup>

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<sup>25</sup> Geneva Conventions, Common Articles 2.

<sup>26</sup> Protocol I, article I (4). See also UNGA Resolution 15/4 (XV) of 14 December 1960: Declaration on the Granting of Independence to Colonial Countries and Peoples.

<sup>27</sup> See the keynote address by Hans Corell at the Conference on the Future of Humanitarian Intervention on 19 April 2001 at the Duke University Centre for European Studies

<sup>28</sup> Popoola A, (2005) "The International Criminal Court Regime and Crimes Against Humanity" in Guobadia D.A. and Akpor P.T. (ed.) *An Introduction to the Rome Statutes of the International Criminal Court*, Lagos, NIALS, p123

<sup>29</sup> Umzurike, U.O. (2005) *Introduction to International Law* (3<sup>rd</sup> ed.), Ibadan, Spectrum Publishers, p212

<sup>30</sup> Okoronye, I. (2013) *Terrorism in International Law*, Owerri, Whytem Publishers Nigeria, p86

<sup>31</sup> Sassoli, M and Bouvier, A. (1999) "How does law protect in War Cases" in Documents and Teaching Materials in Contemporary Practice of International Humanitarian Law, Geneva, ICRC, p67-68

Okoronye on his part, summarized international humanitarian law as follows: the parties to a conflict must at all times distinguish between the civilian population and combatant in order to spare the civilian population and property. Neither the civilian population as a whole nor individual civilian may be attacked; attacks may be made solely against military objectives. He further posits that the wounded and the sick must be collected and cared for by the party to the conflict which has them in its powers. Captured combatants and civilians who find themselves under the authority of the adverse party are entitled to have respect for their lives, their dignity, their personal rights and their political, religious and other connections.<sup>32</sup>

The rules on the protection of categories of crime can largely be found in the Law of Geneva. The Law of Geneva has these summarised applicable rules:

1. Persons *Hors de combat* and those who do not take a direct part in hostilities are entitled to respect for their lives and physical and moral integrity. They shall in all circumstances be protected and treated humanely without any adverse distinction.
2. It is forbidden to kill or injure an enemy who surrenders or who is *hors de combat*.
3. The wounded and sick shall be collated and cared for by the party to the conflict which has them in its power. Protection also covers medical personnel, establishments, transports, and material. The emblem of the Red Cross (Red Crescent) is the sign of such protection and must be respected.
4. Captured combatants and civilians under the authority of an adverse party are entitled to respect for their lives, dignity, personal rights and convictions. They shall be protected against all acts of violence and reprisals. They have the right to correspond with their families and to receive relief.
5. Everyone shall be entitled to benefit from fundamental judicial guarantees. No one shall be held responsible for an act he or she has not committed. No one shall be subjected to physical or mental torture, corporal punishment, or cruel or degrading treatment.<sup>33</sup>

## 5.0 Comparative Analysis of African Humanitarian Law and the Geneva Conventions

African Humanitarian Law and the Geneva Conventions have some peculiar similarities, in fact most of the humanitarian principles in African Humanitarian Law are present in the Geneva

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<sup>32</sup>Okoronye, (note 30 above) p86

<sup>33</sup>Westerman, D.H. (1994) *The African: Today and Tomorrow* (3<sup>rd</sup> ed.) London Press, pp. 28 and 129.

Conventions though worded differently. It is however very important to understand that the psychology of the American and that of the Westerners are different. To refer to the difference is not to express any value judgment. It should be noted that similar spirit of humanism, which is very abundant in African societies, inspired the authors of the Geneva Conventions. With respect to the conduct of war in African communities, it is important to note that, except for special cases of raids, (such as cattle rusting) conflicts were always started by an official declaration of war.<sup>34</sup> An attack was never launched without warning. Ambush could take place in the course of a conflict.<sup>35</sup> This restricted the means of harming an enemy and is similar to the principle that belligerents do not have a limited choice in means of harming an enemy.<sup>36</sup>

Similarly in the Islamic system, fighting was subject to a genuine code of conduct in Islamic law, for instance, it was forbidden to kill women,<sup>37</sup> children<sup>38</sup> or old people;<sup>39</sup> to strike an enemy from behind; to profane certain places or kill a disarmed enemy.<sup>40</sup> One did not wreak vengeance on the enemy dead who generally were entitled to a decent burial.<sup>41</sup> The wounded of both camps were cared for in order that they could be assigned later to work in the field.<sup>42</sup>

The Geneva Conventions include the principle of the Law of The Hague which specifies that the right of belligerents to adopt means of injuring the enemy is not unlimited. The first of three aspects of this principle provides that non-combatants shall not be exposed to military operations. Comparing this with the African humanitarian principles, African traditions specified that certain categories of person should not take part in conflicts. These include old women, old

<sup>34</sup>Atofarati A.A, "The Nigerian Civil War, Causes, Strategies, and Lessons Learnt" available at [www.africamasterweb.com](http://www.africamasterweb.com) accessed 22 July, 2016

<sup>35</sup>Chinwokwu E.C.,(2015) "Community Based Early Warning in Conflict Management and Peace Building in Nigeria: An Analysis of Internal Securities Issues" vol.9 *Journal of Culture Society and Development* p25

<sup>36</sup>*ibid*

<sup>37</sup>Zawadi B., "The Prophet Prohibited the Killing of Women and Children: But What About those Night Raids?" Available at [www.answering-christianity.com](http://www.answering-christianity.com) accessed 20, April 2017

<sup>38</sup>Cole J., "Top Ten Ways Islamic Law Forbids Terrorism" Available at [www.juancole.com](http://www.juancole.com) accessed 23 July, 2016

<sup>39</sup>Kabbani H., "Jihad, Terrorism and Suicide Bombing: The Classical Islamic Perspective" *Islamic Supreme Council of America* p15 available at [www.islamicsupremecouncil.org](http://www.islamicsupremecouncil.org) accessed 23 July, 2016

<sup>40</sup>Cavanaugh M.L. (2015) "The Military's Purpose is not to Kill People and Break Things" available at [www.warontherocks.com](http://www.warontherocks.com) accessed 23 July, 2016

<sup>41</sup>Barton M. and Longue M.L., (2002) *The Civil War Soldier-A Historical Reader* available at [www.books.google.com.ng](http://www.books.google.com.ng) accessed 23 June, 2017

<sup>42</sup>Bello E., (1980) *African Customary Humanitarian Law*, Geneva, ICRC Oyez Publishing, p. 24

people and uncircumcised boys. These persons were in no case to be involved in the fighting and it is noteworthy that in principle, confrontations do not occur in places sheltering them. It would have been regarded as cowardice to attack defenseless persons.<sup>43</sup> One can recognise the concordance between these ideas.

The second aspect of the principle forbids the violation of religious, cultural or artistic characters. Traditional Africa, we have seen, had a great number of sacred places-trees, the dwelling of ancestors, depositories for fetishes, places for initiation ceremonies and some sacred places were often common in most communities in Africa. The fear of arousing divine wrath was sufficient to inspire respect, and hence protection, for sanctuaries and sacred places. It should also be noted that attacks on undefended places are also forbidden under the terms of the law of The Hague. In traditional Africa, it was forbidden to attack a village occupied by old people, women and children as earlier expressed. Such an act is not war but banditry. However, different the context, one can recognize the similarities between the African and Western concepts. It did sometimes occur that certain tribes – constituting a minority carried out raids during which they seized women to marry, but this is a departure from the realm of war and comes closer to piracy.<sup>44</sup>

The third aspect of the principle forbids the use of weapons capable of causing excessive suffering. This provision is comparable with the ban encountered in Africa on the use of certain weapons regarded as too dangerous and of a nature likely to cause needless suffering. The African tradition forbade the use of poisoned arrowheads or spearheads in a conflict with a tribe belonging to the same branch. In this aspect, the African concept was limited than the law of The Hague, since the ban was only effective within one branch, for example, among the Bantu. This is explained by the fact that the African mentality has a need for the feeling of solidarity with members of one's own group, whether the group consists of a family, clan or ethnic group. This implies restraint to which one is obliged to submit, but to outsiders these obligations become relatively secondary.<sup>45</sup>

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<sup>43</sup>*Ibid* at 25

<sup>44</sup>*Ibid* at 26

<sup>45</sup>*Ibid* at 27

While the Law of The Hague is concerned with the means employed in conflicts, the Law of Geneva is especially devoted to protecting the victims of conflicts.<sup>46</sup> Traditional Africa is also familiar with such protection. The Law of Geneva provides, for example, in the principle of neutrality that humanitarian assistance never constitutes interference in a conflict. This can be compared to the institution of arbitrators whose function, during conflicts was to find grounds for understanding between the adversaries, and for this purpose were permitted to move freely between the two camps to make inquiries and to give advice. These arbiters had the benefit of total immunity in the course of their missions. Such immunity resulted from the fact that as messengers, envoys and negotiators they were regarded as foreigners, to whom all respect was due.<sup>47</sup>

Foreigners in Africa were accorded a sacred status,<sup>48</sup> and it is noteworthy that in several African languages, the word foreigner or stranger signified divinity.<sup>49</sup> The foreigner indeed is supposed to be the bearer of a benediction and is therefore treated with respect. He is believed to enjoy special protection and to be gifted with special powers. To injure him would be like attacking divinity, thus calling down super natural punishment upon oneself.<sup>50</sup> One can readily see the similarity between the objectives of the tradition and the law of Geneva.

Okoronye said that in pre-colonial Africa, the conduct of war was considered a whole endeavor which must conform with rules and principles. The use of very dangerous weapons was forbidden and a fallen enemy should not be struck.<sup>51</sup> Respect for women, children and the aged were upheld in all circumstances because women represented the source of life while children represented innocence. The elderly were considered to be close to the spirits of the ancestors.<sup>52</sup>

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<sup>46</sup> Boothby H. W. (2016) *Weapons and the Law of Armed Conflict* available at [www.books.google.com.ng](http://www.books.google.com.ng) accessed 23 July, 2016

<sup>47</sup> Bello (note 42 above) p28

<sup>48</sup> Ekeke E.C. and Ekeopara C.A., (2010) "God, Divinities and Spirits in African Traditional Religious Ontology" vol1(2) *American Journal of Social and Management Sciences* p209

<sup>49</sup> *Ibid* at 217

<sup>50</sup> A typical instance was demonstrated in the classical fiction of Chinua Achebe's *Things Fall Apart*. See Chinua Achebe, (1958) *Things Fall Apart* William Heinemann Ltd.

<sup>51</sup> Okoronye (note 38 above) p87

<sup>52</sup> Diallo Y., (1978) *African Traditions and Humanitarian Law*, Geneva, ICRC p2-3

Customary rules existed in almost all parts of the world. The religion of Islam laid down rules of war and the rights and obligations of combatants and non-combatants in order to make war as civilized and as humane as possible.<sup>53</sup> In response to this, OsitaEze said the importance of customary international humanitarian law cannot be overemphasized, customary international humanitarian law is that like other areas of international law, treaty is not a complete international law. Gaps in treaty law are filled by customary law or general international law. Customary law will apply where parties to the conventions and those who are not engaged in armed conflicts, since the treaties are applicable only to parties.<sup>54</sup>

## **6.0 National Policy on Internally Displaced Persons (Internally-Displaced Persons) in Nigeria**

While there is a visibly large number of internally-displaced persons scattered across various states in Nigeria, there is no reliable database providing a comprehensive profile of internally-displaced persons in Nigeria.<sup>55</sup> In the early 2006, the increasing number of internally-displaced persons due to conflict induced internal displacement informed the Nigerian Government to consider a National Policy on internally-displaced persons the draft of which was tabled for consideration in 2007 but then Federal Executive Council did not adopt it. The draft was revised twice between 2009 and 2012 to reflect the new realities and framework provided by the Kampala Convention. Having recognized that in Nigeria and elsewhere in the world, internally-displaced persons are amongst the most vulnerable populations for obvious reasons,<sup>56</sup> the Federal Government of Nigeria signed, ratified and deposited her instruments of the African Union (Kampala) Convention for the Protection and Assistance of internally-displaced persons in Africa.<sup>57</sup>

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<sup>53</sup> Yamani Z.A. (2001) "Humanitarian International Law in Islam, a General Outlook" cited in Ladan M.T. *Introduction to International Human Right and Humanitarian Law*, Zaria, ABU Press, p108

<sup>54</sup>Eze O. (1992) "African Concept of Human Rights" cited in Kalu A and Osibanjo Y. (eds.) *Perspective on Human Rights*, Lagos Federal Ministry of Justice, p8

<sup>55</sup> The Internal Displacement Monitoring Centre is trying to put up IDP figure analysis in Nigeria, yet it is merely an estimate that lacks accurate precision.

<sup>56</sup> See the Preamble of the National Policy on Internally Displaced Persons in Nigeria, 2012.

<sup>57</sup>The Kampala Convention on IDPs needing 15 ratifications under article 17(1) is yet to come into force as of 7 July 2011. Signed by 32 and ratified by 12 AU States including five ECOWAS Member States:-Gambia, Guinea-Bissau, Mali, Sierra Leone and Togo.

This policy provides a framework for national responsibility towards prevention and protection of citizens and, in some cases, non-citizens, from incidences of arbitrary and other forms of internal displacement, meet their assistance and protection needs during displacement, and ensure their rehabilitation, return, re-integration and resettlement after displacement. The policy spells out principles guiding humanitarian assistance and implementation of durable solutions in situations of internal displacement in Nigeria.

This policy has adopted the human rights-based approach and its principles. The intention is to accommodate as much as possible the provisions of existing international conventions, treaties and protocols on internal displacement, and guided by the dictates of international humanitarian and human rights laws. This policy therefore draws extensively from the guidance of international and national frameworks on the prevention of internal displacement, as well as those on protection and assistance of internally displaced persons. The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), the UN Guiding Principles on internal displacement and the Sphere Minimum Standards for Humanitarian Assistance have significantly defined the direction of this policy.

This policy is a practical admission of the fact that ensuring internally-displaced person protection and assistance primarily lays with national authorities whose mandate and obligation it is to protect and care for them.<sup>58</sup> One of the key factors compounding the plight of internally-displaced persons in Nigeria lies in the weak or non-existent process of enabling internally-displaced persons make an informed and voluntary decision as to whether to return to their home communities, remain where they are, or settle elsewhere in the country.<sup>59</sup>

It must however be remarked that this National Policy is yet to have the force of law in Nigeria, hence it is desirable to have the Policy enacted into law.

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<sup>58</sup> Section 14(2) (b) of the 1999 Nigerian Constitution imposes an obligation on the government, at all levels, to promote the security and welfare of the people as the primary purpose of government. This accord with Article 3(2) of the Kampala Convention on IDPs in Africa which requires States Parties to adopt implementing national legal and policy frameworks on the protection assistance of IDPs. Further, the Convention's Article 4 is to the effect that State Parties are obliged to ensure that all persons are protected against arbitrary displacement as a human right. Furthermore, by virtue of the Convention's Article 7, both parties in armed conflict are obliged to respect the provisions of International Humanitarian Law (IHL) and Human Rights Law in the protection and assistance to IDPs. Violators of the rights of IDPs shall be held responsible for their acts under both international and national laws.

<sup>59</sup>*ibid*

## 7.0 Constitutional Amendment in Nigeria, a Panacea for the Protection of the Rights of Internally Displaced Persons

The problem of internal displacement is serious enough to require an urgent amendment to Nigeria's constitution to guarantee expressly, the rights of internally displaced persons. The rising wave of displacements in the north part of the country has far-reaching implications for national political and economic stability. Given that the constitution obliges the government to safeguard the welfare of all Nigerians,<sup>60</sup> it becomes imperative that there be constitutional protection for displaced people.

The Nigerian Constitution is the grundnorm in the Nigerian legal order.<sup>61</sup> The constitution is significant in that, among other things, it sets policy objectives for the state and makes provision for inalienable human rights.<sup>62</sup> In the national hierarchy of norms, the constitution is regarded as the supreme law.<sup>63</sup> Its essence, set out in the preamble, is the need to ensure the welfare of the Nigerian people.<sup>64</sup> In achieving this principal objective, the constitution highlights strategic policy areas that the government must give priority to.<sup>65</sup> It further provides for fundamental rights that must be respected, and for which redress may be sought if they are infringed.<sup>66</sup>

Constitutional protection for internally displaced persons is important and essential as it will elevate the discussion on internal displacement from being just an altruistic, humanitarian concern to a constitutional issue. It will thus necessitate a systemic institutional response. As the constitution is central to the formation and functioning of government, including protection for internally displaced persons, its provisions will serve as a strong basis for the various organs of state to act proactively.

A constitutional entrenchment will further grant people a legitimate claim to protection against arbitrary state decisions that result in their displacement without recourse to international standards. This is particularly relevant when people are forced to leave their homes to make way

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<sup>60</sup> See generally Section 14(2) of the 1999 Nigerian Constitution

<sup>61</sup> See generally AbiolaSanni, (2006) 'Introduction to Nigerian Legal Method' (2<sup>nd</sup> ed.) ObafemiAwolowo University Press Limited, Ile-Ife

<sup>62</sup> See generally Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria, As Amended

<sup>63</sup> See Section 1(1)&(3) *ibid*

<sup>64</sup> See the Preamble of the 1999 Constitution

<sup>65</sup> See generally Chapter II *ibid*

<sup>66</sup> See Section 46 *ibid*

for development projects. Constitutional protection will give displaced people the opportunity to assert their rights to adequate protection against impoverishment from disruptions to their livelihoods.

One might argue that a reason for the omission of the role of the constitution in the protection of internally displaced persons lies in the rigidity of constitutional amendments. But recent history has shown that it is possible to amend the Nigerian constitution if necessary. The present Nigerian constitution has undergone amendments and another amendment is currently under review.<sup>67</sup>

Internally displaced persons can have their rights constitutionally protected and this research identifies four major areas where the rights of internally displaced persons can be constitutionally guaranteed. First is to extend the rights provided in Chapter IV of the Constitution to specifically make provisions protecting the rights of internally displaced persons. Second is to include the rights to internally displaced persons in Chapter II of the Constitution which is on Fundamental Objectives and Directive Principles of States Policy. The third is through the active role of the judiciary while the fourth is towards ratification and domestication of the United Nations Guiding Principles on Internal Displacement and the Kampala Convention by the National Assembly.

The first identified form is to extend the provisions of Chapter IV of the Constitution to specifically cater for the rights of internally displaced persons. Chapter IV of the Nigerian Constitution<sup>68</sup> provides for fundamental human rights. As rights contained in this chapter are enforceable, an insertion of specific internal displacement rights in the Constitution will afford internally displaced persons a legitimate claim before national courts. Although every internally displaced person in Nigeria is entitled to all rights provided for in the Constitution without any form of discrimination, however this is not sufficient. This research suggests that some specific provisions be inserted into Chapter IV of the Constitution to categorically address issues of internally displacement and correspondingly protect their peculiar rights under the constitution.

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<sup>67</sup>In January 2016 the Nigerian National Assembly set up a constitutional review committee at the level of the Senate and the House of Representatives to see into the further amendment of the 1999 Constitution

<sup>68</sup> Sections 33-46

The second form is in relation to Chapter II of the Nigerian constitution.<sup>69</sup> This Chapter 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. Hence, the provisions of Chapter II of the Nigerian Constitution are duties imposed on both the government and the citizens of Nigeria, and as an architectural plan for the government for good governance. It could however be argued that the provisions of Chapter II of the Constitution are not justiciable by virtue of Section 6(6)(c) of the constitution. However, this research recommends that if the rights of internally displaced persons are enshrined in Chapter II of the Nigerian constitution, a clause could be inserted to read, 'Notwithstanding the provisions of Section 6(6)(c) of the constitution, rights of internally displaced persons included in this Chapter shall be made enforceable in all courts in Nigeria'. This is believed to be a leeway to cure the unenforceability of the provisions of Chapter II of the Nigerian Constitution, especially when the rights of internally displaced persons are embedded in the Chapter.

Furthermore, the directive principles outline policy priorities in relation to economic, political, social and environmental concerns. In preserving social order, section 17 of the 1999 constitution mandates the state to direct its policy towards all citizens. In addition, it specifically recognises the need to protect children, young people and the elderly. Thus, the state has the legitimacy to develop national policies in relation to the welfare of internally displaced persons in furtherance of constitutional duties highlighted in Chapter II of the Nigerian Constitution. For instance, in 2001, a National Youth Policy was developed in Nigeria on children and young people. The policy was revised in 2009. The aim of the policy was to enhance youth participation and foster youth development. In 2007, Nigeria developed a National Child Policy to promote engagement among stakeholders on child rights.

The third instrumentality of constitutionally enforcing the rights of internally-displaced persons lies with the judiciary. The judiciary also has an enormous role to play in the enforcement of the rights of internally displaced persons in Nigeria.<sup>70</sup> The judiciary could advance the protection and assistance of internal displacement through judicial radicalism and periodic reference to the

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<sup>69</sup> Sections 13-24

<sup>70</sup> See section 6 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended)

United Nations Guiding Principles on Internal Displacement and the Kampala Convention, which Nigeria has ratified.

The fourth suggested mode of preserving the rights of internally displaced persons is the ratification and domestication of the United Nations Guiding Principles on Internal Displacement and the Kampala Convention by the National Assembly. Hence, the National Assembly likewise have a role to play in ensuring the rights of internally displaced are adequately preserved and protected.

### **8.0 Conclusion**

This research, having identified the urgent need to protect and assist internally displaced persons, recommends that the Nigerian National Assembly is in a position to initiate constitutional amendments to incorporate the protection of internally-displaced persons. This would ensure durable solutions to the problem of internal displacement at all levels in Nigeria and will also serve as a basis to test the constitutionality of governmental actions, policies, interventions and laws on internal displacement.

### **9.0 Recommendations**

The main thrust of this paper is to recommend an urgent constitutional amendment of the Nigerian Constitution to expressly provide for the protection of internally displaced persons in the country. In the interim however, this paper recommends the following as measures to serve as quasi-legal protection for internally displaced persons in Nigeria.

Responsible national governments are to first and foremost, avoid situations that will lead to displacement. They are to provide adequate security for civilians resident in violence-prone communities during any crises and conflicts particularly for those civilians who are not engaged in the violence. Moreover, ones there are displaced persons, responsible national governments must ensure Governments are to also seek the collaboration of the international community and other non-state actors to help them address the challenge of resettling and providing for displaced person. Based on the complexity of the challenge posed by the crises of internal displacement, working in partnership with regional and international bodies is essential to ensure effective responses.

Engaging displaced persons in consultations and human capital development is likewise a major tool to restoring a good life and livelihood to the internally displaced in Nigeria, especially the women. This can reduce their vulnerability to sexual extortion and violence.

Governments must ensure that internally-displaced persons return voluntarily, in safety and dignity, to their places of habitual residence or, if they choose, to resettle in another part of the country. The government is to assist internally-displaced persons to recover property and possessions or obtain compensation or reparation.<sup>71</sup>

A responsible government must devote to the extent they can, resources to address situations of internal displacement. A responsible and responsive government should invite or accept international assistance, especially when the government in question does not have adequate resources to tackle the challenge of displacement.<sup>72</sup> A responsive government will have a lot to do to protect the internally-displaced persons, assistance needs and to find durable solutions to their plight and to prevent further displacement from taking place.

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<sup>71</sup><http://www.vanguardngr.com/2015/10/do-internally-displaced-people-have-rights-under-the-law> accessed 10th February, 2017

<sup>72</sup> ibid