

# **An Examination of the Constitution of the Federal Republic of Nigeria, 1999, as a framework for the Protection and Promotion of the Rights of Internally Displaced Persons in Nigeria**

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## **Abstract**

*Internal displacement is the great tragedy of our time. Internal displacement has become a burning issue in Nigeria as a result of the Boko Haram insurgency, farmer-herder conflict, kidnapping for ransom, incessant killings and abductions across the Country. This has necessitated the need to examine the rights of internally displaced persons within the constitutional provision. The research found that apart from the fact that the rights of IDPs in Nigeria cannot be found in any singular piece of legislation, there are no specific rights for IDPs in Nigeria except the civil and political rights in chapter II of the constitution which are not justiciable. The paper therefore made some recommendations including re-enactment of the Kampala Convention as an Act of National Assembly and amendment of the constitution to make rights contained in chapter II justiciable, among others.*

**Keywords:** Internally Displaced persons, Rights Protection Constitution, Convention

## **1. Introduction**

Kofi Annan, one-time Secretary-General of the United Nations Organisation (UN) said: “Internal displacement is the great tragedy of our time. The internally displaced people are among the most vulnerable of the human family.” Internal displacement has become a burning issue in Nigeria. Boko Haram insurgency in the north eastern part of Nigeria has entered its 12<sup>th</sup> year since it began in 2009. The Global Report on Internal Displacement of 2020 put the

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figure of internally displaced persons (IDPs) in Nigeria at 2,583,000.<sup>1</sup> Of this figure 2,046,604 are said to be displaced by the insurgency in the north-eastern Nigeria.<sup>2</sup> Farmer-herder conflict has also been on the rise in other parts of the country. In 2021, armed banditry assumed a horrifying dimension which included kidnapping for ransom, incessant killings and abductions, and wanton destruction of properties.<sup>3</sup> All these have greatly increased the number of IDPs in the country. IDPs require urgent assistance in the area of healthcare, food, shelter, security, among other basic needs. This assistance ought to come primarily from the government; however non-governmental organisations, faith-based organisations, humanitarian agencies, and public spirited individuals have all been involved in the care and management of IDPs.

In a bid to rise up to its responsibility to IDPs, the Federal Government of Nigeria formulated the National Policy on Internally Displaced Persons in Nigeria, 2012. While the policy is a good document, it is not law. No court of law can enforce the rights contained in a Policy. The Constitution of the Federal Republic of Nigeria, 1999, applies with equal force to IDPs and is often touted as a formidable tool in the protection and enforcement of the rights of all persons, including IDPs. Thus, if IDPs must approach the courts for the enforcement of their rights, they must rely on the CFRN 1999. However, the extent to which it protects the rights of IDPs is arguable and it is the intent of this paper to examine critically the suitability of the provisions of fundamental rights Constitution of the Federal Republic of Nigeria, 1999 as the Legal framework for the protection and promotion of the rights of IDPs.

## 2. Conceptual Clarifications

### *Internal Displacement*

Article 1 (l) of the African Union Convention for Protection and Assistance of Internally Displaced Persons in Africa, (Kampala Convention), 2009, defined internal displacement as “the involuntary or forced movement, evacuation or relocation of persons or groups of

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<sup>1</sup> Internal Displacement Monitoring Centre (IDMC) 'Nigeria: Country Information' available at <<https://www.internal-displacement.org/countries/nigeria>> last visited 22/7/2021.

<sup>2</sup> Internal Displacement Monitoring Centre (IDMC). 'Nigeria IDP Figure Analysis' <<https://displacement.iom.int/reports/nigeria-%E2%80%94-displacement-report-31-february-2020>> last visited 22/7/2021.

<sup>3</sup> Idris Mohammed 'No End in Sight for Insecurity and Banditry in north western Nigeria' (2021) *Terrorism Monitor* vol. 19 (13)

persons within internationally recognised state borders”. The Internal Displacement Monitoring Centre (IDMC) on its part defined internal displacement as the forced movement of people in the country where they live in.<sup>4</sup> Thus one can surmise that internal displacement is the forced dislocation of persons from their homes within a country.

### ***Internally Displaced Persons***

According to Black’s Law Dictionary an internally displaced person is: “...someone who remains within an internally recognised State border after being forced to flee a house or place of habitual residence because of armed conflict, internal strife, the governments’ systematic violations of human rights or man-made disasters”.<sup>5</sup> The Kampala Convention mirrors the definition of an internally displaced persons as defined by the Guiding Principles on Internal Displacement, 1998.<sup>6</sup> An IDP(s) is thus:

a person or group of persons who have been forced or obliged to flee or leave their homes or places of habitual residence in particular as a result of or in order to avoid the effects of armed conflicts, situations of generalised violence, violations of human rights, natural or human made disasters and who have not crossed an internationally recognised State border.<sup>7</sup>

The first point the Guiding Principle’s definition relies on is the fact that the displacement or dislocation is forced; it is not voluntary. Secondly, the place one flees from could be one’s ancestral home or a place where one stays and makes a living. For instance, a Yoruba man who is an indigene of Oyo State in Southwest Nigeria, who lives and works in Kano State and is forced to flee to Lagos State becomes an IDP. The most important feature is that the person remains within the boundary of his country. The definition goes further to state the circumstances under which a person can become an IDP. They are armed conflict/warfare, presence of violence, violation of human rights and natural or man-made disasters.

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<sup>4</sup> IDMC *Forced Displacement* <<https://www.internal-displacement.org/internal-displacement>> last visited 15/11/2021.

<sup>5</sup> Bryan A Gardner *Black’s Law Dictionary* (9th Ed.) (2009: West Publishing Co.).

<sup>6</sup> UN Doc. E/CN.4/1998/53/Add.2, (11/2/1998). Hereafter referred to as the Guiding Principles.

<sup>7</sup> Paragraph 2 of the Introduction of the Guiding Principles on Internal Displacement, 1998.

Concurring with this analysis, Kolawole<sup>8</sup> has stated that two (2) elements of peculiarities flow from the definition of an IDP in both the Guiding Principles and the Kampala Convention. First is that internal displacement is an involuntary movement. It is a forced migration of persons or groups of persons who often do not have a choice in the matter of their migration other than the option to leave. The second peculiar element is the fact that an IDP is trapped within the country of origin but displaced from the habitual or permanent place of abode or domicile. The most distinguishing feature stated in the Guiding Principles and Kampala Conventions definition is the fact that the person has not crossed an internationally recognised state border. That is, he remains within his own country.

### **3. The Constitution of the Federal Republic of Nigeria, 1999 as the framework for enforcement of Rights of Nigeria.**

While there is no singular piece of legislation that is focused primarily on the rights of IDPs, there are a number of legislation that are relevant to IDPs. The National Emergency Management (Establishment, Etc.) Act, 1999,<sup>9</sup> the National Commission for Refugees, (Establishment, Etc.) Act,<sup>10</sup> the National Human Rights Commission Act,<sup>11</sup> the African Charter on Human and Peoples' (Ratification and Enforcement) Act, 1983,<sup>12</sup> all relate to IDPs in general terms as they are human rights applicable to everyone, IDPs inclusive. There is also the National Policy on Internal Displacement, 2012 which is anchored on the Kampala Convention. In real terms, the principal piece of legislation on the rights of IDPs in Nigeria is the CFRN 1999. Second to it is the Kampala Convention which is not directly applicable in Nigeria by virtue of s. 12 CFRN which prohibits non-applicability of an international treaty which has not been domesticated.

The African Union Convention on the Protection and Assistance of Internally Displaced Persons in Africa, 2012,<sup>13</sup> was formally adopted on 26<sup>th</sup> October, 2009 at the African Union Special Summit in Kampala, Uganda. Nigeria ratified the Convention on 17<sup>th</sup>

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<sup>8</sup> Adeejat-kubra Adenike Kolawole 'Towards the Evolution of Legal and Institutional Framework for the Protection of Internally Displaced Persons (IDPs) in Nigeria' () *OIDA International Journal of Sustainable Development* vol. 6 (5) 141.

<sup>9</sup> Cap N34 Laws of the Federation of Nigeria, (LFN) 2004.

<sup>10</sup> Cap N21, Laws of the Federation of Nigeria, (LFN) 2004.

<sup>11</sup> Cap N46 LFN 2004.

<sup>12</sup> Cap A9, LFN 2004.

<sup>13</sup> Hereafter referred to as the Kampala Convention.

April, 2012. The Kampala Convention, named after the town it was adopted, Kampala, Uganda, is the only binding Convention worldwide providing for the protection of the rights of IDPs and it is also the only document of its calibre that originated from regional activities.<sup>14</sup> It has been opined that the Kampala Convention is a ‘path-breaking’ instrument that aspires to fill the protection gap for IDPs that exists in international law.<sup>15</sup> According to Maru, the Kampala Convention carries more weight than the Guiding Principles, international humanitarian law, human rights law and refugee law, because the Kampala Convention is tailored specifically for IDPs while other instruments lump IDPs with other vulnerable groups; human rights law being general as it is applicable to all human beings.<sup>16</sup> The former president of the International Committee of the Red Cross (ICRC)<sup>17</sup> has also stated that the Kampala Convention has improved international law in many ways and areas. These statements show that the Kampala Convention is rated very high on the list of international legal instruments for the protection of IDPs.

The Kampala Convention is arranged mainly in terms of obligations relating to states parties, international and humanitarian organisations and the African Union. The Convention states categorically in the preamble that States Parties have the “primary responsibility and commitment to respect, protect and fulfil the rights to which internally displaced persons are entitled, without discrimination of any kind.”<sup>18</sup>

#### **4. Comparative Analysis of the Kampala Convention with the Constitution of the Federal Republic of Nigeria, 1999**

The salient provisions of the Kampala Convention are hereby analysed with the aim of identifying relevant provisions of the CFRN 1999 that corresponds with them. The intent being to highlight their

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<sup>14</sup> Olivia K Iwabukuna, ‘Internal Displacement in Africa: African Solutions to African Problems? Challenges and Prospects’ (2011) *Journal of Internal Displacement* Vol.1 (1).

<sup>15</sup> Mehari Taddele Maru ‘The Kampala Convention and its Contributions to filling the Protection Gap in International Law’ (2011) *Journal of Internal Displacement* Vol.1 (1).

<sup>16</sup> *Ibid.*

<sup>17</sup> J Kellenberger, ‘Root, Causes and Prevention of Internal Displacement: The ICRC Perspective’, Statement to the Special Summit on Refugees, Returnees and IDPs in Africa, 23 October, 2009, Kampala, Uganda, available at <<http://www.ICRC.org/web/eng/siteeng.go.ns/html/all/displacement-statement-23/10/09>>.

<sup>18</sup> Paragraph 11, Preamble to the Kampala Convention.

similarities and points of divergence so as to ascertain the extent to which the CFRN 1999 can adequately replace the Kampala Convention in the protection and promotion of the rights of IDPs in Nigeria.

**i. The Right not to be Displaced and Duty to Prevent Displacement**

The Kampala Convention has as its core objective, the prevention of internal displacement in Africa.<sup>19</sup> Article 3(1) (a) of the Convention imposes on States Parties the duty to refrain from, prohibit and prevent arbitrary displacement of population. Articles 3 (1), 4 and 5 provide that States Parties have the primary responsibility to respect, protect and fulfill the rights of IDPs as stated in the Convention. These provisions protect individuals and groups from involuntary displacement except when absolutely necessary and when it occurs, States Parties are to ensure that displacement does not take place in an arbitrary manner.<sup>20</sup>

States Parties generally have the duty to respect, protect and enforce the rights to which IDPs are entitled.<sup>21</sup> The duty to respect mainly requires States Parties to refrain from actions that could give rise to internal displacement. This is a negative duty on the States Parties not to violate the Convention.

Under the Kampala Convention, States are also required to prevent the political, social, cultural and economic exclusion and marginalisation that are likely to precede displacement.<sup>22</sup> They also have specific obligations to allocate resources, adopt national policies and strategies, and enact or amend laws to ensure that displacement is prevented, and set up early warning systems in areas where it could pose a problem.<sup>23</sup>

The express recognition of the right not to be displaced has considerable symbolic value.<sup>24</sup> It gives a clear signal to State and non-State actors actively involved in the displacement of people by affirming the intolerable character of such practices.<sup>25</sup> In addition, it

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<sup>19</sup> Article 2 (b) Kampala Convention.

<sup>20</sup> Rhodri C Williams (ed) *Protecting Internally Displaced Persons: A Manual for Law and Policy Makers* (Brookings Institution-University of Bern, 2008).

<sup>21</sup> Maru (n14).

<sup>22</sup> Article 3 (1) (b) Kampala Convention.

<sup>23</sup> Article 4 Kampala Convention.

<sup>24</sup> Michele Morel 'Environmental Displacement within Kenya : A Search for Legal Protection Frameworks' (2011) *Journal of Internal Displacement* vol. 1 (1) 164.

<sup>25</sup> *Ibid.*

serves as a solid legal framework guiding relevant actors in their various duties in relation to the prevention of arbitrary displacement. It also aids potential victims of arbitrary displacement in their struggle against State conduct or policy decision that may lead to unlawful displacement. Furthermore, the right not to be displaced provides victims of arbitrary displacement wishing to hold their States accountable with a stronger legal basis to plead their case and bring successful claims for remedy and reparation before judicial or quasi-judicial bodies, since a ‘detour’ through other human rights is no longer necessary.<sup>26</sup>

An equivalent provision is absent in the CFRN 1999. The only provision that is similar to the contents of Art.s 3, 4 and 5 of the Kampala Convention is s. 42 CFRN which prohibits discrimination of persons on grounds of ethnic group, place of origin, sex, religion or political opinions. It can thus be seen that the CFRN 1999, does not provide sufficient protection for the right not to be arbitrarily displaced and thus cannot suitably be applied to address the plight of internally displaced victims.

Furthermore, in its section on “Displacement Induced by Projects”,<sup>27</sup> the Kampala Convention commits States Parties to “as much as possible ... prevent displacement caused by projects carried out by public or private actors.” Additionally, feasible alternatives should be explored with full information and consultation of potential evictees, having done a prior “socio-economic and environmental impact assessment” of the project.<sup>28</sup> Article 12 of the Convention is entitled “Compensation” and is related to Article 10. It commits States Parties to establish “just and fair legal frameworks” to manage issues of property, compensation and other forms of reparations for internally displaced persons, for “damage incurred as a result of displacement”, even in cases of natural disasters. Although this section is brief and seemingly not comprehensive, it is important in terms of highlighting underlying legal guarantees to internally displaced persons, “in accordance with international standards.”

## ii. **The Right to Humanitarian Access and Assistance**

The primary responsibility for the protection and assistance of IDPs lies with the State, thus the Kampala Convention further demands that governments allow humanitarian access and assistance

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<sup>26</sup> *Ibid.*

<sup>27</sup> Article 10 Kampala Convention.

<sup>28</sup> Article 10(1) *ibid.*

where necessary. The Kampala Convention commits States Parties to “ensure assistance to internally displaced persons by meeting their basic needs as well as allowing and facilitating rapid and unimpeded access by humanitarian organisations and personnel”.<sup>29</sup>

In addition, the Kampala Convention refers to the Sphere Standards<sup>30</sup> for monitoring and evaluating the effectiveness and impact of humanitarian assistance.<sup>31</sup> According to the Convention, States Parties are to assess or facilitate the assessment of the needs and vulnerabilities of internally displaced persons and of host communities in cooperation with international organisations or agencies;<sup>32</sup> they are also obliged to respect the mandates of the African Union and the United Nations, as well as the roles of international humanitarian organisations in providing protection and assistance to internally displaced persons, in accordance with international law.<sup>33</sup> In case of inadequate resources to respond to a particular disaster, they are further placed under a duty to cooperate in seeking the assistance of international organisations and humanitarian agencies, civil society organisations and other relevant actors. Such organisations may offer their services to all those in need.<sup>34</sup>

Such legal obligations are absent in the CFRN 1999. The rights that may be construed as rights to humanitarian assistance are contained in chapter 2 of the CFRN and they are rendered non-justiciable. Under the African Charter on Human and Peoples’ Rights<sup>35</sup> there are provisions for the rights to health,<sup>36</sup> education<sup>37</sup> and family life;<sup>38</sup> they are too general and tedious in enforcement and therefore not enough to satisfy the peculiar needs of IDPs. There is therefore, the need for a specific law to be enacted by the State to guarantee these needs directly and expeditiously in times of need rather than leave IDPs to the tedious and winding procedure guaranteed in s.46 (1) CFRN 1999, which grants *locus standi* to all citizens of Nigeria whose rights have been, is being or is likely to be

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<sup>29</sup> Article 3 (j) Kampala Convention.

<sup>30</sup> The Sphere Project *Humanitarian Charter and Minimum Standards in Disaster Response* (The Sphere Project: 2004)

<sup>31</sup> Article 9(2) (m) Kampala Convention.

<sup>32</sup> Article 5(5) *ibid.*

<sup>33</sup> Article 3(3) *ibid.*

<sup>34</sup> Article 5(6) *ibid.*

<sup>35</sup> Cap A9, Laws of the Federation of Nigeria (LFN) 2004.

<sup>36</sup> Art. 16 African Charter on Human and Peoples’ Rights.

<sup>37</sup> Art. 17 *ibid.*

<sup>38</sup> Art. 18 *ibid.*



infringed upon. Here the IDP law will simply provide for the shelter, water, food and clothing and will render it obligatory and direct on the State to provide same in calamitous situations.

### iii. **Basic Shelter and Housing**

Shelter is the second must basic need of man, coming after food. The Kampala Convention includes shelter among the particulars of ‘adequate humanitarian assistance’<sup>39</sup> to which IDPs are entitled. The right to adequate housing has been stated to be a component of the right to an adequate standard of living. In the *Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights v. Nigeria*<sup>40</sup> the African Commission held that while the right to shelter or housing is not explicitly provided for in the African Charter on Human and People’s Rights, it found that; ‘...the corollary of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health... the right to property, and the protection afforded to family, forbids the wanton destruction of shelter...’

### iv. **Education**

Education is a fundamental human right and essential for the exercise of all other human rights.<sup>41</sup> The Kampala Convention stipulates that: ‘States Parties shall provide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include...education...’<sup>42</sup>

The Convention on the Rights of the Child, 1990 emphasises that a child’s education shall be directed to the development of ‘his or her own cultural identity, language and values’.<sup>43</sup> The Fourth Geneva Convention, which refers to conduct during international armed conflict, and so applies only to some displacement situations,

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<sup>39</sup> Article 9(2) (b) *ibid*.

<sup>40</sup> 155/96 *Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights v. Nigeria* 15<sup>th</sup> Annual Activity Report (in Decisions of the African Commission on Human and People’s Rights on Communications 2002-2007, IHRDA, Banjul 2008, 277-293).

<sup>41</sup> ‘The Right to Education’ a publication of the United Nations Educational, Scientific and Cultural Organization (UNESCO) retrieved from <[www.Unesco.org/new/en/right2education](http://www.Unesco.org/new/en/right2education)> last visited 9/7/2021.

<sup>42</sup> Article 9(2) (b) of the Kampala Convention.

<sup>43</sup> Article 29(1) (c) Convention on the Rights of the Child.

requires that ‘education shall, as far as possible, be entrusted to persons of a similar cultural tradition’.<sup>44</sup>

There is no corresponding right to education in the CFRN 1999. What rights can be construed as the right to education is contained in chapter II CFRN 1999 which are classified as ‘non-justiciable’.

**v. Movement-Related Rights**

Article 9(2) (e) to (f) of the Kampala Convention guarantees the freedom of movement rights of IDPs. In these provisions, the Kampala Convention has provided the principle of *non-refoulement* and freedom to move freely. It also expressly permits restrictions to the freedom of IDPs in the interest of public safety and health. Although the Kampala Convention does not specifically mention camps, the use of the words ‘any place’ in Article 9 (2) (e) can be taken to include camps. In principle, IDPs should be able to choose where to live while displaced and to voluntarily reconsider such decisions once the reason (s) for their displacement have ceased to exist.<sup>45</sup>

Similarly, IDPs can enjoy the right to freedom of movement which is enshrined in S.41 CFRN 1999. This right to move freely throughout Nigeria requires certain actions or measures on the part of the State to safeguard free movement across the Federation by IDPs. Equally, they are granted the right to reside in any part of the country. Residence in any part of the country is not synonymous with security of residence of IDPs which is what they deserve. Often there are reports of IDP camps being attacked by Boko Haram terrorists and others in Borno, Adamawa and Yobe States. With these happenings, the State can safeguard this right better through a legislation that provides for the steps, measures and counter measures that will take better care of IDPs’ peculiar security need in their places of residence in Nigeria.

**vi. Right to Protection of Family Life**

The Kampala Convention has only one section on the family which is Article 9(2) (h) which provides that “States Parties shall...take necessary measures, including the establishment of specialised mechanisms, to trace and reunify families separated during displacement and otherwise facilitate the re-establishment of family ties”. This section clearly deals with the search for and

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<sup>44</sup> Article 4(3) (a) of Protocol II to the Geneva Conventions.

<sup>45</sup> Williams (n9) 81.

reunification of family members. Predictably, no equivalent provision is provided for in the CFRN 1999. Indeed, it would be quite superfluous to include such a right in the constitution as this right would only be of benefit to IDPs. This makes it imperative for a specific legislation tailored to the needs of IDPs.

#### vii. **Right to Recognition, Issuance and Replacement of Documentation**

Displacement often results in the loss or destruction of personal documents and registries.<sup>46</sup> Many IDPs from marginalised groups may never even have possessed such documents. IDPs' existing documents may also be invalidated as a result of changes in their legal or administrative regime.<sup>47</sup> Lack of documentation and other means to prove one's identity can have serious consequences for individuals and communities depending on each particular country. In many contexts however, IDPs access to benefits and legal rights are dependent on the production of documents such as identification cards, passports, birth and marriage certificates, educational certificates, and certification of health and welfare rights or property title.<sup>48</sup> In appreciating these facts, the Kampala Convention protects the right of IDPs to recognition and documentation. Although the Kampala Convention has no specific provision relating to the right to recognition, Article 13 provides for registration and personal documentation of IDPs.

The Kampala Convention in Article 13(2) and (3) prohibits the imposition of unreasonable conditions such as the return to one's area of habitual residence in order to obtain the relevant documents which is of particular relevance to Nigeria because of the issue of 'indigeneship' that is strongly practiced here. By the above provisions, IDPs living in any part of Nigeria can obtain necessary documents from any State they find themselves even if they are not indigenes of that State. It provides further that women and men should enjoy equal rights to obtain necessary documents and to have them issued in their own names.<sup>49</sup>

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<sup>46</sup> Handbook for the Protection of IDPs p.223

<sup>47</sup> Connor Foley and Barbara McCallin 'The Recovery of Personal Documentation' in Walter Kalin, Rhodri C Williams, Khalid Koser and A Solomon (eds) *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges* (Brookings-Bern Project on Internal Displacement and the American Society of International Law: 2010) 337.

<sup>48</sup> *Ibid*

<sup>49</sup> Article 13(4) of the Kampala Convention.

The CFRN 1999, itself entrenches the indigene factor when it made provision for the federal character principle.<sup>50</sup>

viii. **Right to Property and Possessions**

Forced displacement often leads to the loss of land, homes and other property of individuals and communities who, as a result are deprived of their main source of physical and economic security. People most often leave behind land and other property when they flee and seek safety from the effects of armed conflict, human rights abuses and other events. In many cases, such property is subsequently damaged or destroyed by fighting or appropriated by parties to a conflict or by other persons, who themselves may be displaced.<sup>51</sup> Article 9 (2) provides that “States Parties are to take necessary measures to protect individuals, collective and cultural property left behind by displaced persons as well as in areas where internally displaced persons are located, either within the jurisdiction of the States Parties, or in areas under their effective control”.

The right to own moveable property is provided for in s.43 of the CFRN 1999 and the African Charter (Ratification and Enforcement) Act. It is exercisable only by persons whose rights in such properties is being or likely to be infringed upon in any state of Nigeria. This right like others provided for in Chapter IV of the CFRN 1999 are meant for individuals rather than groups like IDPs who may have had their collective properties like markets, schools, farm lands and village square destroyed. Such properties with collective interests can therefore be better protected by the provisions of an IDP specific legislation.

ix. **Electoral Rights**

Article 9(2) (i) of the Kampala Convention obliges States Parties to “take necessary measures to ensure that internally displaced persons who are citizens in their country of nationality can enjoy their civic and political rights, particularly public participation, and the right to vote and to be elected into public office”. IDPs therefore have the right to political participation, including a specific right to vote, to participate in public affairs, and to freedom of assembly. These rights apply equally to IDPs living in camps and non-camp situations. They also apply whether IDPs choose to return to their area of origin, integrate locally or resettle elsewhere in the

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<sup>50</sup> Paragraph C, III Schedule to the CFRN 1999.

<sup>51</sup> *ibid*

country. The right of franchise granted to IDPs under the Kampala Convention prohibits discrimination against these persons in voting in persons of their choice.

This right is provided for in s.14(2)(c ) CFRN 1999 as part of the Fundamental Objectives and Directive Principles of State Policy which is made non-justiciable under s.6 (6) (c ) of the same Constitution. There is thus a gap in the CFRN 1999 which only an IDP specific legislation can make this right more explicit and easily enforceable by IDPs.

x. **Right to Employment, Economic Activities and Livelihoods**

By Article 3 (1) (k) of the Kampala Convention, States Parties are obliged to create an enabling environment for IDPs to be economically independent and viable. The entire range of State action aimed at promoting employment, economic activity and livelihoods - major direct or indirect targets of state policies everywhere - should be applied with equal force to IDPs. Non - discriminatory application of such policies would improve IDPs situation; more specifically, affirmative action benefiting IDPs could help them more.<sup>52</sup>

Under CFRN 1999, IDPs are lumped together with the generality of the citizenry and have to jostle with them for any available jobs despite their vulnerability and precarious situation.

xi. **Right of IDPs to Durable Solutions**

Article 11(1) of the Kampala Convention provides that: States Parties shall seek lasting solutions to the problem of displacement by promoting and creating satisfactory conditions for voluntary return, local integration or relocation on a sustainable basis and in circumstances of safety and dignity.

The Inter-Agency Standing Committee (IASC) Framework on Durable Solutions for Internally Displaced Persons<sup>53</sup> states that durable solution is achieved when IDPs no longer have any specific assistance and protection needs that are linked to their human rights

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<sup>52</sup> David Tajzman 'Employment, Economic Activities and Livelihoods' in Kalin and Others (eds) (n51) 434

<sup>53</sup> John Holmes (ed) *IASC Framework on Durable Solutions for Internally Displaced Persons*, (Brookings Institution-University of Bern Project on Internal Displacement: 2010).

without discrimination on account of their displacement. Three types of such solutions exist: return of such persons to their former homes, integration at the location they were displaced to, or resettlement to another part of the country.<sup>54</sup> There is no inherent hierarchy between the three types of solutions, and solutions can only be achieved if a number of conditions are fulfilled.<sup>55</sup> The IASC Framework has outlined eight criteria that can be used to determine the extent to which a durable solution has been achieved:

- a. safety and security;
- b. an adequate standard of living;
- c. access to livelihoods;
- d. restoration of housing, land and property;
- e. access to documentation; family reunification;
- f. participation in public affairs; and
- g. access to effective remedies and justice.<sup>56</sup>

Thus, the numerous rights of IDPs provided for under international instruments need to be modified *mutatis mutandis* to provide a more conclusive legal instrument for the protection of the rights of IDPs in Nigeria.

## 5. Findings and Recommendations

The following are the findings of this paper:

1. The rights of IDPs in Nigeria cannot be found in any singular piece of legislation, but are scattered among different laws. Thus there is no comprehensive law dedicated exclusively to IDPs in Nigeria.
2. The Kampala Convention contains rights and duties which do not have equivalent provisions in the CFRN 1999.
3. The provisions of Chapter II on Fundamental Rights CFRN 1999, equally apply to IDPs, however the rights that can be enforced by IDPs are civil and political rights. The socio-economic rights that are based on humanitarian law which are crucial to the assistance and protection of IDPs are rendered non-justiciable by virtue of section 6 (6) (c) CFRN 1999.

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<sup>54</sup> Walter Kalin, *Guiding Principles on Internal Displacement: Annotations* (The American Society of International Law and the Brookings Institution – University Bern Project on Internal Displacement: 2008) 118.

<sup>55</sup> IDP Handbook p451.

<sup>56</sup> Chaloka Beyani, Natalia K Baal and Martina Caterina 'Conceptual Challenges and Practical Solutions in Situations of Internal Displacement' (2016) *Forced Migration Review* 52, 29.

In response to the above findings, it is hereby recommended that Nigeria should enact a specific law on IDPs that is comprehensive enough to cover all their rights and peculiar needs as recognised by the Kampala Convention. This law when eventually enacted should contain a monitoring and enforcement mechanism to ensure that the rights of IDPs are better protected and enforced. In the alternative, the rights of IDPs as contained in Chapter II of the Constitution should be made justiciable by transferring them to Chapter IV of the Constitution. Furthermore, the National Assembly should re-enact the Kampala Convention in line with section 12 of the CFRN, 1999, as amended to make the provisions enforceable by the Citizens of this country.

## **6. Conclusion**

In conclusion, as laudable as the constitutional provisions on Fundamental Rights are, it must be stressed that the entire gamut of rights as provided in the CFRN 1999 that are easily enforceable by IDPs are civil and political rights. Thus, provisions on the right to humanitarian assistance are absent, which are the kinds of rights that are most beneficial to IDPs. In addition, since the fundamental rights contained in the CFRN 1999, are general in nature, their application to IDPs has to be by inferences. In Nigeria, there are laws, in addition to the Constitution, that address the peculiar needs of vulnerable categories of persons like children and the disabled.<sup>57</sup> There is no need for a convoluted straining and inference before arriving at provisions that apply to those sets of persons. Therefore, there is no reason why IDPs should not have a specific law that can be referred to which does not involve a lot of straining to deduce their rights just as it obtains under international law in the form of the African Union Convention on the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention), 2012 and the Guiding Principles on Internal Displacement, 1998.

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<sup>57</sup> Nigeria has enacted the Child Rights Act, Cap C50, Laws of the Federation of Nigeria, 2004 and the Discrimination against Persons with Disabilities (Prohibition) Act, 2018.