

The Application of Cessation Clause to IDPs in Nigeria

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Abstract- Nigeria has been facing the issue of insurgents and banditry since 2004 and this has caused thousands of Nigerians to flee from the ructions of this unrest. The fleeing Nigerians around borders areas move to neighbouring countries to seek refuge but greater numbers are internally displaced. Internally displaced persons in Nigeria are usually at the whims and caprice of the government of Nigeria without external regulatory body. Although this is common to all IDPs cases in the world as there is no international instrument designated to monitor its operations, the IDPs need effective monitoring as refugees in international protection law. This study examines the confluences between refugee law and the incidence of IDPs with a view to exploring one aspect of refugee law, namely, the application of cessation clause, to IDPs and proposes that its application to IDPs can prevent abuses inherent in IDP operations by either the institutions in charge of managing IDPs or by IDPs. This is an exploratory study and it is hoped that further studies can explore the international protection law to bring relief to the IDPs.

Indexed Terms- Nigeria, IDPs, Cessation Clause, Refugee Law

I. INTRODUCTION

The cessation clause is a refugee status instruments which brings to focus certain factors and conditions that may require a refugee status to be revoked, cancelled or no longer desirable. The 1951 Convention relating to the Status of Refugees (hereinafter “1951 Convention”) recognizes that refugee status ends under certain clearly defined conditions. The cessation clause has restrictive application because of its generic connection to refugee status, in any case, what ceases in this context is the refugee status as stipulated by the 1951 convention. The Internal displaced Persons (IDPs) are individuals displaced by virtually all the factors which produce refugees but IDPs are not refugees

simply because they are still within the frontiers of their state. They may have been displaced, they are not stateless- therefore, it’s reasons that the IDPs do not need intervention of the international protection law. However, just like the refugees, the IDPs have often come under certain conditions that a declaration is required about their status. Two scenarios often play out, one, the IDPs may wish a cessation of their status on the basis of personal assessment of conditions which brought them to IDP camp, and may come to a conclusion that it is safe to leave. The second, is when authority decides that an IDP camp is no longer necessary because certain conditions dictate that it is safe to return the people back home. The core of this work is to examine under what law should an IDP camp cease to operate. This becomes imperative since the application of the cessation clause to IDP matters will create conceptual deformities because of the generic nature of cessation clause. One critical point to IDP status is that individuals do not often wish to bring a close to their IDP status when not regulated by laws, but the existence or otherwise of an IDP camp should not be a subject of a wish of an individual. Generally, the cessation of an IDP camp has been supervised under general humanitarian law with no specific tool directed to IDP as a peculiar subject. This work is exploratory as it attempts to employ the use of the cessation clause as a legal measurement of revocation of IDP status. The work maintains that its use is not encumbered even though it is generic and specific to refugee situation. The objective application of the cessation clause by a municipal law has been queried since state party saddle with its application may also be responsible for displacement in the first place.

The Internal Displacement Monitoring Centre (IDMC) has provided that 55.0 million people have been displaced by the end of 2020 globally, and as at 31 December 2020, 2.7 million are internally displaced in Nigeria as a result of conflict and violence especially in the Northeast region of the Country (<https://www.internal-displacement.org/>).

Internally displaced persons (IDPs) have been seen as development that is peculiar to developing countries (Conference on Internal Displacement in Nigeria 3-6 November 2021, Abuja) for two basic reasons, one, many of the factors propelling them are germinated under unbridled political system like the ones in the third world and two, part of development index is the ability of nations to always prepare for the unknown, therefore swift responses of developed countries to incidence of natural disasters is an indicator of development – something that is obviously missing in third world countries. Although some African theorists are wont to explain first world swift response to natural disaster from point of view of geographical expectations, stating clearly that many countries in the west expect many of the disasters and therefore are pre-ready for their occurrence (Conference on Internal Displacement in Nigeria 3-6 November 2021, Abuja). This view, notwithstanding, does not explain why third world nations are ill-prepared to handle sudden ructions which make recourse to internal displaced arrangement inevitable.

The incidence of internally displaced persons (IDPs) in Nigeria is quite a recent phenomenon associated with the rise of insurgents in the North-East part of Nigeria, hitherto, Nigeria was only aware of refugees who crossed from festering nations to seek protection in Nigeria especially during the Liberian civil war in the 1990s. The Boko Haram insurgency is the most potent singular factor which gave rise to IDPs in Borno states and other states in the region have witnessed the incursions of the Boko Haram, thereby extending the prevalence of IDP camps to them. According to a UN statistic of May 2014, report showed that between 2013 and 2014, six other states had been affected by the crisis (Adamawa, Borno, Bauchi, Gombe, Taraba and Yobe) (UNHCR, 2014). Nigeria's IDP population currently stands at 2.7 million, however, the country is still not among top three countries with the largest internally displaced population due to conflict and violence. As at December 2020. DR Congo, Syria and Ethiopia are ranked in this category. The top three countries with the largest number of IDPs due to disasters in 2020 were China, the Philippines and Bangladesh (<https://www.internal-displacement.org/>).

The IDP camps in Nigeria will be used as case study to show how unregulated the operations have been. The absence of regulation here does not mean there are no agencies or institutions or even policies relating to the operation of the IDP camps, what is striking here is that there are varied degrees of abuses in the administrations of the camps and the IDPs actually do not know of any standard of treatment of their status. Recourse to legal redress by IDPs is almost unheard of since there is no court of competence to adjudicate on such matters. Issues of abuses of IDPs have been handled under general violations of human rights which are not necessarily generic to being an IDP.

The point comes back to whether there are known instruments, to seek redress, relating to treatments of IDPs beyond a state frontier, should a state demur?

- The IDPs In Nigeria

As late as December 2021, Amnesty International (AI) had shown concern about the safety of thousands of IDPs in Borno state who had been asked to return to their homes despite continued attacks from Boko Haram and the Islamic State in West Africa Province (ISWAP). Interviews conducted by the AI show that many IDPs have been forced to leave the camps even when the government knows that they are not returning to safety but to delicate and false security. Instances were given when IDPs lost their lives, captured and raped the very night they returned to their villages (<https://www.amnesty.org/en/search/website,2021>) A woman whose 12-year-old daughter was shot when the armed group Boko Haram attacked their resettled shelter in Agiri, Mafa LGA informed Amnesty International that:

“Four days after we arrived Agirimafa, we were attacked by Boko Haram. The military ran away during the attack and our husbands and other men also ran. Boko Haram announced during the attack that we should stay here that they would not touch us but after one month, they came again around 12am in the night. They opened fire on us. My daughter was shot on her leg three times. After the attack, we had to wait till morning before we took her to the hospital. We stayed in

the hospital for 80 days and they conducted several surgeries on her but at the end she became paralyzed”.

The country director of the AI reported that “at least 6 people were killed and 14 injured in Agiri, Mafa Local Government Area on 30 August 2021, one month after they were resettled”. He went further to cite instances where returnees in New Marte, Agiri and Shuwari experienced multiple attacks by Boko Haram since their resettlement. (HTTPs, 2021)

In addition to forcing IPDs to return to unsafety, is the very short notice of bringing IDP status into an end. The authorities in Nigeria have limited framework to measure or gauge when and how an IDP status should be brought to an end. This is the inevitable consequence of not having a strong policy that directs the affairs of the IDPs in the country. All the IDPs in Agiri and Shuwari villages reported to the AI that the government did not give them any notice before asking them to vacate the camp and this was in spite of the reports that insurgents were still very much around attacking villages nearby.

According to a 30-year-old farmer resettled at Agiri, Mafa LGA: “The Chairman of Mafa LGA gathered us and said we are being given three days’ notice to vacate the IDP camp. He said that on Monday and Tuesday, people in Agiri will be returned, while others in surrounding villages will be returned on Wednesday. He said we must prepare ourselves and return to our villages. Everyone was confused with the three days’ notice and we were returned to Agiri on the expiration of the short notice.”

Another grotesque account of short notice of eviction was given by a 28-year-old father of seven now living in Shewari camp, Jere LGA.,

“Boko Haram did so many bad things to us, but I would never forget how I felt the day government officials came to the IDP camp on a Wednesday and informed us that by Friday at 4pm, they don’t want to see anyone in the IDP camp. We were given two days’ notice and I didn’t know where to go with my seven kids. ”<https://www.amnesty.org/en/search/website,2021>

The above is an instance of how government administer IDP camps without recourse to any regulatory instrument whether internal or international protection law, thus escalating the tendencies of abuse. Generally, the IDPs are treated under the municipal law of a state, however, should a state’s act not be regulated by some superior instruments especially when the state relates with the IDPs as part of political system? Again, should a state alone be left to determine when an IDP status comes to an end when the state has other political factors it considers beyond safety of IDPs. For instance, the it has been observed that during elections, the need to populate an electoral constituency may ignite abrupt decision to return IDPs to their communities. In addition, scarcity of funding is also a potent reason why IDP status comes to an end. This cascades to a reasonable conclusion that the IDP is largely unregulated in Nigeria

- Cessation Clause and the IDP Camps: Substantive Analysis

The cessation clause gives legal content to the stoppage of refugee status to someone who is no longer a refugee or does no longer qualifies to be called a refugee. Rather than being seen as a separate article in the 1951 Refugee Convention, the cessation clause is a caveat to refugee status and definition, namely, referring to those who are refugees except for other recognised conditions that have excluded them. Thus, the 1951 Convention relating to the Status of Refugees recognises that refugee status ends under certain clearly defined conditions. This means that once an individual is determined to be a refugee, their status is maintained unless they fall within the terms of the cessation clauses or their status is cancelled or revoked under Article 1C of the 1951 Convention.

The principle of the cessation clause nitpicks from the grounds provided by article 1C which provides: the 1951 Convention shall cease to apply to any person falling under the terms of Article 1(A) if:

He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his

nationality; Provided that this paragraph shall not apply to a refugee falling under section A (1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

Being a person who has no nationality, he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence; Provided that this paragraph shall not apply to a refugee falling under section A(1) of this Article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.,

The major challenge here is how to apply this provision to a non-refugee issue even when such present very similar character. However, the provision clearly states its domain to be refugees and asylum system. Applying this provision to the IDP is likely to create major conceptual issues whereas IDPs bear same features as the refugees, they are still under the protection of a state, and are therefore not refugees, that are stateless who need the intervention of international protection law.

In recent times arguments have emerged relating to the possibility of a refugee even within his state frontier, if only the justification of international law's intervention is the statelessness of an individual. To refer to someone as being stateless under asylum system means the absence of or the inability of state to protect the individual. Inability of a state to protect may be an issue of lack of capacity to do so and the idea of statelessness cannot possibly be ignited in this context. Absence of state protection is the legal context of seizure or failure of responsibility to protect. In this perspective an individual is possibly persecuted and is also prevented from fleeing from his state. Yet, there is also the idea of false protection when the option to flee to a more secured territory is denied to citizens for various political reasons.

This study maintains that if IDPs share virtually same characters with refugees, there should be some relief from refugee instrument without necessarily

destroying the refugee architecture to the extent that the cessation clause here would have shelved its restrictive usage only to refugee. Cessation clause with respect to IDPs could derive its application from other bodies of international law. The recourse to international law aid is necessitated generally by the partiality of the state when adjudging its own institutions.

While municipal authorities maintain formal control on the operation of the IDPs, international law, although aware of its limitation, can rely on international instruments through its organ of humanitarian law and human rights declaration, to extract some form of monitors of the activities of national authorities over the IDPs. The recourse to these instruments is pivotal in establishing international concern over a matter that often not subjected to international intervention and scrutiny. In 2001, the Inter-Agency Standing Committee of the United Nations system developed a mandate to attend to the challenges of Internally Displaced Persons, in a manner that there would be some international guiding principles, to bring the IDPs under international watch or attention. For this purpose, particular operational agencies as well as the Representative of the UN Secretary-General on Internally Displaced Persons (RSG on IDPs) and the Internal Displacement Unit were established in the Office for the Coordination of Humanitarian Affairs (OCHA). Two critical areas of concern for international intervention for IDPs are, when and how should displacement be considered no longer required and how to ensure return of IDPs to safety. These are two extreme views that hold fundamental infractions for both government and IDPs respectively, namely, government should not end IDP status when it is not ripe to do so and IDP should return when it is required to do so. The Deputy Emergency Relief Coordinator, in an official request to the RSG on IDPs, requested his advice and guidance 'indicating when generically an individual would not only become an IDP but when he/she should no longer be considered under this category ("Who We Are". OCHA 2022).

To an important extent many international instruments on the IDPs rely substantially on refugee provisions to treat issues of IDPs. In determining how

IDP camps should come to an end, refugee experience is relied on with respect to the principle of the cessation clause as already mentioned above. There have been variant displacements around the world that either produced refugees and IDPs at the same time, or only refugees or only IDPs. This sometimes is exacerbated by the operation of the United Nations High Commissioner for Refugees (UNHCR) which has mandate of operation for refugees, but its functions overlap when there are IDP contents in the line of its operations and eventually the two concepts are treated under the UN refugee mandate. The concern has often been raised whether the UNHCR's invocation of the "ceased circumstances" provisions for refugees has implications for the determination of the cessation of internal displacement in the same country of origin (UN Doc. E/CN.4/1994/43/Add.1)? This inquiry came to global concern in 1996 when in December of that year, the UNHCR declared the cessation clause on Mozambican refugees, this invocation of the "cessation clause" to end refugee status for Mozambican refugees appears to have been an important determining factor in the decision to consider there to be no longer any internally displaced persons in the country either. However, when the RSG on IDPs visited the country that same month, he found that 'despite the decision by the Government and the donor community no longer to target displaced groups, this in no way means that all internally displaced persons have returned' (UN Doc. E/CN.4/1994/43/Add.1).

The same situation is converse in Nigeria where conflict and wars against the insurgents have led thousands to be IDPs but some have crossed international borders to neighbouring countries like Cameroun as refugees. The authorities in Nigeria often claim not being aware of this international displacement in order to continue to gain a sense of control in the views of international observers.

The above only shows that while it is possible to use the cessation clause for IDPs, the IDPs cannot be assumed to be refugees and therefore should not be treated under the same mandate. Essentially even when they overlap, the predominant content will have to take precedence and such the two cannot be skewed together.

Aware of this debacle, the United Nations has combined two major instruments to tackle the challenges of the IDPs, one is the application of the cessation clause which is borrowed from the Refugee Convention and two, is the application of general humanitarian law and human rights. These two have thus far provided operational standard for treatment of IDPs but the international system is yet to provide an agency that will supervise the application of these standards under a mandate system. Although, even for refugee law, international protection laws appear to be more of guiding principles than law, so for the IDPs, nations have not actually domesticated the international standard treatment of the IDPs, thus leaving the IDPs totally at the mercy of their national authorities.

- Cessation Clause and When IDPs Want to End Status

Early 2020, the UN Deputy Secretary-General Amina Mohammed reported that thousands of internally displaced persons (IDPs) in Nigeria want to return to their homes and livelihoods. And she also reported that they were impatient to do so. after visiting a camp in the town of Banki, near Nigeria's border with Cameroon (The Cable: 2022).

This is an instance where certain measures are needed in individual choices of the IDPs, there have been reports of IDPs who are farmers who insisted on going back to their farm lands, especially during harvest or during planting season. Most often, many fall into the hands of insurgents who most likely know that the harvesting time would lure the IDPs to the farms. Some were killed summarily and some were kidnapped. The right of IDPs to make informed and voluntary decisions as to whether they want to return, or settle and integrate at the place where they found refuge or elsewhere, is one of the cornerstones of the Guiding Principles (E/CN4/1998/53/Add2). The UN Guiding Principles appears to want to acquire a supra-individual status on the human rights of persons when it places limitation on the rights of movement of IDPs by maintaining that there may be situations in which national authorities may determine that conditions are too unsafe to permit return or settlement in a specific location (E/CN4/1998/53/Add2). When in doubt as to which

international instrument to employ when IDPs are insistence on returning when the situation is unsafe, this UN Guiding Principle retains a prescriptive rule to assist correctness in application of standard.

Further, the UNHCR's Executive Committee Conclusion No. 69 (XLIII) 1992, although with respect to cessation of refugee status, enjoins authorities to assess the situation where the individual is returning and if found unsafe, neither the individual nor the authorities should return the individual to unsafety, Article 1C(5) and (6) provides for the cessation of a person's refugee status where "the circumstances in connection with which he [or she] has been recognized as a refugee have ceased to exist". To assist assessment of how and to what extent conditions in the country of origin must have changed before these "ceased circumstances" (Executive Committee Conclusion No. 69 (XLIII) (1992). It provides further that:

" taking any decision on application of the cessation clauses based on "ceased circumstances", states must carefully assess the fundamental character of the changes in the country of nationality or origin, including the general human rights situation, as well as the particular cause of fear of persecution, in order to make sure in an objective and verifiable way that the situation which justified the granting of refugee status has ceased to exist."

Although the above addresses refugee status, its benefit can be extrapolated to IDP status cases. In this respect, irrespective of the claims and grounds provided by an IDP to return, the UNHCR Executive Committee reserves the authority of assessment of such claims with the national authorities which have the responsibility to make very fair and objective conclusion on the demand of the IDPs. Now with respect to cessation of IDPs in the North-East part of Nigeria, such decisions are not easy to assess where IDPs are known to be farmers and need to harvest their produce. Cases have been reported even when the IDPs in this category bring some produce to assist feeding in the camp.

Nonetheless, the fact that such request to return is not based on large-scale aspiration which is often inspired by trusted and permanent changes, shows

that the situation is still unsafe and unstable. In practical terms when after all assessment is carried out, and the IDP insists on returning, the choice of enforcement not to return or otherwise, lies with state, barring further derogation of the IDP human rights.

- Government and Cessation Clause of IDPs

As earlier mentioned, local authorities (as in Nigeria) are quick to revoke the cessation clause on IDP camps without adequately fulfilling the conditions required by international law to necessitate revocation. More often revocation of the cessation clause smacks responses of government to certain challenges in the camps. When these challenges cannot be surmounted, a resort to quick fix is to bring IDP camps to abrupt end. Reports are rife about how government have closed IDP camps without paying attention to safety, and durable solution to resettling the IDPs. However, the UN Guiding principles stipulate the following conditions before the cessation clause can be revoked:

- Formerly displaced persons do not suffer attacks, harassment, intimidation, persecution or any other form of punitive action upon return to their home communities or settlement in other locations. Attacks or other acts of violence against internally displaced persons are prohibited in all circumstances.
- Formerly displaced persons are not subject to discrimination for reasons related to their displacement. This provision has two components. First, displacement ends when returnees and settled or locally integrated persons do not face discrimination because they had been displaced in the past. Second, for the solution to be sustainable, displacement can be said to have ended only if the reasons that induced past and may induce future displacement have ended.
- Formerly displaced persons have full and non-discriminatory access to national and sub-national protection mechanisms, including police and courts.
- Formerly displaced persons have access to personal documentation, which typically is needed to access public services, to vote and for administrative purposes. To give effect to the right for internally displaced persons to

recognition before the law, it is important that the formerly displaced have access to documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates.

- e. Formerly displaced persons have access to mechanisms for property restitution or compensation regardless of whether they return or settle in the area where they found refuge or a new location.
- f. Formerly displaced persons enjoy without discrimination an adequate standard of living, including shelter, health care, food, water and other means of survival. National authorities have the principal responsibility to ensure that those who return, integrate locally or settle elsewhere in the country have access, on a sustainable basis, to essential food and potable water, basic shelter and housing, and essential medical services and sanitation.
- g. Formerly displaced persons have been able to reunite with family members if they choose to do so. Families separated by displacement should be reunited as quickly as possible, particularly when children are involved.
- h. Formerly displaced persons are able to exercise the right to participate fully and equally in public affairs.

CONCLUSION

The comparison between refugee and IDP is necessary in this study to the extent the two share the same material properties, save that one category crossed the frontier of a state to another. As already observed, international law has not totally abandoned the IDPs to national laws' whims but with less vent and support as we have in the refugee convention. One clear difference is that there is no convention yet on the treatment of IDPs, leaving the UN with a mere provisional guideline to the treatment of IDPs. Guidelines are not laws, rather, they are detailed plan or explanation to guide an organisation in setting standards or determining a course of action. Nations follow this guideline as a matter of pleasure where derogations are often without consequence.

IDPs generally are at the mercy of their national authorities and nations find it easy to acquiesce when there is no fundamental consequence when they demur, developing nations (like Nigeria) find it hard to meet with standard set by the UN Guiding Principles. This is more exacerbated when the cause of displacement is political. Conflicts and internal strife steep internal displacement to further controversies as there are denials and counter denials of the causes and durable solutions. An effective way out of this quagmire is simply for states to follow the Guiding Principles set by the United Nation which has at its core, the protection of internally displaced persons and also relate with the principles in the application of the cessation clause in the refugee convention as the normative on which cessation of IDP status takes its roots

Relating to the above is the challenge of adjudication of IDP matters. IDP is a very subjective concept since its operations are within a state boundary and being regulated under the municipal law of a state. Often, the establishment or cessation of IDP camps is politicised to such an extent that state may retain IDP camps because of aid accruals from donor countries and on the other hand, a state may deny or refuse to establish IDP camps because of the believe that international communities use that as indication of absence of peace especially when the IDPs are creation of wars and conflicts. The International Criminal Court (ICC) has linked the incidence of genocide to refusal or denial of IDP camps to victims of wars and conflicts when the state intentionally disallows citizens from fleeing and at the same time refusing to create a camp of safety for them (ICC-CPI-062707-227). The fact that IDP is left to the whims and caprice of state's authority, its application and standard of operation are not, strictly speaking, regulated by any known external intervention. Issues like when to establish a camp, or apply cessation, are prerogative of a state and that is what opens the concept to political mechanisations.

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