

THE STATE OF REFUGEES AND INTERNALLY DISPLACED PERSONS IN NIGERIA: A LEGAL REVIEW¹

Abstract

From time immemorial, oppression, torture, inhuman and degrading treatment, ethnic, religious and political crises and other violations of human rights have caused people to flee their homelands. For these reasons, people have been forced to seek asylum in other countries. In other situations, people have become foreigners even in their own country. These persons who are in either situations refugees or internally displaced persons (IDPs) are vulnerable economically, socially, psychologically and politically. The national and international communities are confronted with the monumental task of ensuring protection for these groups of persons. The question has been “what are the legal and institutional frameworks in place for the protection of refugees and IDPs?” This paper seeks to examine the problems of refugees and IDPs, and consider their legal status and right to protection. It also aims at investigating the legal and institutional frameworks for their protection.

Key Words: *Refugees, IDPs, Protection, Nigeria, Law*

1. Introduction

Refugees and internally displaced persons (IDPs) face grave dangers in their own countries and which dangers have forced them across international borders in search of protection. They are forced to flee their countries of origin, to seek asylum and to be granted legal protection (refugee status) in the country of refuge. The trauma of being uprooted from their homes and of becoming separated from family members adds to the terrifying experiences that many refugees and IDPs undergo before and during their flight. Lack of language skills and unfamiliarity with new surroundings, coupled with fear and concern about events back home, create added burdens. At the very root of displacement lies the obvious problem of detachment and eviction from established environments thus making the refugees and IDPs susceptible to economic, social and political hardship. Economically, the refugees lack the basic amenities of life having been cut from their employment. Often they are left with little or no means of livelihood and could hardly feed themselves talk more of their relatives. Even where asylum or refugee status is granted, they are still in lack as the resources at their disposal can hardly sustain them. This is so because in their new found environment, integration and amalgamation is difficult as the citizens of the host state are usually afraid or unable to accept the refugees or asylum seekers. Socially, refugees and IDPs most times lose contact with their relatives, friends and families. The causes of the displacement, in most cases, are abrupt and sudden so much so that the victims are left with little or no time to pick up property talk more of locating friends and family. These tear them away from their social life which they have over the years built through the act of nature and by choice. Politically, the refugee and IDPs flee from their country of origin where they had and enjoyed political rights ranging from the right to vote and be voted for and the right to own moveable and immoveable property in the host state, etc. At this juncture it is pertinent to define key terms- refugees and IDPs.

2. Definitions

The definition of the term “refugee” is provided for in the Refugee Convention,² which is the primary convention for the protection of refugees. In Article 1 A (2) thereof, it states that for the purposes of the present Convention the term ‘refugee’ shall apply to any person who:

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² The primary convention on refugees is known as and called Convention Relating to the Status of Refugees signed at Geneva on 28 July 1951. The Convention came into force on 22 April 1954, the ninetieth day following the day of deposit of the sixth instrument of ratification or accession, in accordance with article 43. The following states

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

There is yet no generally accepted definition of IDPs. However, the UNHCR considers the internally displaced to be “persons who have had to leave their homes for refugee-like reasons and are in a refugee-like situation, but who remain within the border of their own country. They have fled persecution, situations of general violence or massive violations of human rights and do not enjoy the full protection of their own government,”³ The International Organization for Migration (IOM) on its part considers the term “displaced persons” to include persons who had to leave their homes as a result of armed conflicts, widespread violence, natural disaster or violations of human rights, and who have not crossed an international border. The IOM working definition is less restrictive than the usual definition referred to by UNHCR. The 1998 Guiding Principles on Internal Displacement⁴ stated that IDPs are:

Persons or groups 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 generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border⁵

3. Causes and Situations of Displacement in Nigeria

In Nigeria, ethnic and religious strife, internal armed conflicts, militancy and insurgency have been the most salient causes of displacement. In most parts of the country, over the years, ethnic wars have caused people to flee to other parts of the country where their lives, property and freedoms are not in danger. Conflicting claims of indigeneship and citizenship have deprived people of the right to freedom of movement and the right of residence in any part of the country. Protracted inter-communal conflicts fueled by religious, regional or ethnic divisions regularly lead to death and displacement throughout the country.⁶ It has in fact been noted that crises induced by religious divisions have produced the greater number of refugees especially IDPs in Nigeria.⁷

deposited with the Secretary-General of the United Nations their instrument of ratification or accession on the dates indicated: Denmark- also applicable to Greenland (4 Dec 1952), Norway (23 Mar 1953), Belgium (22 Jul 1953), Luxembourg (23 Jul 1953), Federal Republic of Germany (1 Dec 1953), Australia- also applicable to Norfolk Island, Papua, New Guinea and Nauru (22 Jan 1954), United Kingdom of Great Britain and Northern Ireland- also applicable to Channel Islands and the Isle of Man (11 Mar 1954).

³ See Division of International Protection, International Legal Standards Applicable to the Protection of Internally Displaced Persons: A Reference Manual for UNHCR staff (UNHCR, 1996) p. 2

⁴ The primary legislation on IDPs, submitted in 1998 by Francis Deng, the former Special Representative of the Secretary – General on Human Rights issues to the 54th Session of the Human Rights Commission.

⁵ UN Doc. E/CN.4/1998/53/Add.2, Guiding Principles on Internal Displacement, Principle 2.

⁶ M T Aluaigba, “the Tiv-Jukun Ethnic Conflict and the Citizenship Question in Nigeria”, 17 November 2009. Internet material obtained from <http://www.internal-displacement.org> accessed on 12-02-2012.

⁷ G D Je’adayibe, “Religious Conflicts and Internally Displaced Persons in Nigeria” 2008. Internet material obtained from <http://www.internal-displacement.org> accessed on 12-02-2012

For example, in 1999, Zamfara State adopted Sharia law as its only legal system. Several other Northern states voiced their will to follow suit and ten did. This led to a series of uprising and violent clashes between Christians and Muslims in the city of Kaduna, in February 2000. Entire neighbourhoods were “religiously cleansed” and many Igbo, generally Christians, were killed. As thousands of people fled the far North, religious tensions increased in other areas. In reprisal, Igbo groups in the South killed hundreds of generally Muslim Hausa migrants from the north.⁸

In 2001, Jos the formerly peaceful capital of Plateau State that sits on the dividing line between the largely Muslim north and the Christian south, was engulfed in religious clashes that killed more than one thousand and displaced more.⁹ Many settled in temporary camps or permanently in neighbouring Bauchi State. Since then, deadly clashes leading to displacement have regularly flared up, as the authorities have failed to take adequate measures to prevent violence and protect people. In 2010, up to 30,000 people have fled clashes in and around Jos.¹⁰

Also, the activities of the dreaded *Jama'atul Ahlis Sunnah Lid Dawatil wal Jihad Islamic* better known as *Boko Haram* have caused people to flee parts of Northern Nigeria down to the Southern parts. This religious sect that believes members are proud soldiers of Allah, has vowed never to give up in fight against “infidels”.¹¹ True to their words this group has continued striking, killing and maiming people in the Northern part of the country and even in Abuja, the Federal Capital Territory.

Other factors which are known to have caused displacement in Nigeria include flood, erosion, brutal killings in some parts of the country as that of Ogoni land and Odi town¹², and other isolated cases like governments implementation of states master plans and the deportation of citizens.

4. Determination of Refugee Status under International Law

The determination of refugee status lies with the national authorities within the asylum state. They decide what criteria an asylum seeker must meet in order to be granted Convention refugee status. The procedures adopted by states for the determination of refugee status vary considerably from state to state. Following this, the Executive Committee of the UNHCR in 1977¹³ outlined the basic requirements, which procedures for the determination of refugee status should satisfy, namely:

- 1) The competent official (e.g. immigration officer or border police officer) to whom the applicant addresses himself at the border or in the territory of a Contracting state, should have clear instructions for dealing with cases which might be within the purview of the relevant international instruments. He should be required to act in accordance with the principle of non-refoulement and to refer such cases to a higher authority.

⁸ *Ibid.*

⁹ Human Rights Watch (HRW), April 2006, “They Do Not Own This Place” Government Discrimination Against “Non-Indigenes” in Nigeria.

¹⁰ U.S. Department of State (U.S. DOS) 2011, 2010 Country Reports on Human Rights Practices: Nigeria.

¹¹ R Mordi, “Politics, Religion, Frustrate War on Terror” in Tell Magazine No.20, 21 May 2012 pg.43.

¹² O Nwaja, “Obasanjo Condemned for the Situation in Nigeria”. Internet material obtained from www.waado.org. 6 December 1999 accessed on 16-02-12

¹³ ExCom No. 8 (XXVIII), 1977, “Determination of Refugee Status”

- 2) The applicant should receive the necessary guidance as to the procedure to be followed.
- 3) There should be a clearly identified authority, wherever possible, a single central authority, with the responsibility for examining requests for refugee status and taking a decision in the first instance.
- 4) The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities concerned. The applicants should also be given the opportunity, of which they should be duly informed, to contact a representative of UNHCR.
- 5) If the applicant is recognized as a refugee, he should be informed accordingly and issued with documentation certifying his refugee status.
- 6) If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or to a different authority, whether administrative or judicial, according to the prevailing system.
- 7) The applicant should be allowed to remain in the country pending a decision on his initial request by the competent authority referred to in paragraph 3 above, unless it has been established by that authority that his request is clearly abusive. He should also be permitted to remain in the country while an appeal to a higher administrative authority or to the courts is pending.

5. The Nigerian Framework for the Protection of Refugees

In Nigeria, the major legal and institutional framework for the protection of refugees is the National Commission for Refugees (NCR). The Commission was established by Decree 52 of 1989 now known as the National Commission for Refugees, etc. Act Cap N21 Laws of the Federation 2004. The Commission was created with a view to protecting and safeguarding the interests of refugees in Nigeria. By virtue of section 3 (1)¹⁴ of the NCFR Act, the Commission is to operate under the supervision of the Secretary to the Federal Government. The Commission shall be constituted by a Chairman who shall be appointed by the President, a representative of the Secretary to the Federal Government as Vice Chairman, the Federal Commissioner for Refugees or his representative, the Permanent Secretary of the Ministry of Foreign Affairs or his representative, the Permanent Secretary of the Ministry of Internal Affairs or his representative and the representative of the United Nations High Commissioner for Refugees in Nigeria as observer to be invited by the Commission from time to time to the meetings of the Commission where the matters to be deliberated upon have international dimensions. Consistent with the internationally accepted meaning of the term, as reflected in the above mentioned Conventions, section 20 (1) of the NCFR Act declares that a person shall be considered a refugee if he falls within the definition provided by:¹⁵

- a) Article 1 of the 1951 UN Convention Relating to the Status of Refugees;
- b) Article 1 of the 1967 UN Protocol Relating to the Status of Refugees

¹⁴ The establishment section.

¹⁵ Set out in the First, Second and Third Schedules to Cap. N21 LFN 2004.

- c) Article 1 of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.

Thus in Nigeria, a person is considered a refugee, who owing to a well-founded fear of persecution, colonial rule, or foreign occupation, or events seriously disturbing public order, covering a wide variety of man-made conditions which do not permit humans to reside safely in their countries of origin or nationality, and have to seek refuge in Nigeria, including also civil wars or armed conflicts, as well as due to the conditions of famine and natural catastrophes. However, a person shall not be considered to be a refugee under Nigerian Law in the following circumstances:

- a) When there are serious reasons to believe that he or she has committed a crime against humanity, as defined in any international instrument to which Nigeria is a party and which has been drawn up to make provisions in respect of such crimes; or he has committed a serious non-political crime outside Nigeria prior to his entry;
- b) He has been guilty of acts contrary to the purposes and principles of the Organisation of African Unity.¹⁶

The NCFR Act provides for the procedure which must be followed in the application for the grant of refugee status and also for appeals against refusal by the Federal Commissioner for Refugees to grant refugee status to an applicant.¹⁷

The Procedure is as follows:

1. The applicant applies for the grant of refugee status to the Federal Commissioner through the nearest competent officer or through the office of the UNHCR in Nigeria.
2. A competent officer who first receives the applicant shall, if he is not an immigration officer, as soon as possible
3. Notify an immigration officer that a person seeking refugee status has entered into or is present in Nigeria.¹⁸
4. The application when received by the office of the UNHCR here in Nigeria shall be sent to the Eligibility Committee.
5. The Eligibility Committee shall be constituted in accordance with s. 6(1) of the Act and may invite the applicant to appear before it.
6. The Federal Commissioner shall notify the decision of the Eligibility Committee to the applicant in writing.
7. Where the Eligibility Committee recommends that the applicant shall not be granted refugee status, it shall give reasons for its decisions.¹⁹
8. Where the application is refused, the applicant may appeal the decision of the Eligibility Committee to the Appeal Board within thirty days of his being notified of the refusal

¹⁶ Now African Union (AU). See section 20 (2) of NCFR Act and Article 5 (c) of the OAU Convention.

¹⁷ See s. 8 of the NCFR Act Cap. N 21 LFN 2004

¹⁸ *Ibid* section 8 (2)

¹⁹ *Ibid* section 8 (6)

9. The applicant and every member of his family shall be allowed to remain in the country pending the decisions of the Board.²⁰
10. If the application is finally refused, the applicant shall be given reasonable time to seek admission as a refugee into another country.
11. Where the application for refugee status is granted, the applicant and his family shall be issued with an identity card in the form prescribed by the Minister charged with
12. The responsibility for matters relating to internal affairs. They shall also be issued with a residence permit and shall be subjected to all laws in force within Nigeria.²¹ In accordance with Article 28 of the 1951 Convention and Article VI of the OAU Convention the applicant and his family shall be issued with the United Nations Travel Document.

For this purpose, the function of the Commission under the law is to, among other things:

- a) Lay down general guidelines and overall policy on general issues relating to refugees and persons seeking asylum in Nigeria;
- b) Advise the Federal Government on policy matters in relation to refugees in Nigeria;
- c) Consider such matters as the Secretary to the Federal Government may, from time to time, refer to it and make recommendations thereon to the Secretary to the Federal Government, responsible for supervising the Commission;
- d) Advise the Federal Government on appropriate measures to be taken, including the provision of adequate facilities and services necessary for the care of refugees affected by large scale influx.²²

Furthermore, the Federal Commissioner who shall be appointed by the President shall have powers to:

- a) Grant refugee status to applicants on the recommendations of the Eligibility Committee constituted pursuant to section 6 (1) of the Act
- b) Preside over the committees on refugees as may be appointed from time to time;
- c) Ensure the provision of adequate facilities and services for the reception and care of refugees in Nigeria;
- d) Ensure compliance with the provisions of section 1 (1) of the Act; and
- e) Exercise such other powers and perform such other duties relating to refugees as may be assigned to him, from time to time, by the Commission or the secretary to the Federal Government, responsible for his supervision.²³

²⁰ *Ibid* section 8 (8)

²¹ *Ibid* section 11

²² *Ibid*, section 4 (1) and (4)

²³ *Ibid* section 5(1)(a)-(e)

Also, following from the above, the NCFR Act provides for an Eligibility Committee which shall be under the Federal Commissioner for Refugees. The Committee is to be chaired by the Permanent secretary, Ministry of Foreign Affairs, with the Director of Immigration Department, a representative of the office of the Secretary to the Federal Government as member and a representative of the UNHCR in Nigeria as an observer.²⁴ Applicants dissatisfied with the decisions of the Eligibility Committee shall direct their grievances to an Appeal Board created by the Act.²⁵

Finally, the Federal Commissioner for Refugees confers refugee status on would be refugees who are successful at the Eligibility interviews and at Appeal Board proceedings.

6. The Nigerian Framework for the Protection of the Internally Displaced Persons

The only national authority saddled with the protection of the internally displaced, usually referred to as internally displaced persons (IDPs) is the National Emergency Management Agency (NEMA). It is responsible for providing direct material assistance to displaced persons in Nigeria. It offers material assistance to repatriated Nigerians and IDPs no matter the cause of displacement. The agency came into existence through the promulgation of the National Emergency Relief Act of 1976²⁶ which has today been transformed into National Emergency Management Agency (Establishment, etc.) Act 2004.²⁷ The Agency was established under section 1 of both the old and new Acts, but under the old Act, to perform the function of organizing, providing and coordinating emergency relief to victims of national disasters throughout the Federation and matters incidental thereto. The functions of the Agency as outlined in section 6(1) of the new Act are as follows:

- a) To formulate policy on all activities relating to disaster management in Nigeria and co-ordinate the plans and programmes for efficient and effective response to disasters at national level;
- b) Co-ordinate and promote research activities relating to disaster management at the national level;
- c) Monitor the state of preparedness of all organisations or agencies which may contribute to disaster management in Nigeria;
- d) Collate data from relevant agencies so as to enhance forecasting, planning and fields operation of disaster management;
- e) Educate and inform the public on disaster prevention and control measures;
- f) Co-ordinate and facilitate the provision of necessary resources for search and rescue and other types of disaster curtailment activities in response to distress call;
- g) Co-ordinate the activities of all voluntary organisations engaged in emergency relief operations in any part of the Federation;

²⁴ *Ibid* section 6

²⁵ *Ibid* section 7

²⁶ Cap 257, Laws of the Federation 1990. Hereinafter to be called “the old Act”.

²⁷ Cap. N34 Laws of the Federation 2004. Hereinafter to be called “the new Act”.

- h) Receive financial and technical aid from international organisations and non-governmental agencies for the purpose of disaster management in Nigeria;
- i) Collect emergency relief supply from local and foreign sources and from international and non-governmental agencies;
- j) Distribute emergency relief materials to victims of natural or other disasters and assist in the rehabilitation of the victims where necessary;
- k) Liaise with State Emergency Management Committees established under section 8²⁸ of this Act to assess and monitor, where necessary, the distribution of relief materials to disaster victims;
- l) Process relief assistance to such countries as may be determined from time to time;
- m) Liaise with the United Nations Disaster Reduction Organisation or such other international bodies for the reduction of natural and other disaster;
- n) Prepare the annual budget for disaster management in Nigeria; and
- o) Perform such other functions which in the opinion of the Agency are required for the purpose of achieving its objectives under this Act.

NEMA responds to the occurrence of disasters in the country by sending relief materials and supplies to affected communities and facilitates their ability to survive immediate problems and dispossession. In reality these attempts do not last long and the victims are soon left on their own. With the introduction of the new Act, there were expectations that it would stir the Agency towards proactive measures in preventing, mitigating, and embarking on post disaster rehabilitation and reconstruction. The Agency until now had to struggle to fully comprehend and perform the new mandates to the optimum. The required synergy and collaboration among disaster related organisations is still lacking. Also most of the States and Local Governments have not seen the need to legislate and establish complementary functional emergency agencies to address the humanitarian challenges of citizens in their constituencies. The few States where relevant disaster management agencies exist are very weak and under-funded making them to depend precariously on NEMA.

The Agency in its operation adopts a method which is regarded as the “vulture concept”.²⁹ The concept is defined as and entails a state of inertia pending the occurrence of disasters after which there is a flurry of activities that gradually dies out and another disaster is awaited to galvanize the institution. A more proactive method of operation has been advocated which is known as the “eagle concept”.³⁰ This concept through forecasting and early warning signals, large scale displacements and catastrophes may be circumvented, prevented or at least mitigated.

²⁸ Section 8 provides for the establishment of State Committees

²⁹ B Ayeni, “Challenges to Mainstreaming Disaster Risk Reduction into the Development Process in Nigeria” in *Mainstreaming Disaster Risk Reduction into Sustainable Development in Nigeria*. Volume II (Abuja: NEMA Publications, 2007) p.58

³⁰ *Ibid.*

7. National Responsibility in Situations of Internal Displacement³¹

In addition to ensuring the protection of rights in accordance with international law, national responsibility in situations of internal displacement entails: 1. Preventing displacement and minimizing its adverse effects; 2. Raising national awareness about the problem; 3. Collecting data on the number and condition of IDPs; 4. Supporting training on the rights of IDPs; 5. Creating a legal framework upholding the rights of IDPs; 6. Developing a national policy on internal displacement; 7. Designating an institutional focal point on IDPs; 8. Encouraging national human rights institutions to address internal displacement; 9. Ensuring that IDPs participate in decision making; 10. Supporting durable solutions; 11. Allocating adequate resources to address internal displacement and 12. Cooperating with the international community when national capacity is insufficient.

8. Conclusion and Recommendations

It was observed that Nigeria is not in compliance with the framework for national responsibility in situations of internal displacement. In many cases, the non-compliance with the framework for national responsibility in situations of displacement is due to politics and in others due to lack of adequate manpower and technology. Complacency and tacit acquiescence caused by fear are contributing factors. Much effort is still required to enforce and implement the recommended guidelines for the protection of IDPs and the prevention of situations of displacement. This is so because in Nigeria, IDPs, more than refugees pose greater challenges to the development and growth of the country.

Finally, for the human rights of citizens, refugees, IDPs and other migrants to be properly protected and safeguarded, the causes of displacement should be addressed, their protection from and avoidance of forced displacement ensured, and their assistance during all phases of displacement guaranteed. There ought to be a reflection of the same in government legislation, policies and operational guidelines. For instance, in Nigeria, the Constitution review committee should include in Chapter 2 of the Constitution a fundamental objective and directive principle of state policy on the part of government both at the national and at state levels, that will ensure that all man-made causes of displacement are prevented, completely eradicated or reduced to the barest minimum, with particular reference to conflicts and civil unrests. These provisions, the writer advocates, should be made justiciable such that when Government defaults, innocent citizens can take out actions for enforcement. Also, provisions should be made to prevent or reduce the natural causes however minimally through a process of forecasting.

The national legal frameworks for the protection of refugees and IDPs which are in consonance and on all fours with the 1951 Convention, its 1967 Protocol, and the Guiding Principles on Internal Displacement, the Handbook on IDPs and other relevant international treaties and covenants should be extended to cater for the preventable causes of displacement like ethnic conflicts and wars. Currently, all the legislation/legal frameworks are targeted at protecting refugees and IDPs after displacement had occurred rather than addressing the cause(s) of displacement. Proper provision for implementation and enforcement of the national legal framework must be made with strict penalties for non-adherence. Government should consider inviting competent international institutions and authorities, the High Commissioner for Refugees, the IDP Unit of the UN Office for the Coordination of Humanitarian Affairs (OCHA), other UN agencies, NGOs, professionals and international law experts to provide technical assistance in development of legislation and policies. Such legislation and policies will provide prevention and protection measures to be taken in situations of displacement and

³¹ Paragraph 3 of the Handbook for the Protection of IDPs.

for the protection of the displaced persons. Penalties for the breach or failure to provide for such measures would also be provided by such legislation and policies. Effective mechanism for the coordination of refugee and IDP protection and assistance should be developed including the delineation of responsibilities between the relevant public institutions at federal and state levels.