



Assessing the Legal Frameworks for the Protection of Internally Displaced Persons (IDPs) in the North-Eastern Nigeria

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Authors' contributions

This work was carried out in collaboration between all authors. All authors read and approved the final manuscript.

Article Information

DOI: 10.9734/ARJASS/2018/45550

Editor(s):

- (1) Dr. Jan-Erik Lane, Institute of Public Policy, Serbia.
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Complete Peer review History: <http://www.sciencedomain.org/review-history/27819>

Review Article

Received 09 October 2018
Accepted 11 December 2018
Published 17 December 2018

ABSTRACT

Force displacement is a daunting challenge facing the international community as a result of armed conflicts, insurgency and communal tension. In the same vein, Nigeria has been experiencing the problem of internal displacement as a result of the Boko Haram insurgency. More than two million Nigerians have been internally displaced as a result of Boko Haram insurgency that has been bedeviling the country since 2009. Internally displaced persons differ from refugees, though they have similar characteristics. The sources of displacement of refugees and IDPs may be the same and requires equal treatment. However, IDPs have been excluded under the protection of international refugee law. This is because IDPs do not cross international borders and therefore they should be under the protection of their national governments. Sometimes the national authorities are behind the reasons for their displacement or unable to protect them. This is one of

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the reasons IDPs have been experiencing neglect and inadequate protection. Accordingly, Nigerian IDPs have not been adequately protected, as there is no national or international legal frameworks that are directly addressed the plight of Nigerian IDPs. Therefore, the aim of this paper is to critically assess the efficacy of the domestic and international legal frameworks on internal displacement in Nigeria. The study has adopted the use of secondary data extracted from the journals, articles, books, magazines, newspapers and reports. It employs descriptive method of data analysis. The finding is that Nigerian policy on IDPs is not effective as it has not been domesticated or implemented.

Keywords: Protection; internal displacement; refugees; internally displaced persons; legal framework.

1. INTRODUCTION

The post-Cold War era has witnessed the declining of the conflicts between/among the states and that period coincides with the emergence of “new wars” such as civil wars, insurgencies, ethnic conflicts, genocides and other violent conflicts perpetrated by human beings against their fellows. Unlike conventional wars that normally occur between states, “new wars” wage by organized armed groups against the states or other groups within the states [1]. These groups use different modes of violence to achieve their aims, which include bombings, guerrilla tactics, hostage taking, maiming, killing, raping, and so on Oberschall, [2]. In this type of conflicts, it is not difficult to distinguish between combatants and noncombatants as indicated in the law of war. Mostly civilians become the target and that ensued mass casualties and forced displacement of the population from their homes or places of habitual residence. Also, the period witnessed brutal neglect of human rights and deliberate disrespect of the rule of international humanitarian law (IHL). This has led to the massive forced displacement of people within the borders of their own countries. This category of people has been described as internally displaced persons (IDPs). According to the Guiding Principles on Internal Displacement, internally displaced persons are

...persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized border (UNOCHA, 1999: 1).

The causes of the displacement of IDPs and refugees may be the same, but the only difference is that IDPs remain within the

boundaries of their countries, whereas, refugees cross internationally recognized borders.

Arguably, about 65.3 million people have been forcibly displaced globally in 2015 as a result of conflict and generalized violence. IDPs have accounted for about 40.5 million, whereas refugees recorded 21.3 million globally (Wieling, 2017) [3]. Similarly, another report shows that 30.6 million have been newly internally displaced as a result of conflict and disaster in 2017 across 145 countries. Furthermore, a total number of 48.5 million remained IDPs as of the end of 2017 including those who have been returned or relocated but have not found a truly durable solution [4]. However, the current trend of global forced displacement reveals that IDPs outnumbered refugees. But, IDPs have been legally exempted from the international protection afforded to refugees by virtue of their displacement within their own countries. Legal status has been granted to the refugees, but none for the IDPs. In fact, there is no any international law exclusively responsible for IDPs’ protection. The ever-increasing number of IDPs have posed a serious challenge to the international community that necessitates the formulation of Guiding Principles on Internal Displacement in 1998 through the effort of the United Nations Commission for Human Rights. It remains until today the only international non-binding norms, customary or soft law that serves as a global principle for the protection of internally displaced persons. The Principle 3(1) of the Guiding Principle of Internal Displacement states that the primary responsibility for IDPs protection lies with the national governments. It maintains that IDPs are entitled to enjoy full rights and freedom like any other citizen of the state. Ironically, in some instances the national authorities might be the causes of the displacement or unable to adequately protect them. Internally displaced persons have been described as the world’s most vulnerable people [5].

Against this backdrop, violent attacks by *Boko Haram* insurgents displaced many people in the North-eastern Nigeria. Some of these people have moved to other parts of the country and others to the neighbouring countries to avoid the havoc wreaked by the *Boko Haram* insurgents, thereby creating a devastating humanitarian crisis that calls for dire humanitarian intervention. Those displaced within the Nigerian borders facing serious protection problem. This can be partly related to the lack of legal framework for the protection of internally displaced persons. Quite a number of credible reports have described Nigeria as a country with the worst and highest Number of IDPs, following Syria and Columbia. About 3.3 million people have been displaced within the Nigerian border as a result of insurgency which started since 2009. The figure of IDPs in Nigeria has been significantly increased since 2013 and it reaches over four million in 2015 [6]. The 2015 report of the International Organization for Migration (IOM) shows that about 2.2 million people have been internally displaced in the North-eastern Nigeria as a result of the Boko Haram insurgency. These traumatized victims have been neglected, abused and deprived of the most basic elements of a dignified life. However, Nigerian government was unable to provide any explicit national legal framework for IDPs protection despite the vulnerability and abuse suffered by the Nigerian IDPs for many years. There are only general Constitutional provisions of the fundamental human rights entitled to all Nigerian citizens and other draft policies on internal displacement that is yet to be implemented [7].

2. GLOBAL TREND OF INTERNAL DISPLACEMENT

Recently the displacements of civilians within their national borders have outnumbered those displaced outside the internationally recognized borders. This is because of the so-called new wars that have arisen after the Cold War period, which ensue gross violation of human rights and wanton destruction of life and properties. The era has witnessed civil war, insurgency and other deliberate killings that uproot many civilians from their homes [8]. Most of these victims of conflict have been displaced within the borders of their own countries. This is because of the unfavourable refugee and asylum laws that restrict movement across the border, making it difficult for many victims. As a result of that victims have opted for internal migration [9]. This represents a dramatic change in the trend of

forced displacement with the IDPs outnumbered refugees. However, international regime has accorded protection to the refugees, but not to the IDPs.

The first IDPs data compiled in 1982, comparatively shows that for every one IDP there were ten refugees [9]. In line with this, United States Committee for Refugees (USCR) reported that in 1982 there were 1.2 million people displaced within their own countries across the globe. But, at that time the number of refugees was 10.5 million, and considerably higher than internally displaced persons [10]. Nevertheless, during the period of three years the number of IDPs has dramatically increased and reached to about 9 million. This was the remarkable increased of the number of IDPs that call for separate report on IDPs by the USCR. The total number of IDPs had increased from 11.5 million to 14 million by 1986 across twenty countries. The trend of global internal displacement continued to grow and by 1987 there were 15 million IDPs [9].

By 2002, the USCR reported that more than 20 million had been internally displaced worldwide as a result of violent conflict, human rights violation and generalized violence. Out of this number, the UNHCR was rendering assistance to about 6 million IDPs among its "persons of concern" [11]. Ever since 2003, violent conflicts have resulted in considerable increase of the global trend of internal displacement that produced more IDPs. Between 2003 and 2016, it is estimated that about 5.2 million incidents of displacements occurred yearly, which is an approximately about 14,000 people forced to flee every day [12].

The figure of IDPs has reached about 25 million by the beginning of the 21st century. At the same time, the number of refugees has decreased to about 10 million [13]. These crises of IDPs have covered the whole planet; no region in the world was without IDPs crisis. About 40 countries had been facing IDPs crisis during that time. Violent conflict has been identified as the prime caused of these displacements, even though some people have been displaced as a result of natural disasters. Arguably, between 1993 and 1994, armed conflict forced about 10,000 people to leave their habitual residents on a daily basis. Whereas, some crossed international border, others remained displaced within their countries, as IDPs [14]. However, Africa has been considered as the worst affected region

recording more than half of the global figure of IDPs annually. Nevertheless, until recent conflicts in the Middle East and the resultant mass migration crisis in the region, Africa had the largest number of IDPs.

Recently, IDMC has reported that in 2014 about 38 million people were internally displaced globally. About 11 million were newly displaced by violent conflicts. The report has shown that one person forced to flee in every three seconds [15]. A total of 40.8 million were internally displaced as a result of violent conflict in 2015 [12,16].

Furthermore, there has been a lack of accurate and available data on internally displaced persons because of the improper country recording and monitoring of IDPs trends. Most of the data monitoring was done by international organizations such as the IOM, IDMC, ICRC and UNHCR, and with the absence of core responsibility of any of these institutions. There is often the tendency that information may not comprehensively cover the entire scenario, and there is also the likelihood of duplication or inflation. The Internal Displacement Monitoring Center (IDMC) of the Norwegian Refugee Commission has been resourceful in providing data and information on IDPs globally. However, this is also not without discrepancies and irregularities. For example, in 2014, the IDMC published that Nigeria had 3.3 million IDPs, But a year later, the IDMC noted that the figures were inflated because of variations in data collection by experts in the country. The figures in 2015 reflected a much lower number of just over 1 million (IDMC, 2014).

3. DEVELOPMENTS AND GAPS IN INTERNATIONAL LEGAL FRAMEWORK FOR IDPs PROTECTION

For many decades, international humanitarian concerned for the refugees, a group of people who migrated from one country to another as a result of conflict, violence or persecution. This has resulted in the advancement of an international refugee law and the formation of the 1951 Refugee Convention and its Protocol of 1967 in the office of the United Nations High Commissioner for Refugees (UNHCR) with the mandate to protect refugees. However, IDPs as the largest group of forcibly displaced have not been granted special status similar to that of refugees. Indeed, the concept of internal

displacement is less recognized under international law. Hence, over the years, managing internal displacement has been considered a matter of state sovereignty. Even though, since 1920 internally displaced persons have been receiving assistance from the international community [16].

Nonetheless, internal displacement has begun to be recognized as the global 'problem' during the late 1980s, when two international conferences were held on war refugees from Southern Africa and Central America. By 1990s, the displaced persons who remained within their countries began to be treated by the international community as specific "persons of concern" different from refugees. There was widespread recognition that there was a need to develop a coherent and effective legal basis for protecting IDPs and to establish a new international agency to provide them protection and assistance [17]. This period marked the beginning effort of the international community to address the plight of internally displaced persons. During the same period, nongovernmental organizations have presented the global problem of internal displacement in the agenda of the United Nations through the UN Commission on Human Rights (CHR). As a result of that, the UN Secretary General appointed the Special Representative on IDPs and that led to the drafting of the UN Guiding Principles on Internal Displacement in 1998 by former SR on IDPs, Francis Deng and his team members [18].

The Guiding Principles of Internal Displacement have set important global principles that serve as a soft law for the protection of IDPs. Although, the principles are not legally binding instrument, but have played a vital role in promoting separate body of 'IDPs law'. Also, UN agencies (including UNHCR) have been making reference to the Guiding Principles in justifying their involvement in IDPs situations. Furthermore, these Principles have set a ground for regional organizations in Africa, Europe and America develop Conventions/Treaties that encourage their state members to integrate the Guiding Principles into their national laws [19]. For example, the council of Europe and American organization has advocated the incorporation of the Guiding Principles into their domestic legislations. Additionally, African Union (AU) has made a greater effort by transforming the Guiding Principles into the first regional binding law on the protection of IDPs. The AU Kampala Convention has created a special protection

regime for IDPs protection. The Convention was initiated in 2009 and came into force in 2012. Many African states have domesticated the Convention into their national laws, whereas others are yet to do so. Again, a treaty has been adopted by the International Conference on the Great Lake Region (ICGLR) in 2008. The aim was to enforce state to domesticate the Guiding Principles into their national laws. Indeed, the Guiding Principles have helped the materialization and the development of different bodies of IDP laws at both national and international fora [16].

However, until today there is still yearning about specific international legal status for the IDPs. Although, the early dilemma about the normative standard on internal displacement has drastically declined, but the notion of the binding international treaty for protection of IDPs has been increasingly resisted. This is because, the concept of state sovereignty and non-intervention serves as obstacles for international protection of the people displaced within their national borders [20]. Habitually, if the issue of IDPs present to the United Nations, the states refer to the principle that international intervention should be based on the request of the State concerned. Also, states make reference with the United Nations' Charter prohibition of "the threat of force or use of force against the territorial integrity or political independence of any state, and intervention in matters which are essentially within the domestic jurisdiction of any state" [16,6]. Accordingly, the Guiding Principles have been criticized as a tool for intervention. The Guiding Principles were drafted outside normal state-centric method for producing international law. Rather, its legal authority has been analogous to international human rights law and international humanitarian law [21,9]. Consequently, Alborzi [22] argues that it is very difficult to overstretch international law to effectively tackle the problem of IDPs.

Despite all the international effort to address the challenges of internal displacement, there is still 'clear legal distinction' in the institutional responsibilities created for refugees and IDPs. Thus, IDPs are effectively excluded from the protection under the Refugee Convention, and remain outside the scope of assistance, and protection provided by the UNHCR. A report by the UNHCR affirms this:

When the international legal and institutional regime to protect refugees was set up 50 years ago, it did not include internally

displaced persons. In keeping with the traditional notions of sovereignty, internally displaced persons were seen as falling under the domestic jurisdiction of the state concerned. The result is that the response of the international community to the problem of internal displacement has been inconsistent, and large numbers of internally displaced persons have remained without effective protection or assistance [23: 214].

Nonetheless, the UN General Assembly has endorsed the UNHCR role in protecting IDPs in 1993, but subject to the request of the UN Secretary General and consent of the state concerned. Furthermore, the core mandate of the UNHCR is to protect refugees and do not have the exclusive role in IDPs protection. Rather, the IDPs issues have been shared among the various UN agencies. This approach is called "cluster approach" [24].

Additionally, it is now two decades after the adoption of the Guiding Principles, but the solution to the problems of internal displacement is yet to be achieved. In 2018, the Global Report of Internal Displacement (GRID) published a report about the 20th anniversary of the Guiding Principles and affirms that;

There is...little to celebrate. More than 30.6 million new displacements associated with conflict and disasters in a single year is not a sign of success by any measure; nor is the persistence of new displacements in the last decade. Progress in the development of normative frameworks and policies has not been matched by an implementation and adequate investment in preventing and ending displacement [4:1].

On the other hand, international law contains fundamental norms and standards that are applicable to internal displacement. These relevant norms can be identified in the field of international human rights law and international humanitarian law. They are (a) prevention of forced displacement, (b) identifying the basic human rights of all including IDPs, (c) protection from expulsion, (d) state responsibility to address the plight of displacement. Nonetheless, these norms of international law may serve as sources of legal protection for IDP, but there are still 'grey areas' and 'gaps' in the international legal protection of the IDPs. For instance, international human rights laws prohibits only arbitrary displacements and their application may be

hindered by the idea of derogation. Likewise, international humanitarian law does not prohibit all forms of force displacement. Certainly, international law is still uncertain about internal displacement [16]. Therefore, lack of a specific legal framework comprehensively addressing internal displacement, and the failure of the response system remained a major gap which needs to be filled.

4. STATE RESPONSIBILITY AND THE NIGERIAN QUEST FOR LEGAL FRAMEWORK FOR THE PROTECTION OF IDPs

The International Law Commission (ILC) clearly shows that international law today saddles more responsibility on the state with regard to the treatment of its citizens [16]. This indicates that the states have the primary responsibility to protect and assist the internally displaced persons (IDPs) within their territorial borders. For this reason, there has been an increasing concern of the application of the state responsibility by studying appropriate law for IDP protection [25].

5. NIGERIAN CONSTITUTION AND IDPs PROTECTION

The Nigerian IDPs have been living under deplorable condition with lack of food, social amenities, health facilities, high infant and maternal mortality, prostitution among others. Nigerian government bears the primary responsibility of protecting IDPs within its national borders. Arguably, internally displaced persons have been under the protection of their national governments since they do not cross their national borders. IDPs are entitled to fundamental human rights which consist right to human dignity, rights to life and other inalienable rights. Their fundamental human rights need to be preserved and protected by the national government. However, the degree to which these rights can be protected is contingent to the legal framework for the protection of IDPs and the mechanisms to ensure compliance with the established laws [26].

A Constitution is regarded as the national legal document which normally specifies the rights and duty of the government. It states the functions and responsibilities of the government, including the role of protecting the citizens of the country.

The constitution has been used as the basis upon which various organs of government operate. It empowers people to legally claim protection against any potential or real danger [27]. Basically, a constitution is the existing national law where internally displaced people can legitimately proclaim their rights to sufficient and decent protection against any threat to their lives. The constitution obligates the national government to safeguard the citizens of the country. Consequently, the Constitution can serve as the national legal framework for the protection of the internally displaced persons. Unfortunately, Nigerian constitution does not specifically laid down any provision for the protection of the internally displaced population. This can be partly related to the rigidity of the amendment procedures of the Nigerian Constitution [28].

The Nigerian Constitution has been considered as the supreme law of the country and any other law is supplementary to it. Thus, any law which is inconsistent with the Nigerian Constitution shall be declared null and void or invalid. Conversely, Chapter IV of the 1999 Constitution as amended, clearly states the fundamental human rights of the Nigerian citizens. These fundamental human rights contain under sections 33 to 46 of the Constitution. Therefore, these rights are inalienable and shall be protected by the national authority. Also, the Constitution delineates the rights and obligations of the government, and at the same time develops instruments by which the government discharges its obligations as sanctioned by the Constitution [29]. The Constitution mandates the state with the responsibility to protect the rights of its citizens from any abuse. Legally, the state is the primary custodian of the rights of all Nigerians and it is under obligation to protect these rights. Although, the Nigerian government has the primary responsibility to safeguard the citizens, and internally displaced persons does not exclude from the citizens. But, the Constitutional role for the protection of IDPs is absent in the Nigerian Constitution [30]. Even though, the primary responsibilities for IDPs protection lie with the government concerned.

In spite of these rights contain in the Nigerian Constitution, IDPs are invariably and tactically denied access to these rights or are not enjoying the rights available to the general citizens. Unlike Nigerian Constitution, the Ugandan Constitution obliges the national authority to discharge its fundamental responsibility to the citizens,

including IDPs on basis of social justice, equity and economic development [31]. Also, the Constitution urges the government to ensure that all people enjoy equal rights and opportunities to decent life, shelter, education, food security, health facilities, potable water, decent clothes and social amenities among others. Therefore, the Ugandan Constitution states that the government has responsibility to protect and provide social services to the general populace, including internally displaced persons. The government has to ensure adequate protection for both IDPs and other Ugandan citizens [32].

The national responsibility needs to be effective for the protection of the internally displaced persons. In so far as the IDPs remain within the national borders of their country, the primary responsibility for their protection lie with their national authority. At the same time, the national government needs to safeguard its citizens from any displacement in the first place. This principle is in lines with the Guiding Principle on Internally Displacement and the African Union (Kampala) Convention on IDPs [33]. Furthermore, the role of the state in this aspect has been captured by the international law and emphasis in national and international declarations. The most prominent international statement on the state's responsibility for safeguarding the victims of conflicts or natural disaster is the UN Resolution 46/182 (1991) which states that "Each State has the responsibility primarily to take care of victims of natural disasters and other emergencies occurring on its territory. Hence, the affected State has the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory". However, previous studies reveal massive violation of IDPs rights despite the existing provision of the fundamental human rights contained in the Nigerian Constitution. The IDPs protection in Nigeria has been suffering by legal problem which virtually deny IDPs adequate protection [34].

Abegunde [35] the Nigerian response to the IDPs' predicament is largely inadequate and fragmented because of the lack of legal framework on internal displacement. As a result of that the internally displaced persons have become the most vulnerable and defenceless to any kind of mistreatment, neglect, abuse and exploitation. However, previous studies focus on the role of the state in protecting IDPs, instead of focusing on the role of international organization in protecting IDPs.

6. NEMA ACT AND NATIONAL POLICY ON IDPs IN NIGERIA

National Emergency Management Agency (NEMA) is an institution saddle with the responsibility to manage disaster with all its repercussions. The agency was established in 1997 and it develops from the work of inter-ministerial body was established by the Nigerian government in 1990 to deal with natural disaster reduction strategies in conformity with the United Nations International Decade for Natural Disaster Reduction (IDNDR). It was created through Act 12 as amended by Act 50 of 1999 to handle a disaster in Nigeria. The main objectives of NEMA are to manage human and material resources to achieve effective disaster prevention, training, alleviation and resilience to disaster in Nigeria. However, the NEMA Act produces an essential legal framework for IDPs protection in Nigeria. Nevertheless, NEMA Act does not mention "internally displaced persons", but they have been recognized as the victims of disaster [36]. This is considered as the major gap of the Act, and it invariably negates the legal capacity of the agency in managing and protecting the IDPs.

Lack of proper laws and policies about IDPs protection in Nigeria has placed overburden responsibilities on NEMA. This is because it is the only domestic agency with the ability to quickly respond to urgent situations by virtue of its roles or functions. Although NEMA has certain unit devoted for the IDPs related issues. As a result of that the agency has been facing the problem of scarce resources to involve in all the emergency situations and this has hampered its ability to provide adequate protection to the IDPs in Nigeria [37]. However, presently the bill has been presented to the national assembly of Nigeria to amend the NEMA Act and the bill has passed through the second reading. The purpose of the bill is to formally include IDPs in the amended Act in order to formally assign NEMA with the responsibility of IDPs protection [38]. Arguably, the ability of the Nigerian government to adequately address the issues of the IDPs depends on the speedy action to pass this bill into law.

NEMA has been involved in disaster management by giving out relief materials to the victims of disaster, but these efforts do not last long because in most cases the victims are eventually left on their own. Therefore, the new Act needs to introduce a practical method of preventing, reducing and participating on post

disaster rehabilitation and reform. Furthermore, most states and local governments rely heavily on NEMA to tackle their humanitarian challenges of their areas. States and local governments hardly make laws to address humanitarian concerns of their various constituencies. However, some states have relevant disaster management institutions, but most of them are weak, incapable and lacks adequate resources to perform well, for that reason they depend on NEMA [39].

However, in 2003 Nigerian government establishes committee with the mandate to draft national policy on internal displacement so as to address the existing legal gap about IDPs protection. The idea to establish national policy on IDPs protection has been initiated by the National Commission for Refugees (NCFR) and the draft has been prepared in 2003. Also, the committee charged with the responsibilities to create preventive measures of internal displacement, effective practical methods of managing IDPs, mitigating IDPs suffering during displacement, and better ways of protecting the fundamental rights of the internally displaced persons. Furthermore, in 2011, the committee comes up with a draft and presents it to the Nigerian government. Regrettably, the draft has become a mirage given the fact that it is yet to be domesticated. On the other hand, National Commission for Refugees (NCFR) is a Nigerian agency with a legal and institutional responsibility to protect refugees in Nigeria. It was established by Section 3 (1) 14 of the NCFR Act. The Commission is under the supervision of the Secretary of the Federal Government of Nigeria [40].

7. CONCLUSION

There is no international legal framework for the protection of the internally displaced persons. Nonetheless, the Guiding Principles on Internal Displacement was established in 1998, but it is a non-binding instrument and therefore not enforceable on states. The problem of internal displacement has not been directly addressed by any global legal framework. However, the Guiding Principles clearly state that the states have the primary responsibility to protect IDPs. However, there is absent of effective domestic response from the Nigerian government to protect and assist Nigerian IDPs. Nigeria government has signed and ratified the Kampala Convention, but it is yet to domesticate it. Accordingly, this research finds that, there is no

dedicated national legal instrument for the protection of IDPs in Nigeria. Therefore, IDPs suffer because of the lack of commitment by the Nigerian government to protect and assist them. Likewise, they suffer from the absence of specific international legal and institutional frameworks for their protection when their states fail to do so. On the basis of this, that this study recommends that the Nigerian government shall domesticate the long-waiting draft national policy for the protection of IDPs. This policy should be in line with the African Union (Kampala) Convention on the protection of IDPs in Africa. Also, there is a needed to amend the Nigerian Constitution and incorporate the rights of the IDPs.

COMPETING INTERESTS

Authors have declared that no competing interests exist.

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