



A Critical Analysis of the Rights of Internally Displaced Persons in Nigeria

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ABSTRACT

In Nigeria, today, more than 3 million people are internally displaced for different reasons ranging from war and conflicts to natural disaster, persecution, discrimination and environmental degradation. Internally Displaced Persons (IDPs) face many issues in their displacement such as hunger, illness, diseases, abuse, trauma, exclusion, discrimination, neglect and starvation. There is unanimity of definition of IDPs under international law, regional law and domestic law and the roles of the government in protecting their rights. Nigeria is one of the states that have ratified some of these international legal instruments recognizing the rights of IDPs but have failed to take practical steps at domestic level to ensure that these rights are adequately implemented. It is against this backdrop that this article was aimed at examining the rights of IDPs under Nigerian law. The paper adopted the doctrinal research methodology to discuss the applicable legal documents. It found that there is inadequate legal protection of IDPs and their rights in Nigeria. It concluded that until the government gives a serious legal and institutional attention to the rights of IDPs in Nigeria, this vulnerable group will continue to face increased neglect in the country. It recommended that the National Assembly should enact a legislation codifying the rights of IDPs and the obligations of government towards the observance and implementation of those rights.

Keywords: Rights, Internally Displaced Persons (IDPs), Internal Displacement, Nigerian law

INTRODUCTION

Globally, the issue of internal displacement has become one of the most pressing humanitarian issues. This is because displacement often leads to human rights abuses, such as forced evictions and mass arbitrary arrests. As a result, many internally displaced persons (IDPs) experience terrible human rights violations and are unable to rebuild their lives and communities.¹ In Nigeria, more than 3 million people have been displaced as a result of the Boko Haram insurgency.² While international attention has focused on the humanitarian crisis caused by this conflict, not enough attention has been given to the plight of IDPs and their human rights. Although the Nigerian constitution has provided some fundamental right, which also apply to the IDPs, they have been poorly implemented. Moreover, the government has neglected the rights of IDPs and has continued to impose restrictions on their freedom of movement, access to basic services, education and employment opportunities. As a result, thousands of IDPs continue to live in poverty and are forced to live in deplorable conditions.

¹ S C Unachukwu, 'An Appraisal of the Challenges and Legal Protection Available for Internally Displaced Persons in Nigeria' [2022](6)(3) *International Journal of Trend in Scientific Research and Development (IJTSRD)*:91-96.

² M Olugbode, 'Nigeria Has 3.2 Million IDPs, 84,000 Refugees, UNHCR Reveals'

<<https://www.thisdaylive.com/index.php/2022/06/21/nigeria-has-3-2-million-idps-84000-refugees-unhcr-reveals/>> accessed 26 November 2022.

DEFINITION OF TERMS

Rights

The term right has been variously defined by different scholars. The Black's Law Dictionary has defined it as 'something that is due to a person by just claim, just legal guarantee or moral principle.'³ It is hereby defined within the context of human rights to include the entitlement of a person which inheres in him by virtue of his humanity and as recognized by the law. In *Kuti v Attorney General of Federation*⁴ the court has defined human rights as:

A right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition of a civilized existence, and what has been done by our existence, and what has been done by our (Nigeria) constitutions since independence is to have these rights ensured in the constitution so that the rights could be immutable to the extent of the non-immutability of the constitution itself.

Human rights are universal, inalienable, indivisible and interrelated or interdependent.⁵ It is universal in the sense that it has equality of application to every individual without discrimination. Inherent in the sense that human rights are intrinsic to humanity. Inalienable meaning that no one can take away these rights from the individuals. Indivisible in that they cannot be separated or divided into parts. Finally, human rights are interrelated or interdependent in the sense that they all have equal status and are all necessary and depend on one another in protecting human dignity.⁶

Internally Displaced Persons (IDPs)

Article 2 of the United Nations Guiding Principles on Internal Displacement 1988 has defined Internally Displaced Persons in the following words:

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.⁷

The foregoing is the standard legal definition of IDPs recognized under domestic, regional and domestic law. The definition simply implies that IDPs are not necessarily refugees but people who face the same ordeals as refugees in that they are forced to flee their homes due to conflict. The key distinguishing element between refugees and IDPs is that IDPs are within the borders of their country and have therefore not crossed an international border; whereas refugees have crossed an international border to escape persecution, natural disaster, insurgency or other permissible factor. Despite the differences between the term "refugee" and "internally displaced person" there is overlap between the two statuses. The same root causes are often behind displacement in both contexts and the problems faced by internally displaced persons are often similar to those experienced by refugees. Also, they share similar protection needs and legal rights.

³ Garner p.1517

⁴ (1985) 2 NWLR (Pt 6) 211.

⁵ Human Rights.< <http://www.yrcenter.org>> accessed 22 November 2022.

⁶ U Emelonye, 'Rule of law and Human Rights Development',

< <http://www.nigerabestforum.com/geenraltopics/p.72986> > accessed 22 November 2022.

⁷ Protocol on the Protection and Assistance to Internally Displaced Persons 2006, art.1(5); African Union Convention for Protection and Assistance of Internally Displaced Persons in Africa 2009, art.1(k); National Policy on Internally Displaced Persons in Nigeria 2012, s.1.2.

CAUSES AND EFFECTS OF INTERNAL DISPLACEMENT IN NIGERIA

Today, more than 4 million people are internally displaced in Nigeria with Boko Haram insurgency contributing to over 3 million in the northeastern part of the country.⁸ Internal displacement has adverse effects on IDPs in Nigeria - physical, psychological and social. The physical effects of displacement include the destruction and loss of property, injury, and death. Psychological effects include post-traumatic stress disorder (PTSD), depression, anxiety, helplessness, and grief. Social effects include loss of income, separation from family/friends, breakdown of social networks and increased social isolation. Women and children are more vulnerable to these adverse effects.

The rates of internal displacement in Nigeria are rising as a result of insurgency activities, ethnic, religious and political divisions, natural disaster and environmental degradation in the country.⁹ The displacement of over two millions people by the foregoing factors has resulted in significant physical, psychological and social damage for displaced communities. In 2022, the outbreak of flood in some parts of Nigeria - Lagos, Rivers, Kogi, Edo, Bayelsa, and others - has further complicated the humanitarian situation in the country.

The condition of the IDPs in the affected areas remains precarious due to the lack of adequate food and shelter, as well as limited access to basic healthcare. This has further demonstrated the weakness of the law and the inability of the state to protect such vulnerable population. This has raised serious concern among stakeholders as to the role of the law in not only ensuring their well-being but also protecting their rights as guaranteed under the law.

RIGHTS OF IDPS UNDER INTERNATIONAL LEVEL

The legal protection of the rights of IDPs takes its root at the international level with the adoption of the United Nations Guiding Principles on Internal Displacement in 1998 followed by the 2006 Protocol on the Protection and Assistance to Internally Displaced Persons. Later in 2009, the African Union (AU) adopted the Convention for Protection and Assistance of Internally Displaced Persons in Africa. The common aim of these international legal instruments was to provide a legal framework that can serve as a blueprint for member states to protect IDPs within their jurisdictions.

1. United Nations Guiding Principles on Internally Displaced Persons in 1988

Under principle 1 of the United Nations Guiding Principles on Internal Displacement 1998, IDPs are entitled to enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. The Guideline prohibits any form of discrimination in the enjoyment of any rights and freedoms on the ground of their internal displacement. In other words, the fact that a person is internally displaced does not deny him the rights enjoyed by other persons not internally displaced. Principle 4 takes cognizance to special IDPs such as children, expectant mothers and persons with disabilities.¹⁰ The Guidelines provides that these persons are entitled to special legal protection and assistance required by their conditions as well as necessary treatments, special needs and consideration.¹¹ Principle 7 of the Guiding Principle states that 'prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.'¹² This means that displacement should be a last resort and every effort should be made to prevent displacement in the first place. Internally displaced people have the right to an adequate standard of living and access to essential services. It therefore implies that these rights need to be extended to them before they are forced to move to a new place. Thus, the authorities

⁸ UN Refugee Agency, 'Internally Displaced People' <<https://www.unhcr.org/ng/idps>> accessed 27 November 2022.

⁹ F K Mohammed, 'The Causes and Consequences of Internal Displacement in Nigeria and Related Governance Challenges' (Working Paper. Division Global Issues Stiftung Wissenschaft und Politik German Institute for International and Security Affairs, April 2017, SWP Berlin)

¹⁰ UN Guiding Principle on Internal Displacement 1998, principle 4(2)

¹¹ *Ibid.*

¹² *Ibid.*, principle 7(1).

undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.¹³

Principle 10 of the Guiding Principles states that ‘attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances.’¹⁴ By this provision, it is prohibited to attack internally displaced persons who are not participating in hostilities. This means that any violence against such internally displaced persons is a crime irrespective of the fact that they are former combatants. For example, if a civilian was wounded during an attack while fleeing from the fighting and was later forced to return to his home for fear of being killed if he stays outside, then the attack constituted an act of violence against that person even though he had participated in hostilities in the past.

In addition to the foregoing, the UN Guiding Principles recognizes the following rights of IDPs:

- i. Adequate measures must be taken to ensure that those who will be relocated have full access to information about the circumstances of their relocation, including any applicable compensation and relocation;¹⁵
- ii. The individuals who will be relocated must provide their free and informed consent;
- iii. The authorities concerned must make an effort to include those who will be impacted, particularly women, in the planning process.
- iv. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence¹⁶
- v. IDPs have the right to move freely in and out of camps or other settlements.¹⁷
- vi. The right to seek safety in another part of the country¹⁸
- vii. The right to leave their country¹⁹
- viii. The right to seek asylum in another country²⁰
- ix. The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.²¹
- x. All internally displaced persons have the right to know the fate and whereabouts of missing relatives²²
- xi. All internally displaced persons have the right to an adequate standard of living.²³

In order to ensure that these rights are complied with, the UN Guiding Principles vests some obligations on the Member States. For example, under principle 9, States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands. By virtue of principle 24, all humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.²⁴ Also, humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.²⁵

¹³ *Ibid.*, principle 7(2).

¹⁴ *Ibid.*, principle 10(1).

¹⁵ UNGP (n 10), principle 7(3).

¹⁶ *Ibid.*, principle 14(1).

¹⁷ *Ibid.*, principle 14(2).

¹⁸ *Ibid.*, principle 15(a).

¹⁹ *Ibid.*, principle 15(b).

²⁰ *Ibid.*, principle 15(c).

²¹ *Ibid.*, principle 15(d).

²² UNGP (n 10), principle 16.

²³ *Ibid.*, principle 18(1).

²⁴ *Ibid.*, principle 24(1).

²⁵ *Ibid.*, principle 24(2).

2. The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa

The Kampala Convention was adopted by the African Union in 2008 but it came into force in 2012. By virtue of article 15, the provisions of the Kampala Convention apply to all situations of internal displacement regardless of its causes. The Kampala Convention did not expressly prescribe the rights of IDPs; however, it recognizes the rights of these people as set out in the UN Guiding Principles on Internal Displacement²⁶ and provide the obligations and responsibilities of State Parties with respect to those rights.

The first objective of the Kampala Convention is to promote and strengthen regional and national initiatives aimed at reducing or preventing internal displacement, eradicating its causes, and offering long-lasting remedies.²⁷ In line with this objective, article 3(1)(b) of the Kampala Convention obligates the Member States in Africa to prevent marginalisation and political, social, cultural, and economic exclusion that may result in the displacement of populations or individuals due to their political, religious, or social identities.

To ensure adequate enforcement of the objective, the Kampala Convention further obligates Member States to incorporate their obligations under the Convention into domestic law by enacting or amending relevant legislation on the protection of, and assistance to, internally displaced persons in conformity with their obligations under international law.²⁸ Under this provision, African states are implored to take legal steps at the national level to ensure that the objectives set out in the Kampala Convention are effectively met.

RIGHTS OF IDPS IN NIGERIA

The protection of IDPs rests primarily with national governments and local authorities²⁹ who are under constitutional obligation to ensure that the safety, security and welfare of their citizens, especially those under certain humanitarian crises, are guaranteed and protected.³⁰ There are some laws in Nigeria touch on the rights and legal protection of IDPs and their general welfare.

1. Constitution of the Federal Public of Nigeria 1999 (as amended)

The Constitution of the Federal Republic of Nigeria 1999 (as amended) is the foundation of legal rights in Nigeria and the reason for this assertion cannot be far-fetched. The CFRN is the supreme law in Nigeria from where all other laws, persons and authorities derive their validity.³¹ Thus, any act that violates the provision of the CFRN is void to the extent of its inconsistency.³² This implies that the rights recognized under the CFRN supersedes all other rules and persons and shall not be derogated from except in accordance with the provisions of the CFRN.

With respect to IDPs, there is no special part of the CFRN dedicated on the rights of the IDPs; however, the general rights recognized under Chapter IV of the CFRN also apply to the IDPs. It therefore means that IDPs have the following rights recognized under the CFRN: right to life,³³ right to dignity of the human person,³⁴ right to personal liberty,³⁵ right to fair hearing;³⁶ right to private and family life;³⁷ right to freedom of thought, conscience and religion,³⁸ right to freedom of expression and the press,³⁹ right to

²⁶ for the Protection and Assistance of Internally Displaced Persons in Africa, preamble.

²⁷ Kampala Convention (n 26), art.2(a).

²⁸ *Ibid.*, art.3(2)(a).

²⁹ UNGP (n 10), principle 25(1).

³⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended) Cap C23 LFN 2004, s.14(2)(b).

³¹ *Ibid.*, s.1.

³² CFRN (n 1). s.1(3).

³³ *Ibid.*, s.33; *Okonkwo v. State* (1998) 4 NWLR (Pt.544)142; *Odugu v. A.G. Federation* (1996)6 NWLR (Pt.456) 508

³⁴ *Ibid.*, s.34; *Nemi v. A.G. Lagos State* (1996)6 NWLR (Pt.452)42; *Mogaji v. Boards of Custom* (1982)3 NCLR 552

³⁵ *Ibid.*, s.35; *Iyere v. Duru* (1986)5 NWLR (Pt.44)665; *Madiebo v. Nwankwo* (2002)1 NWLR (Pt.748)426

³⁶ *Ibid.*, s.36; *LPDC v. Fawehinmi* (1985)1 NWLR (Pt.7) 300; *Adigun v. A.G. Oyo State* (1987)1 NWLR (Pt.53)678

³⁷ *Ibid.*, s.37; *Ezeadukwa v. Maduka* (1997) 8 NWLR (Pt.518) 635; *Malone v. COP* (1979)2 All ER 620

³⁸ *Ibid.*, s.38; *Adamu v. A.G. Borno State* (1966)8 NWLR (Pt.465) 203

³⁹ *Ibid.*, s.39; *People Star Press v. Adebayo* (1971)1 UILR 269; *Amakiri v. Iwowari* (1974)1 RSLR 5

peaceful assembly and association;⁴⁰ right to freedom of movement,⁴¹ and many others rights. These rights are enforceable in courts and may not necessarily need to occur before a cause of action will arise as a mere threat of violating any of such rights can entitle one the *locus* maintain an action. Thus, except under the circumstances recognized by the CFRN,⁴² none of these rights is to be derogated from an IDP whether during the period of displacement or at post-displacement era.

In addition to the rights under Chapter IV, the CFRN also obligates the State to direct its policy towards ensuring that provision is made for public assistance in deserving cases or other conditions of need.⁴³ IDPs under humanitarian crises fall under this category as the intendment of the drafters of the CFRN is to ensure that those in vulnerable conditions are protected by the government by making adequate protection for their wellbeing. The flood incident that ravaged over 100 communities in Rivers State rendered many people vulnerable and helpless that they had to cry out for public assistance from the government and general public.⁴⁴ Section 17(3)(g) of the CFRN therefore permits the government to make provision for public assistance for the affected victims to reduce the devastating impacts of the natural disaster on them.

However, it is quite unfortunate that the government treats such issues with less and undeserving attention; and since the provision of such public assistance to the IDPs is second-generation right in Nigeria under Chapter II of the CFRN, the IDPs cannot enforce the non-compliance of that obligation in court. This is because by the provision of section 6(6)(c) of the CFRN, the court does not have the jurisdiction to entertain matters bothering on the failure of the government to comply with its obligations under Chapter II of the CFRN, which contain the second-generation rights.⁴⁵ This constitutional barrier makes it difficult for the IDPs to seek justice in court where the government has failed to cater for their wellbeing as required by the law. The IDPs may have the option of enforcing their second-generations rights guaranteed under the African Charter on Human and Peoples' Rights 1981 by virtue of the ratification and domestication of the Charter.⁴⁶ The problem is that, until today, the Nigerian courts are slow in enforcing these soft rights against the government because of the economic and financial incapacity of the government to enforce such rights in the country.

2. National Policy on Internally Displaced Person

The Federal Government of Nigeria established a committee in 2003 to create a National Policy on Internally Displaced Persons (IDPs) to aid in identity card registration and issuance, internal displacement prevention or reduction, and responsibility distribution among government agencies and organs. The National Policy on Internally Displaced Persons, the committee's final product, was prepared and delivered to the government, however it has not yet been formally accepted.⁴⁷ The Policy is based on Kampala Convention and the Guiding Principles on Internal Displacement.⁴⁸

Chapter 3 of the National Policy on Internally Displaced Person (NPIDPs) provides for the rights and obligations of the IDPs. It states that all internally displaced people in Nigeria are entitled to all of the rights outlined in the Nigerian Constitution, statutes, and domesticated sub-regional, regional, and international human rights and humanitarian agreements. In addition to the foregoing general rights to which IDPs are entitled, there are specific rights under the NPIDPs applicable in Nigeria. Under this National Policy, the IDPs have the right to seek safety in another part of the country.⁴⁹ This means that the safety of IDPs is not absolutely confined to the host community as they have the right to seek refuge from

⁴⁰ *Ibid.*, s. 40; *Osawe v. Reg. of Trade Unions* (1985) 1 NWLR (Pt.4) 755; *Trucks Nig. Ltd. v. Pine* (1999)6 NWLR (Pt. 607) 514

⁴¹ *Ibid.*, s. 41; *Thomas v. Sawkins* (1935)All ER 655; *Okogie v. A.G. Lagos State* (1981) 1 NCLR 218

⁴² *Ibid.*, s.45.

⁴³ CFRN (n 30), s.17(3)(g).

⁴⁴ Daily Trust, 'Tales Of Rivers Residents Sacked By Flood' (23 oCTOBER 2022) <<https://dailytrust.com/tales-of-rivers-residents-sacked-by-flood/>> accessed 22 November 2022.

⁴⁵ *Okogie v. A.G. Lagos State* (1981) 1 NCLR 218

⁴⁶ *Abacha and ors v Fawehinmi* (2001) 1 CHR 95

⁴⁷ S C Unachukwu, 'An Appraisal of the Challenges and Legal Protection Available for Internally Displaced Persons in Nigeria' [2022](6)(2) *International Journal of Trend in Scientific Research and Development*:91-98.

⁴⁸ *Ibid.*

⁴⁹ National Policy on Internally Displaced Persons 2009, cap.3.1.1.(c)(i)

conflict in other parts of the country. This is especially necessary where the continuous stay in that host community would put them at risk of attack or harassment.

IDPs also have the right to leave their country under the National Policy document.⁵⁰ However, this does not apply if the country in which the IDPs are seeking asylum is itself experiencing violence and war. In this case, the IDPs are not free to leave as it would be unsafe for them to do so. IDPs in Nigeria have the right to seek asylum in other part of the country of their choice if they feel that their safety will be jeopardized if they remain in a particular area in Nigeria. On the other hand, the Nigerian government has the right to reasonably refuse to allow the IDPs to seek refuge in any other country where they may face persecution due to ethnicity or nationality.

Furthermore, IDPs have the right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.⁵¹ In other words, they cannot be sent back to their home country if their safety and wellbeing cannot be guaranteed there. This means that the government may not force any IDPs to return to their home and settle elsewhere unless they are willing and able to secure adequate security for them. In reality however, this is often not the case as many IDPs remain in desperate conditions for many years after fleeing their homes because of continued insecurity in their country of origin.

Under the policy document, IDPs are entitled to ask the state and local authorities for protection and help, and they are not to face punishment or persecution for doing so.⁵² Additionally, vulnerable IDPs have a right to the protection and assistance necessitated by their illness or unique need. Children who are accompanied, unaccompanied, or orphans, women, especially nursing mothers, expectant mothers, and female heads of households, people with impairments, and the elderly are examples of these vulnerable IDPs.⁵³

This Policy hereby guarantees the right to the dignity, the physical, mental, and moral integrity of every human being. IDPs must be protected from rape, sexual harassment, mutilation, torture, inhuman treatment or punishment, gender-specific violence, forced prostitution, indecent assault, slavery in any form, forced sale into marriage, sexual exploitation, forced labour of children, and acts of violence meant to sow fear among internally displaced people, whether or not their freedom is restricted. Threats to do any of the aforementioned are likewise prohibited.

3. National Emergency Management Agency (Establishment) Act 1999

The NEMA Act was enacted to ensure the effective management of disasters in Nigeria. Although it does not prescribe the rights of the IDPs, it does vests the NEMA with the duty to formulate policies and coordinate activities for efficient and effective response to disasters at the national level.⁵⁴ Where there is a distress call either by IDPs or other people, NEMA is empowered under section 6(1)(f) of the NEMA Act to facilitate the provision of necessary resources for search and rescue and other types of disaster curtailment activities in response to such call. It is also under duty to collect relief materials from local and international sources and distribute same to the IDPs or victims of natural disaster and further assist in the rehabilitation of the victims.⁵⁵

4. National Commissions for Refugees (Establishment etc) Act

This law was established for the purpose of safeguarding the interest and treatment of persons who are seeking to become refugees in Nigeria or persons seeking political asylum in Nigeria.⁵⁶ Under this law, refugees have the right to be admitted entry into Nigeria for their safety. Section 1(1) of the Act clearly states that no refugee shall be refused entry into Nigeria, expelled, extradited or returned in any manner whatsoever, to the frontiers of any territory where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular group or political opinion or where his life,

⁵⁰ NPIDP (n 49), cap.3.1.1(c)(ii).

⁵¹ *Ibid.*, cap.3.1.1(c)(iv).

⁵² *Ibid.*, cap.3.1.1(d).

⁵³ *Ibid.*, cap.3.1.1(e).

⁵⁴ National Emergency Management Agency (Establishment) Act 1999 N34 LFN 2004, S.6(1)(a).

⁵⁵ *Ibid.*, s.6(1)(i)(j).

⁵⁶ National Commissions for Refugees (Establishment etc) Act, preamble.

physical integrity or liberty could be threatened on account of external aggression, occupation, foreign domination or events seriously disrupting public order in any part or the whole of that territory. However, under section 1(2) of the Act, entry of such person may be denied where he poses a danger to the security of Nigeria or where he is convicted by a court or tribunal for committing any serious crime within the recognised under the Act.

5. National Commission for Refugees, Migrants and IDPs (NCFRMI) Act

The NCFRMI was established in 1989 by the NCFRMI Act to address issues and problems relating to refugees in Nigeria. However, in 2002, the mandate of the NCFRMI was expanded to include the IDPs and later migrants. Thus, today the NCFRMI is mandated to coordinate the national action for the protection and assistance of refugees, asylum seekers, returnees, stateless persons, migrants and IDPs. The NCFRMI works in collaboration with the Federal Government to ensure the total rehabilitation, reintegration and resettlement of IDPs in Nigeria.

RIGHTS OF IDPS IN OTHER JURISDICTIONS

Colombia is one the countries that have taken both legislative and judicial steps in protecting the rights of IDPs. The Colombian government has established a legal framework to protect the rights of IDPs. The Colombian Constitution guarantees the right to life, liberty, and security of person, as well as the right to freedom of movement and residence. The Colombian government has also ratified several international treaties that protect the rights of IDPs, including the International Covenant on Civil and Political Rights 1966, the International Covenant on Economic, Social and Cultural Rights 1966, and the Convention on the Rights of the Child. These treaties provide a legal basis for protecting the rights of IDPs in Colombia. In 1997, the Government of Colombia passed Law No. 387 on the protection of IDPs, which states in article 15(1) that in the event of a displacement, the government will be obligated to assist the displaced, including with food and temporary accommodation. The Law further established the National Institute of Urban Reform and charged it with the duty of establishing unique housing projects to accommodate the needs of people displaced by violence.⁵⁷

In 2004, the Constitutional Court held that all of the relevant authorities must remedy the poor living conditions of IDPs.⁵⁸ The Court observed that thousands of IDPs consistently experience violations of their human rights, including the right to food and the right to housing, as a result of government action or inaction in providing appropriate protection to populations who have been displaced.⁵⁹ In general, the Court observed that the rights abuses of IDPs were caused by underlying structural flaws rather than the deeds or inactions of a single authority. This judicial creativity and responsiveness has helped to strengthen the observance of the rights of IDPs prescribed by the Law No. 387 and other legislative enactments that promote the rights of this vulnerable group.

This is unlike the situation in Nigeria where there are slow efforts from both the judiciary and the legislature on issues relating to second-generation rights, especially on the issues affecting the IDPs. Colombia has a Law that legally protects the IDPs and their rights and in addition, the Constitutional courts have made laudable decisions that charge the government in complying with its obligations on the plight of IDPs. This therefore serves as useful lessons to Nigeria because without an adequate legislative framework and judicial activism, the enforcement of the rights of IDPs in Nigeria will continue to suffer serious setbacks.

ISSUES FACING THE RIGHTS OF IDPS IN NIGERIA

There is no doubt that the rights of internally displaced persons in Nigeria are often violated. This is due to the fact that there is no clear legal framework in place to protect their rights. Since the commencement

⁵⁷ Law No. 387, art.19(14).

⁵⁸ Colombian Constitutional Court, Decision T-025 of 2004

⁵⁹ *Ibid.*

of terrorism and insurgency in Nigeria that have seen the displacement of many Nigerians, it is quite sad that the National Assembly is yet to see the need to enact a legal regime to protect the IDPs from all forms of abuse and denial of basic necessities. The provisions of the CFRN are not adequate to protect the IDPs. Although the National Policy on Internally Displaced Persons contained provisions that specifically address the rights, interests and needs of the IDPs, it is a mere draft policy document which is yet to receive a legal backing from the National Assembly.⁶⁰

Additionally, the government often fails to provide adequate assistance and support to internally displaced persons. As a result, they are often forced to live in squalid conditions and are at risk of diseases, exploitation, abuse and death. However, it is important to note that there are some organisations and individuals working to protect the rights of internally displaced persons in Nigeria. For instance, the Nigerian Red Cross Society has set up camps to provide assistance and support to internally displaced persons, especially in the northeastern part of the country where millions of people are displaced by Boko Haram insurgency. Additionally, there are a number of NGOs working to raise awareness about the rights of internally displaced persons and to provide support to them. But the lack of government's support to these organizations is significantly reducing their zeal in caring for the IDPs. For example, in the outbreak of flood in 2022, some government institutions provided meagre supports to the victims but pumped so much money in their political campaigns and meetings.

Ignorance and illiteracy constitutes another problem facing the rights of IDPs in Nigeria. Until today, most people in Nigeria, both the educated and uneducated, are largely unaware of the rights and safeguards provided by the law to ensure they are treated fairly and equally at the IDP camps. Most of these safeguards exist in the form of constitutional rights, international rights and policy rights which go to the root of every of their general safety and wellbeing. But due to ignorance and illiteracy, most IDPs have failed to utilize these tools or failed to act when they are denied of them. As a result their silence, the governments do not sit up to their responsibilities.

Bribery and corruption has eaten deep into the fabrics of the Nigerian legal system and its public and private institutions. There are many instances where bribery and corruption have denied the IDPs and deserving persons of public assistance. When COVID-19 broke out in Nigeria in 2020, every state received palliatives to be distributed to the deserving persons in each state.⁶¹ But it is unfortunate that in most states, these palliatives were distributed among government officials and other non-deserving persons who were enriching themselves with public funds and resources to the detriment of the public.⁶² In 2022, the governor of Rivers State approved the sum of 1 Billion Naira to cater for the IDPs and victims of flood in the state,⁶³ but the condition of the displaced people and their camp did not reflect such amount.

Furthermore, for IDPs' rights to be effectively guaranteed and protected, there must be strong institutions that can enforce and implement the rights recognized by the law. However, in Nigeria, reverse is the case as the institutions that are supposed to promote the law are the ones abusing it. Also, most of the institutions involved in responding to humanitarian disaster such as the NEMA and the Federal Ministry of Humanitarian Affairs, Disaster Management and Social Development in Nigeria are poorly equipped with funds, infrastructure and competent personnel who have the integrity and passion to comply and enforce the rights of IDPs without fear or favour.

⁶⁰ Unachukwu (n 1)

⁶¹ State House, 'Distribution of Palliatives by Federal Ministry of Humanitarian Affairs, Disaster Management and Social Development (FMHDS)' <<https://statehouse.gov.ng/covid19/2020/12/28/palliative-reports-fmhds/>> accessed 29 November 2022.

⁶² L Nwabughio, '2021 Budget Defence: Every Governor got COVID-19 palliatives from FG — Humanitarian Affairs Minister' <<https://www.vanguardngr.com/2020/11/2021-budget-defence-every-governor-got-covid-19-palliatives-from-fg---humanitarian-affairs-minister/>> accessed 29 October 2022

⁶³ D Naku, 'Wike approves N1bn to support Rivers flood victims' <<https://punchng.com/wike-approves-n1bn-to-support-rivers-flood-victims/#:~:text=Wike%20said%20the%20N1%20billion,the%20Rivers%20State%20Government%2C%20Dr.>>> accessed 29 October 2022.

There also judicial barriers that hinder the effectiveness of the rights of IDPs in Nigeria. The first barrier is the non-justiciability of the economic, health and social rights of the IDPs which ties the hands of the courts in holding the government responsible for failing to fulfill their constitutional obligations. The second judicial barrier is the high cost of justice system in Nigeria. IDPs are vulnerable persons who may not have the financial muscle to obtain the services of a legal practitioner to enforce their rights. The third and final barrier is the procedural delays in adjudicating cases in Nigeria. Human rights cases are supposed to be given top priorities, however, in most courts in Nigeria, it is possible for some fundamental rights cases to linger for over five years due to unnecessary adjournments, inadequate court personnel and facilities, political interferences, ineptitude of magistrates and judges and other factors.⁶⁴ These factors, put together, discourage IDPs to enforce their rights and therefore make these rights a mere paper work.

There are also issues facing the rights of IDPs under international law. Without doubt, the UN Guiding Principles on Internal Displacement provides for certain rights of IDPs. However, there are specific problems facing the provisions of this Guiding Principles. First, although the provisions in the Guiding Principles are mandatory, there is no mechanism to ensure compliance and prosecution of those who do not comply with the provisions. There are also no mechanisms to address complaints related to the protection of human rights of IDPs and lack of access to justice and remedy by IDPs. Second, the recommendations and principles found in the Guiding Principles focus more on individuals and their rights, and less on host communities and their needs. Third, international law is generally weak in the protection of rights and entitlements of the host community and IDPs as a whole as a whole due to problem of state sovereignty.

For example, in Nigeria, section 12 of the CFRN 1999 has made it clear that no treaty shall have the force of law in the country except same has been dully domesticated by the National Assembly and adopted as part of our domestic laws. Only then will Nigerians rely on those rights within the jurisdiction. This implies that unless the UN General Principles on International Displacement and the Kampala Convention have been domesticated, the IDPs in Nigeria cannot rely on the rights contained in them. This poses a serious setback to the international legal protection of IDPs. The National Policy on Internally Displaced Persons may have recognized the rights contained in the foregoing international legal instruments, the Policy is yet to be adopted by the National Assembly and thus not yet a legal documents enforceable in court.

CONCLUSION

Like every other person, IDPs have the right to life, the right to freedom from torture, the right to freedom from inhuman or degrading treatment, the right to respect for private and family life, and the right to an adequate standard of living. It is therefore important to recognize the problems faced by IDPs in Nigeria and ensure that their rights are protected. Failure to do so will not only worsen the situation but will also breed resentment and animosity among the IDPs towards the authorities responsible for protecting their rights. The government therefore owes the IDPs several obligations primary among which is to ensure that they are able to live in dignified conditions and have access to adequate food and shelter. In addition, the government must ensure that they are able to return home when they are able to do so without exposing themselves to any harm or risk. Unless these are effectively guaranteed, then the humanity of the IDPs would seem to have been completely ignored or eroded by reason of their displacement.

RECOMMENDATIONS

The following are the recommendations of this paper:

⁶⁴ M R Ayuba, 'Justice Delayed is Justice Denied: An Empirical Study of Causes and Implications of Delayed Justice by the Nigerian Courts' (A Paper Presented to the Department of Sociology, Faculty of Social Sciences, Ahmadu Bello University, Zaria).

- i. The National Assembly should adopt the National Policy on Internally Displaced Persons and improve on it for adoption as the legislative framework for the rights of IDPs in Nigeria
- ii. The National Assembly should establish a National Council on the Rights of IDPs to ensure that the rights and welfare of the IDPs recognized under the law are effectively implemented without fear or favour.
- iii. To address the issue of corruption in the provision of public assistance to the IDPs, the whistle blowing policy should be reviewed to provided more protection to the whistle blowers and more stringent sanction to the culprits
- iv. The National Assembly should domesticate the UN General Principle on Internal Displacement and the Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa to facilitate their full application and implementation in Nigeria
- v. Economic, social and health rights of IDPs should be made justiciable by the deletion of the provision of section 6(6)(c) of the CFRN 1999

Therefore, it is submitted that if the foregoing recommendations are fully implemented, the issues and problems facing the rights of IDPs in Nigeria will become dead and buried.