LEGAL PROTECTION OF INTERNALLY DISPLACED CHILDREN IN AFRICA: COMPARATIVE ANALYSIS[1]

Abstract

Internal displacement is a global phenomenon and a critical human right as well as humanitarian issue. There is virtually no country in the world that has not experienced internal displacement of its citizens either as a result of natural or man-made disasters. While all classes of human beings are affectable, children are the worst hit by internal displacement and its attendant negative impacts. Statistics shows that Africa has produced the highest number of internally displaced children in the world and these children have received the least attention required to address their plight. This article, examined the protection measures adopted by African states for the internally displaced child[2] using Nigeria, Kenya and Sudan as case studies. The doctrinal method of research was adopted based on primary and secondary sources. The article found and concluded that, not much progress has been recorded in the protection of internally displaced children in Africa and this is attributable not just to the absence of adequate laws for their protection but lack of implementation of the available laws. It is recommended *inter alia* that the internally displaced child should not only be regarded as one in need of humanitarian assistance but one entitled to enforceable rights.

Key Words: Child, Internal Displacement, Legal Protection, Africa.

1.Introduction

The child has been variously classified into the group of vulnerable persons in need of special protection, particularly, as a result of his immaturity in age and mind that exposes him to a greater risk of exploitation, physical and emotional harm. The situation is worse for the child who has been displaced from his natural environment and ordinary place of habitation. Internal displacement foists on the child a situation of helplessness, hopelessness and homelessness, consequently, making him vulnerable and completely dependent on humanitarian assistance for survival. The state of vulnerability which the internally displaced child has been exposed to, imposes a limitation on the child's full development and adversely affects the growth and sustainability of any nation. This has necessitated persistent agitations for child protection, in response to which African nation states have made relative efforts through the instrumentality of the law to offer legal protection to the displaced child.

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[2] Herein referred to as IDCs

The African Continent has negotiated some instruments relating to the protection of the child as well as internally displaced persons such as the Kampala Convention, the Great Lake Protocols and the African Charter on the Rights and Welfare of the Child. States within the Continent have equally adopted domestic legislations and policy frameworks in this regard. However, the availability of these laws is one thing while their adequacy and efficacy are a different ball game. Previous studies on the protection of the child have focused on the need of states to provide and promote laws that will protect IDPs without much effort deployed in determining and examining the implementation apparatus for protecting the displaced child, hence this article.

2.Incidence and Consequences of Internal Displacement on Children in Africa

Factors that cause displacement of people can be natural such as floods, earthquakes, droughts, hurricane, wildfire, famine and other disasters. However, often the causes are human-made. The human causes include wars, terrorism, genocide, insurgency, persecution and political instability.

Internal displacement of people has been a recurring challenge in Africa and obviously, the most affected persons are vulnerable groups such as children, aged and women who are exposed to severe socio-economic, political, psychological, medical and environmental hazards.[3] The effects of internal displacement on children include a lack of physical security, inadequate access to education, sexual abuse, inadequate food and nutrition, and various health risks.[4] Consequently, IDCs are in need of a safe and secured refuge, food and water, access to health care services, protection from sexual abuse and all other forms of exploitation, quality education, freedom from discrimination and access to justice to ventilate their grievances when their rights are being violated amongst others.

It is no longer news in Nigeria that banditry, terrorism, ethnic and religious crisis and other societal vices amongst other causes of displacements have left so many children homeless. This situation is not different from Kenya and Sudan. The most common causes of displacement in Kenya are political and ethnic violence, natural or man-made disasters, resource-based conflicts, and evictions. Disasters in Kenya occur from a number of hazards including, fires, floods, terrorism, development, technological accidents, diseases and epidemics. In Sudan, where at least two million children have

[3]A Itumo,; 'Nigerian State and Responses to Plights of Persons Internally Displaced by Boko Haram Insurgents: Implications for Socio-Economic and Political Development', [2016], *Research on Humanities and Social Sciences* (Vol.6, No.15), 24.

[4]O O Olusegun,., and Ogunfolu, A.; 'Protecting Internally Displaced Children in Armed Conflicts: Nigeria in Focus,' [2019], *Notre Dame Journal of International & Comparative Law*, (Vol. 9: Issue. 2), 4

been forced from their homes since the conflict in Sudan erupted in April, 2023, it has been reported that children are in urgent need of lifesaving humanitarian support. The impact of on-going violence continues to threaten the lives and futures of families and children, leaving basic services cut off and many health facilities closed, damaged, or destroyed. As the conflict in Sudan rages on, the toll on children continues to grow more devastating by the day.[5]

In the process of fleeing their homes and communities to avoid being killed or abducted, children are often exposed to all kinds of physical dangers, attacks and illnesses. A large number of displaced children end up in camps, but instead of these camps being places of safety and protection, they are turned into nightmares for the children as a result of regular human rights violations that take place in the camps sometimes, under the watch and connivance of government officials and institutions who are assigned to cater for their welfare. Children are more prone to abuse and exploitation in IDP camps due to their weak physical stature, age, and inability to protect themselves.

The ugly experiences in the camp have been narrated by some of the child victims of displacement. In the IDP camp in Maraban Rido Kaduna, a 13-year-old Sandra Yohanna who could not control her tears while narrating her ordeal in the camp said, her mother usually put salt in water for her and her siblings to drink and sleep because there was no food in the house. Another child narrated that she uses pieces of clothes to improvise as sanitary pads during her monthly period and sometimes she could get stained because she does not have enough clothes to use as sanitary pad. She further stated that they are ten and sometimes up to twenty in number sleeping in one room. There was a time her brother was infected with chicken pox, all of them suffered the same sickness because they sleep in a non-ventilated room. In corroborating the stories of these children, the coordinator of the IDP camp, Mr Adams Sule confirmed that there are over 4000 IDPS in the camp designed to accommodate only 100 persons and 2,500 of them are children most of whom are orphans. He noted that many children are facing malnutrition, diverse health challenges particularly, those who are sickle cell patients and many are out of school.[6] There has also been a case of "re-displacement" of these children from the temporary refuge.

[5] 'Sudan Conflict Leaves 13.6 million Children in Desperate Need of Humanitarian Aid', <https://www.unicef.org/sudan/press-releases/sudan-conflict-leaves-136-million-children-desperate-need-humanitarian-aid >, accessed on 2/1/2024

[6] "Plight Of IDPs Amid Hunger in Kaduna Camp" <https://leadership.ng/plight-of-idps-amid-hunger-in-kaduna-camp/>, accessed on 11/9/2023

3. Protection of the Internally Displaced Child under the Regional laws

There are certain conventions adopted and ratified by African countries which are directly related to the IDCs. These include: the Kampala Convention, Great Lakes Protocol and the African Charter on the Rights and Welfare of the Child. These treaties shall be discussed hereunder.

3.1African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)

The Convention was adopted in Kampala, Uganda on the 23rd October, 2009 but entered into force on 6th December, 2012 to provide a regional legal and institutional framework specifically, for the prevention of internal displacement and the protection of and assistance to internally displaced persons. The victims of displacement need not be citizens of the country, it is sufficient to benefit from the protection where a person is a habitual resident.

The provisions of the Convention are based on the international human rights, humanitarian principles as contained in the various legal instruments and by analogy, refugee law. Of particular reference is the 1990 African Charter on the Rights and Welfare of the Child which shows a clear indication that the African Continent is interested in the welfare of the internally displaced child. The 1998 United Nations Guiding Principles on Internal Displacement was also recognized by the Convention as a springboard for the protection of internally displaced persons.

The Kampala Convention is one Convention that has been largely ratified by almost all the African States. However, beyond ratification, the Convention imposes a duty on State Parties to incorporate their obligations under this Convention into domestic law by enacting or amending relevant legislation on the protection of, and assistance to, internally displaced persons in conformity with their obligations under international law.[7] The decision to adopt an instrument on displacement shows the readiness of the African countries to actualise the protection granted by the Convention as a mark of national responsibility.[8] Nevertheless, the sovereign powers of state parties to make such laws remain exclusive and its exercise in this direction is not more than discretionary.[9] Until the Convention is duly domesticated, its provisions will remain mere aspirations. Niger is the first African country to incorporate the Kampala Convention into their domestic laws about nine years after

[7] Article III 2(b)

[8] Internal Displacement Monitoring Centre Workshop on Kampala Convention: from ratification to domestication and operationalisation, held on 30th November-2nd December, 2015, <https://www.refworld.org/pdfid/570391b44.pdf> accessed on 25/11/2021

[9] Article V (12) and Article VII(2)

the adoption of the Convention.[10] Kenya has also enacted its own legislation on internal displacement but Nigeria and Sudan are yet to do so. Rather than enacting laws in this regard, state parties prefer the adoption of other measures as appropriate, including strategies and policies on internal displacement at national and local levels.[11]

The Kampala Convention creates state centric obligations based on state responsibility, alongside obligations of non-state actors, including their accountability for displacement.[12] It is the primary responsibility of State Parties to provide protection of and humanitarian assistance to internally displaced persons within their territory or jurisdiction without discrimination of any kind[13]. Where it cannot effectively handle its responsibility under the Convention, states are encouraged to seek the cooperation of international organizations or humanitarian agencies, civil society organizations and other relevant actors.[14]

The Convention clearly stated what and how the duties of the nation states are to be carried out.[15] The general responsibilities of states include: prohibition and prevention of arbitrary displacement of populations, prevention of political, social, cultural and economic exclusion and marginalisation; respect and protection of the human rights of internally displaced persons; respect for international humanitarian law regarding the protection of internally displaced persons; ensuring individual responsibility for acts of arbitrary displacement, in accordance with applicable domestic and international criminal law; ensuring the accountability of non-State actors concerned for acts of arbitrary displacement or complicity in such acts; ensuring assistance to internally displaced persons by meeting their basic needs as well as allowing and facilitating rapid and unimpeded access by humanitarian organizations and personnel; and promotion of self-reliant and sustainable livelihoods amongst internally displaced

[10] 'Niger becomes the first country in Africa to adopt a national law for the protection and assistance of Internally Displaced Persons',
<https://reliefweb.int/report/niger/niger-becomes-first-country-africa-adopt-national-law-protection-and-assistance >accessed on 25/11/2021

[11] Article III 2(c)

[12] C Beyani,; "A view from inside the kitchen of the Kampala Convention: the modernisation of the international legal regime for the protection of internally displaced persons",
<http://eprints.lse.ac.uk/103693/4/SSRN_id3736788.pdf >accessed on 20/12/2021

[13] Preamble and Article V(1)

[14] Article III(3)

[15] Articles III and IV

persons.[16] The responsibilities are summed up in two-prevention of internal displacement and protection of internally displaced persons.

To emphasise the need to end internal displacement, apart from imposing a duty on the states to avoid arbitrary displacement, the Convention grants a right to all persons within the territorial enclave of a state from being arbitrarily displaced.[17] Thus, the emphasis on the right not to be arbitrarily displaced, is integral to the narrative of protecting and assisting IDPs. The IDPs reserve the right to peacefully request or seek that protection and assistance, in accordance with relevant national and international laws, a right for which they shall not be persecuted, prosecuted or punished.[18] To ensure the prevention of displacement, State Parties undertook to criminalise acts of arbitrary displacement that amount to genocide, war crimes or crimes against humanity.[19]

With particular reference to the child who is at the centre of this research, the Convention defines a child as a person below the age of 18years. The Convention reinforces the need for states to ensure that children are not recruited or allowed to take part in hostilities "under any circumstances".[20] Forcible recruitment of children by any armed group is prohibited.[21] The Kampala Convention also prohibits "kidnapping, abduction or hostage taking ...sexual slavery and trafficking in persons especially women and children".[22] The need for "special protection" for unaccompanied children is further accentuated.[23] This is particularly relevant given the fact that displacement often creates a situation where children may be separated from their parents or guardians.[24] The Kampala Convention specifically requires states to establish "specialized mechanisms" for family tracing and reunification.[25]The recognition of the principles of human rights particularly, the African Charter on the Rights and Welfare of the Child extends the obligations on state parties and non-state actors to respecting and protecting the rights of the child provided under the Charter, particularly, the best interest principle.

[16] Article III(1)
[17] Article III (4)@ provides that States Parties shall take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change
[18] Article V
[19] Article III (6)
[20] Article 7
[21] Article VII (5)(e) and (f)
[22] Article 7
[23] R Adeola.; 'Protection of Internally Displaced Children in Africa', op. cit., 125
[24] *Ibid.*
[25] *Ibid.*

Internal displacement is an infringement of the fundamental rights of a person which cannot go unredressed or without a remedy. This is in line with the age long principle of law, *ubi jus ibi remedium* and the Convention did not lack in addressing this. Thus, by *Article XII*, the Convention States Parties shall provide persons affected by displacement with effective remedies by the establishment of an effective legal framework to provide just and fair compensation and other forms of reparations, where appropriate, for damage incurred as a result of displacement, in accordance with international standards. A State Party shall be liable to make reparation to internally displaced persons for damage when such a State Party refrains from protecting and assisting internally displaced persons in the event of natural disasters.[26] To monitor and review the implementation of the objectives of this Convention, States Parties agree to establish a Conference of States Parties to this Convention where they are required to present their reports indicating the legislative and other measures that have been taken to give effect to this Convention.[27]

3.2,Great Lakes Protocol

The Protocol on the Protection and Assistance to Internally Displaced Persons – the IDP Protocol – was signed as part of the Pact on Security, Stability and Development in the Great Lakes Region by the Heads of State and Government of eleven member states[28] on 15 December 2006, under the auspices of the International Conference on the Great Lakes Region (ICGLR). All member states have ratified the Pact, of which the IDP Protocol is a part. The IDP Protocol expresses commitment to the implementation of the internationally-recognised Guiding Principles on Internal Displacement. The Guiding Principles are central to the IDP Protocol and formally annexed to the text.

The Protocol adopts the traditional definition of internally displaced persons wherein it recognises armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters and effects of large-scale developments as the likely causes of displacement.[29] However, the Protocol did not define a child. It rather, placed a duty on state parties to provide the child with special protection[30]in accordance with the principles of international humanitarian law and human rights

[26] Article ix
[27] Article 10
[28] The ICGLR member states are Angola, Burundi, Central African Republic (CAR), Democratic Republic of Congo (DRC), Kenya, Republic of Congo, Rwanda, South Sudan, Sudan, Uganda, Tanzania, Zambia.
[29] Article 1(4) and (5) of the Protocol
[30] Article 4(1)(d)

applicable to the protection of internally displaced persons in general and as reflected in the Guiding Principles in particular.[31]

Responsibility for protecting internally displaced persons has been undertaken by Member States by the prevention of arbitrary displacement, elimination of the root causes of displacement and the mitigation to the extent possible, of the consequences of displacement. Member States also accept to bear the primary responsibility for the protection of the physical and material safety of internally displaced persons during flight, in places of displacement, and upon return, or resettlement elsewhere within the territory of the State. Member States further agree to facilitate rapid and unimpeded humanitarian access and assistance to internally displaced persons and ensure the safety and security of humanitarian personnel in areas of displacement.[32]

The scope of protection to be given to the child include: to ensure they are safe in satisfactory conditions of dignity, hygiene, water, food and shelter, away from areas of armed conflict and danger while having regard to their special needs.[33] The child's right to freedom of movement and choice of residence within designated areas of location, except when restrictions on such movement and residence are necessary, justified, and proportionate to the requirements of maintaining public security, public order and public health; should be guaranteed.[34] The states should equally facilitate family reunification, and provide, if necessary, special protection for families of mixed ethnic identity; establish a regional mechanism in the Great Lakes Region for monitoring the protection of internally displaced persons under this Protocol, provided that such a mechanism shall not affect the supervisory role of the United Nations Commission on Human Rights and treaty bodies, and the African Commission and Court on Human and Peoples' Rights, and the right of internally displaced persons to bring complaints before these bodies.[35]Rights to seek and enjoy asylum in other States and the fundamental principle of non-refoulement, are recognised and should be guaranteed by the states.[36]

Where Governments of Member States lack the capacity to protect and assist internally displaced persons, such Governments shall accept and respect the obligation

[31] Article 4(1)(a)
[32] Article 3(1), (2), (3,(6), (7)
[33] Article 4(1)(f)
[34] Article 4 (1)(g)
[35] Article 4(1)(h)
[36] Article 4(1)(k)

of the organs of the international community to provide protection and assistance to internally displaced persons.[37]

To further achieve the desired protection of IDPs, Member States shall enact national legislation to domesticate the Guiding Principles fully and to provide a legal framework for their implementation within national legal systems. Member States shall ensure the effective participation of internally displaced persons in the preparation and design of the said legislation.

3.3, African Charter on the Rights and Welfare of the Child

The African Charter is the regional version of the Convention on the Rights of the Child. Africa has taken the lead in setting the standards for children's rights in a regional context.[38]Just like Kampala Convention, the OAU is the first regional organisation to adopt a binding regional instrument concerned with children's rights,[39] offering human rights guarantees and safeguards for the child, thereby fulfilling its international obligations. The African Children's Charter puts children's rights legally and culturally into perspective and establishes a legal framework for their protection.

The ACRWC's provisions relating to protection of internally displaced children are substantially similar to that of the Convention on the Rights of the Child (CRC).[40]Although the rights and duties in the ACRWC cover almost every aspect of a child's life, there are four principles that are so fundamental that they may be thought of as underpinning the entire Charter. As with the CRC, these include the rule against non-discrimination,[41] the 'best interests' rule,[42] the right to survival and development; and the rule requiring the child's participation.[43] Since these are crosscutting principles, they apply to all considerations relating to the protection of internally displaced children.[44]

[37] Article 3(10)

[38] B D Mezmur.; 'The African Children's Charter @ 30: A distinction without a difference?', [2020], *The International Journal of Children's Rights*, (28), 693-714

[39] Lloyd, A., 'A theoretical analysis of the reality of children's rights in Africa', [2002], *African Human Rights Journal*, (2), 11-32

[40] "HandBook for the Protection of Internally displaced Persons", <https://www.unhcr.org/4c2355229.pdf > accessed on 24/8/2022

[41] *Article 3*

[42] *Article 4*

[43] *Art. 4(2)*

[44] *Ibid*.

Article 5(1) provides that every child has an inherent right to life and that this right must be protected by law. *Article 5(2)* complements the recognition of this right by obliging states to ensure to the maximum extent possible the survival, protection and development of the child. Since the right to life and the right to survival are essential preconditions to the enjoyment of any of the rights protected in the ACRWC, they apply in all considerations relating to the promotion and protection of the rights and welfare of the child.

The African Children's Charter provides a general direction that states parties must take all appropriate measures to ensure that an internally displaced child receives appropriate protection and humanitarian assistance.[45] While *Article 23(1)* of the African Children's Charter emphasizes the need to take "appropriate measures" for the protection of IDCs, it is not clear what such measures entail.[46] It has been suggested however, that the phrase "appropriate measures" requires the adoption of a "broad range of measures cutting across all sectors of Government, which must be used and be effective in order to prevent displacement and protect internally displaced children.[47] These measures shall include legislative, administrative, financial, educational, judicial and social measures geared towards "appropriate protection and humanitarian assistance" for the enjoyment of the rights in the African Children's Charter and other international instruments. The direction to take all appropriate measure requires states parties to deploy all their resources including social, economic, political, legal and diplomatic resources in ensuring that IDCs are allowed to enjoy the rights enshrined in the ACRWC and in order to alleviate the difficult situation in which such children find themselves[48]. There are no limits to the nature and scope of such 'appropriate measures and all internal displacement situations will need to be assessed on a case-by-case basis and responses continually evaluated as the displacement situation unfolds. Thus, where children have moved across borders of their state but are within the country, the host state is obligated to ensure as a basic minimum that essentials such as food, adequate sanitation, and shelter are made available promptly. Additionally, the host state is enjoined to ensure that the children have adequate security and that they are not subject to threats from elements from whom they have fled. Where the host state in unable so to do, it is a requirement to deploy its diplomatic capabilities in ensuring that international help is sourced from

[45] *Article 23(1)*

[46] R Adeola , and B D Mezmur,; 'The Protection of Internally Displaced Children in Africa: A Doctrinal Analysis of Article 23(4) of the African Children's Charter', [2021], *Journal of African Law* (Vol.65), 115 - 129

[47] HandBook for the Protection of Internally displaced Persons, <https://www.unhcr.org/4c2355229.pdf >accessed on 24/8/2022

[48] *Ibid.*

other regional or international partners.[49]The Charter encourages cooperation of states parties with existing international organizations which protect and assist IDCs in their efforts to protect and assist the children.[50]

In addition, the Charter makes special provision for unaccompanied IDCs who are in an even more desperate situation. In this regard, the Charter identifies two key responses with respect to unaccompanied children, namely the 'tracing of the parents or other close relatives…in order to obtain information necessary for reunification with the family'[51] and, where such parents or relatives cannot be found, the placement of such child in alternative care.[52]

Where children are separated from their usual caregivers, the ACRWC makes special provision. Thus, although it gives individual rights to children, it also emphasizes relationships.[53] In this regard, the ACRWC proclaims the family as 'the natural unit and basis of society' and entitles every child 'to the enjoyment of parental care and protection'[54]. The recognition of the centrality of the family in the upbringing of a child forms the basis of the prioritization of family reunification as a primary response in situations of separation. The obligation of states under these provisions is to ensure that children who are parentless or permanently or even temporarily deprived of their family environment must 'be provided with alternative family care' which may take the form of adoption, foster placement or placement in suitable institutions for the protection and care of children.

Other complementary rights have been provided under the Charter. *Article 6* of the ACRWC guarantees every child the right to a name, the right to be registered immediately after birth, and the right to acquire a nationality. The preservation of a child's identity also includes within its purview the protection of the child's cultural, racial, linguistic and religious identity[55] and, in this regard, the African Children's

Charter guarantees every child the right to participate freely in cultural life[56] and the right to freedom of religion.[57] In relation to IDCs, rights of identity are of fundamental

[49]T Kaime**, "**The Protection of Refugee Children Under the African Human Rights: Finding Durable Solutions in International Law (London, Routledge, 2008) , p.302.

[50] Article. 23(2)

[51] Article. 23(2)

[52] Articles 23(3) and 25(2)(b).

[53]L J LeBlanc.; *The Convention on the Rights of the Child*, Nebraska, University of Nebraska Press, 1995, 404.

[54] ACRWC *Article 18(1)*

[55]D Hodgson,; 'The international legal protection of the child's right to a legal identity and the problem of statelessness' [1993], International *Journal of Law, Policy and the Family*, (Vol.7), 265.

[56] ACRWC, Article 12(1)

[57] *Ibid*, Article 9(1)

importance. Registration of children will assist in the tracing of family members for the purpose of reunification and the protection of the child's cultural, racial, linguistic and religious identity, which in turn will inform the process of determining the child's best interests. These provisions obligate states to identify, register and document refugee children as soon as is practicable.[58]

Article 16 protects all children from all forms of torture, physical or mental injury and abuse, neglect or maltreatment. The child also has the right to be protected from sexual exploitation[59]as well as economic exploitation and from performing any work that is likely to be harmful to the child's health or physical, mental, spiritual, moral or social development[60]. Further, children under the age of eighteen have protection against military recruitment and direct involvement in military hostilities[61].The Charter also provides for the child's right to education[62], rest, leisure and play[63], and to the highest attainable state of health[64].

An analysis of the extent of state obligations emanating from the duty to provide protection and assistance to internally displaced children demonstrate just how onerous the duties assumed under these provisions of the ACRWC are. The economic and financial implications of guaranteeing these rights to IDCs by states may lead to their totally shirking from their duty to protect and provide assistance to IDCs.

Article 31 provides for the child's responsibility. According to the Article, every child shall have responsibilities towards his family and society, the State and other legally recognized communities and the international community. To ensure proper implementation of the Charter, *Article 32* provides for the establishment of African Committee of Experts on the Rights and Welfare of the Child within the Organization of African Unity to promote and protect the rights and welfare of the child.

4.Comparative Analysis of the Laws on IDPs

To combat the numerous challenges faced by the IDCs, the Kenyan, Nigerian and Sudanese governments have put in place legal, policy and institutional frameworks. Firstly, these countries are subscribers to the various international human rights instruments upon which the IDP laws and policies are founded. Secondly, specific

[58] T Kaime, op.cit**.,** p.308
[59] ACRWC Art 27
[60]ACRWC *Art 15*
[61] *Ibid, Art. 22(2)*
[62] *Ibid, Art. 11*
[63] *Ibid,Art 12(1)*
[64] *Ibid,Art 14(1)*

instruments on internal displacement negotiated within the international community and African region have been recognised and ratified. The three countries under review are all parties to the United Nations Guiding Principles on internal displacement but while Nigeria is a signatory to the Kampala Convention, Kenya is a signatory to the Great Lakes Protocol. Sudan has not ratified any of these conventions. The Guiding Principles, the Kampala Convention and Great Lakes Protocol all impose a responsibility on states to establish domestic legal framework for the prevention of internal displacement and the protection of its victims.

In the discharge of this responsibility, Kenya has enacted the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act of 2012 which provides for quite a number of civil, political, social and economic rights for IDCs. Sudan and Nigeria have no specific law on IDPs but have formulated national policies that recognise state responsibility over IDPs.[65] Despite not having a law on IDPs, there are other national legislations relevant to the internally displaced child in Nigeria and Sudan. Sudan Constitutional Charter and the Child Act are useful instruments in the protection of IDCs and their rights as well as the Constitution of Nigeria and the Child's Right Act amongst others. Kenya equally has a Constitution and the Children's Act applicable to the IDCs.

Whether law or policy, the responsibility of states over IDPs which includes children are well spelt out. In Sudan, the responsibility to prevent the causes of displacement and minimising the effects arising therefrom is on the Government.[66] *Sections 5 and 6* of the Kenya IDP Act provides for both prevention and protection from displacement. Government is duty-bound to guard against factors and prevent conditions that have the potential to result in the displacement of persons even in situations of armed conflict, generalized violence, human rights violations, natural or human-made disasters and development project. Measures government is expected to take to achieve this are equally provided for.[67] Displacement and relocation due to development projects shall only be lawful if justified by compelling and overriding public interests[68]in which case adequate assistance and protection shall be granted to the victims of such displacement. One of the laudable provisions of this law is contained in *Section 23* of the Act which criminalises acts likely to cause arbitrary displacement of people or to injure IDPs. In Nigeria, Government is considered the primary duty bearer with the responsibility for protection of internally displaced persons. Such protection will be responsive, i.e. aiming to prevent imminent or stop on-going violations, remedial, i.e. aiming to provide redress (e.g. access to justice, reparation or rehabilitation) for past violations, or

[65] Sudan National IDP policy, Article 8.
[66] Principle 8(2)
[67] S. 5(3) and (4) of the Act. See also S. 7
[68] S. 6(3)

environment building, i.e. aiming at creating the necessary legal and institutional framework, capacity and awareness that is necessary to promote respect for human rights of internally displaced persons and prevent future violations.

IDCs are granted certain rights as citizens of the aforementioned countries regardless of their displacement. These rights include civil, political, social, economic and cultural rights. However, while these rights are recognised as enforceable rights in Sudan and Kenya, only the civil and political rights are litigable in Nigeria. The socio-economic rights are provided under the fundamental objectives and directive principles of state policy and were declared non-justiciable by *section 6(6)©* of the Constitution. For instance, unlike in Nigeria, under the Kenyan and Sudanese constitutions, rights to education and health are made litigable. *Section 53* of the Kenyan Constitution guarantees the child's right to free and compulsory basic education. This right was further recognised in *Section 13* of the Children's Act. It is the responsibility of every parent or guardian to ensure that the child takes advantage of this right. [69]Similarly, *Article 62* of the Sudanese Constitution provides for the right to free and compulsory education at the general level. *Section 5(2)(e)* of the Child Act imposes on the State the duty to provide education for the child. In Nigeria, free, compulsory and universal basic education is not provided for as a right but a mere objective and directive principle of state policy.[70] However, the enactment of the Child's Right Act and the court's decision have elevated education from being an objective to a right.[71]

The Kenyan Constitution makes provisions for the right of IDCs to a clean and healthy environment.[72] The right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;[73] accessible and adequate housing and to reasonable standards of sanitation; be free from hunger, and to have adequate food of acceptable quality; to clean and safe water in adequate quantities; to social security and to education are equally provided. *Article 65* of the Sudanese Constitution, mandates the State to provide primary health care and emergency services free of charge for all citizens, to develop public health, and establish, develop and rehabilitate health and basic diagnostic institutions. *Section 5(2)(a)* of the Child Act further imposes a duty on the State to ensure that the child grows up in a healthy environment.

[69] Children's Act, s. 13(2).

[70] Sudanese Constitution, s.18.

[71] CRA;s 15, Legal Defence And Assistance Project (LEDAP) Gte & Ltd v Federal Ministry Of Education & Anor SUIT NO.: FHC/ABJ/CS/978/15

[72] s.42

[73] See also the Children's Act, s.16.

The justiciability of the economic, social and cultural rights under the Kenyan Constitution was firmly recognised and established in *Osman v Minister of State for Provincial Administration & Internal Security and Ors*[74]. *In this case,* the High Court of Kenya has held that the forced eviction of 1,122 people was a violation of the right to adequate housing enshrined in the Kenyan Constitution and a number of other rights, and made injunctions compelling the government to return the evictees to their land and to reconstruct reasonable housing for the community. The Court further held that the Kenyan Constitution of 2010 recognises civil and political rights and economic, social and cultural rights, and makes both justiciable. It also applies international human rights covenants signed by the Kenyan government as the law of Kenya.

The proliferation of institutions to address the problem of internal displacement is a reality and common to all the countries under discussion.[75] This is not different from what is obtainable at the international level; no single international institution is solely responsible for the protection of IDPs. The multiplicity and lack of clarity around the exact roles and responsibilities of institutions responsible for preventing, protecting and addressing displacement, as well as around the way in which they should interact, remains a major challenge to the full protection of IDPs. The trio run an open-door policy when it comes to assisting IDPs and have continued to receive aid from the international community.

Unlike the Nigerian and Sudan position, the Kenyan IDP Act includes the county government in the responsibility to protect IDPs under the Act but does not specify the ways in which the national and county governments will collaborate in fulfilling their mutual responsibility for the IDP Act's administrative implementation. The Nigerian government tried to adopt the shared responsibility formula of Kenya but only ended up removing the primary responsibility of protecting IDP from the national Government to the State Government in its newly adopted IDP policy of 2021.

The draft National Policy for the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya recognizes the need for predictable funding and provides for the establishment of an IDP fund "to comprehensively cover the implementation of the policy in all its aspects and any kind

[74] *[2011] eKLR*

[75] In Kenya you have Ministry of Devolution and Planning's special programmes directorate, the NCCC, the National Disaster Management Agency (NADIMA) and National Steering Committee on Peace-Building and Conflict Management (NSC). In Nigeria, there is the Ministry of Humanitarian Affairs and Social Development, National Commission for Refugees, Migrants and IDPs and National Emergency Management Agency (NEMA) and its state branches known as the State Emergency Management Agency (SEMA) in addition to the international agencies and NGOs.

of displacement situation irrespective of its cause."[76] To address corruption and mismanagement of the fund, the draft policy further provides that the fund shall be overseen by an independent board composed of representatives of relevant stakeholders and be open to receive bilateral and multilateral donations, but not exclude the possibility for donors to continue to directly fund humanitarian activities as well as recovery and development projects. The budget for the fund is provided through budgetary appropriations by Parliament, but it is also open to the public. On the other hand, in Nigeria, as part of its response to the plight of IDPs, resources are mapped out in the annual budget to assist them. This usually comes under the budget allocation for the Ministry of Humanitarian Services and Social development which houses various institutions and agencies. In the absence of a special body saddled with the responsibility of handling IDPs in Nigeria as earlier noted, the IDPs benefit from the limited resources apportioned to NEMA and NCRMI. The NCRMI was originally established by law for only refugees before its mandate was by a presidential fiat extended to IDPs and migrants. Therefore, the IDPs are like the biblical Lazarus who desired to eat from the crumbs that fall from the Rich man's table.

5.Lessons from the IDP laws of Nigeria, Kenya and Sudan

Based on the comparative analysis, the following lessons are to be drawn:

The embodiment of bills of rights for children in the Sudanese and Kenyan constitutions is worth emulating. This makes child protection both a national and constitutional issue requiring compliance by government at all levels without an exercise of discretion. It also creates a platform for uniformity in the legal protection of the child and gives the internally displaced child a strong foundation for the demand and exercise of his rights.

The domestication by Kenya of the United Nations Guiding Principles on Internal Displacement and the Great Lakes Protocol is another lesson to learn. This step not only recognises and identifies IDPs as persons in need of special protection due to their vulnerability to human rights violations but donates exercisable and enforceable rights to them. This is a demonstration of commitment to international obligations which require states to adopt such specific national laws for the protection of IDPs.

The approach of Sudan and Kenya to treaties and conventions which they have ratified is yet another lesson to draw from these countries. The international instruments automatically form integral part of their domestic laws upon such ratification without undergoing another process of legislation to make them applicable.

The enforceability status accorded socio-economic rights by the Sudanese and Kenya legal frameworks is a great lesson to learn. The full realization of the civil and political

[76] Draft IDP Policy, Chapter X, Paragraph 3

rights is contingent upon the satisfaction of their social and economic needs. The reality is that IDCs are more in need of social and economic protection such as food, water, clean and healthy environment, education etc. which should be demanded as of right and not received as mere reliefs from humanitarian agencies. The decision to make socio-economic rights litigable and justiciable by these countries is commendable. For instance, in Sudan, the provision of good and quality health care facilities and services is a constitutionally recognised and litigable right. The state undertakes to provide primary health care and emergency services free of charge for all citizens, to develop public health, and establish, develop and rehabilitate health and basic diagnostic institutions.[77]

The criminalisation of forced displacement by the Kenyan IDP laws is laudable. The dire consequences of displacement are enough reason to warrant its criminalisation This will go a long way to reduce the rate of such displacement by deterring people from doing things that will force people out of their homes. The division of the responsibility to protect IDCs amongst the tiers of Government in Kenya thereby reducing the burden on the national Government is a good development to be encouraged.

6. Conclusion

There is no gainsaying the fact that by adopting the UN Guidelines, the Kampala and Great Lakes Protocol, IDP laws and policies, Kenya, Nigeria and Sudan have demonstrated a commitment to improve the conditions of IDCs in their country. While this is desirable, enacting law that establishes institutions for protection and assistance to IDPs and embedding suitable agendas into its protection framework, may not be enough. In many cases, African states that host internally displaced populations have resorted to massing them in camps run by international organizations, and have not paid particular attention to the rights and welfare of the children who find themselves in these dire circumstances. The plight of the vulnerable children caught up in problems such as this, demands more creative solutions than the mass shepherding of people into camps. Despite the massive displacement problem on the African continent and the elegant rules contained in the relevant laws, the AU does not have a central organ for coordinating displacement issues. Unless the legal rights of IDCs are properly recognized and implemented, the only guarantee they will have, is the continued hardship of their situation.[78]

For the desired results to be achieved, protection of the Internally displaced child should be prioritised. A shared and collective responsibility amongst the tiers of government as well as grassroot protection by which the care and protection to be given the IDCs are delivered at their doorsteps, are recommended for effective protection of the IDCs. Most of the IDCs are camped in locations that are usually far

[77] *Article 6*

[78] Kaime, T., *op.cit*., 309-310

from the general public and often times inaccessible as a result of insecurity and poor road infrastructure. It is therefore, recommended that the Local Government structure being very close to these IDCs, be fully activated and utilised in offering the required protection to the IDCs. Laws and institutions that will enable it achieve this protection should be established as well as the resources. The host communities too must be empowered to achieve this grassroot protection as the nearest group to the IDCs. A legal framework mandating the states of origin of these IDCs to undertake the welfare of their indigenes while outside their homes to lessen the burden on their host states or communities is recommended for the realisation of a qualitative protection of the IDCs. The humanitarian approach to the plight of internally displaced children should be replaced with a human rights-based approach. A human-rights based approach places the displaced child in a position of a right-bearer which empowers him to make demands for the enforcement of those rights within the ambit of the law and which imposes a legal duty on their states to meet those demands. The problem of institutional multiplicity should be addressed by the government creating one institution solely dedicated to the protection of internally displaced persons. This institution would have regional, state and local government branches within the country for proximity of intervention and with different units such as the legal unit, disaster management unit, child care unit, security unit, humanitarian unit etc. to address each concern that arises from such displacement. Moreso, the institution should be subjected to routine supervision and scrutiny for the purposes of accountability and checkmating corrupt practices such as diversion of funds meant for IDCs. The protection of IDCs should not be left to policy makers and must not exist in the realm of speculation or conjecture.