

## RETHINKING DISPLACEMENT AND THE PROTECTION OF FEMALE ASYLUM SEEKERS IN NIGERIA\*

### Abstract

*Displacement has over the years become one of the major causes of migration of persons en masse from one part of the world to another. The victims of the displacement are usually in dire need of legal protection which actually exists having been codified by various enactments but which is often times illusory. The procedure to follow before legal status is granted to persons seeking asylum in a host country is also cumbersome. This position is the same for men, women and children. However, due to the vulnerability of women and children, the consequences of displacement affect them differently. The study investigated the effects of displacement on women and their protection regime as asylum seekers. It mainly considered and appraised the adequacy or otherwise of the legal regime for the protection of female asylum seekers and victims of displacement.*

**Key words:** *displacement, asylum seekers, protection, migrants, immigrants, refugees*

### 1. Introduction

Over the years, the increased flow of migrants, immigrants, asylum seekers, refugees, forcibly displaced persons and/or internally displaced persons have been a source of major concern to national and international communities. The number of displaced persons increases every year<sup>1</sup> and both the national and international communities seem quite unable to capture and address the immediate as well as the remote cause(s) of the increase in relation to these sets of people. Be that as it may, over the years, international and domestic conflicts and violence have reared their heads as the major causes and are noted to have caused and contributed immensely to the mass displacement of persons. Also, throughout recorded history, oppressions and disasters have caused people to flee their homelands.<sup>2</sup> Torture, inhuman and degrading treatment, religious and political persecutions and other violations of human rights have exacerbated the situations of displacement. More frequently, it is poverty and the lack of prospects for development that push individuals and families into exile, to seek ways to survive in distant lands, where they rarely find a suitable welcome. Many of today's conflicts are characterized by mass human rights violations committed with impunity. There is occurrence of repugnant practices like domestic violence against women and girls, female genital mutilation (FGM), the recruitment of child soldiers and the use of antipersonnel landmines. Displacement is also caused by natural mishaps such as drought, floods, volcanic eruptions and manmade and artificial factors like tribal conflicts which can lead to ethnic cleansing, genocide, coups etc.<sup>3</sup> Ethnic tension arising from contending national aspirations also make people become refugees and internally displaced persons. This, it is argued, has precipitated localized ethnic conflicts which have spilt over to larger communities.<sup>4</sup> Regarding displacement as a source of international migration, the Cairo Conference in 1994 encapsulated what the causes of displacement are when it stated in its draft that:

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\* By **Obinna O. MBANUGO, LLM, LLB, BL**, Lecturer, Department of International Law, Faculty of Law, Nnamdi Azikiwe University, Awka. obinnambanugo@ymail.com, +2348037749145; **Boniface E. EWULUM, PhD (Law), LLM, LLB, BL**, Lecturer, Department of Public and Private Law, Faculty of Law, Nnamdi Azikiwe University, Awka. emefie@yahoo.com, +234-703-813-7153; and **Jude O. EZEANOKWASA, PhD(Law), JCD (Canon Law), LLM, JCL(Canon Law), LLB, BL, B.D.(Theology), B.Phil. (Philosophy)**, Lecturer, Department of International Law and Jurisprudence, Faculty of Law, Nnamdi Azikiwe University, Awka. jo.ezeanokwasa@unizik.edu.ng, +234-705-267-7705.

<sup>1</sup> See Report of Jacques Quenod on Refugees, Displaced Persons and Returnees, U.N ESCOR, 2<sup>nd</sup> Sess. 37<sup>th</sup> Plen. Mtg. 10 U.N Doc. E/1991/109/Add.1(1991). That report noted that 18 million people all over the world were at that time considered to be either refugees or persons who have crossed international borders and stating that another 24 million are thought to be internally displaced.

<sup>2</sup> Elizabeth Ama Oji, "The Law for the Protection of Refugees in Nigeria" in Okpara Okpara (ed), *Human Rights Law and Practice in Nigeria Vol. 2* (Abakaliki: Publicom International (Nig) Ltd 2009) p.148.

<sup>3</sup> Muhammed Tawfik Ladan, *Migration, Trafficking, Human Rights and Refugees under International Law: - A Case Study of Africa* (Zaria, ABU Press Ltd, 2004) p.227

<sup>4</sup> *Ibid.*

International economic imbalance, poverty and environmental degradation, combined with the absence of peace and security, human rights violation and varying degrees of development of judicial and democratic institutions are all factors affecting international migration<sup>5</sup>.

It is important to note that displacement can be of two categories: internal and external. It is internal when the persons involved are merely displaced within their country of origin and have been pulled away from their means of sustenance and livelihood to new areas or other parts of their country of origin. It is external where the persons involved have crossed an internationally recognized border and are outside their country of origin. The second category is the concern of the present study.

## 2. Definitions

There is a great deal of confusion about the difference between an asylum seeker and a refugee even though often the terms are used interchangeably or incorrectly. An asylum seeker is someone who is seeking international protection but whose claim for refugee status has not yet been determined. Such a person can be referred to as a refugee applicant to an extent. That is to say, that asylum seeker can be a person who has applied for the grant of refugee status and is probably awaiting a decision on same. In contrast, however, a refugee is someone who has been recognized under the 1951 Convention Relating to the Status of Refugees to be a refugee. According to the Convention, a refugee is a person who:

Owing to the well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it...<sup>6</sup>

Consistent with the internationally accepted meaning of the term, as reflected in the above mentioned Convention, section 20 (1) of the National Commission for Refugees (NCFR) Act<sup>7</sup> declares that a person shall be considered a refugee if he falls within the definition provided by: a) Article 1 of the 1951 UN Convention Relating to the Status of Refugees. Thus, in Nigeria, a person is considered a refugee, who owing to a well-founded fear of persecution, colonial rule, or foreign occupation, or events seriously disturbing public order, covering a wide variety of man-made conditions which do not permit humans to reside safely in their countries of origin or nationality, including also civil wars or armed conflicts, as well as due to the conditions of famine and natural catastrophes, have to seek refuge in Nigeria. Hence, it will be correct to assert that a refugee can be an asylum seeker and an asylum seeker a refugee, both of them being persons who are applying or waiting for the grant of refugee status.

In fact, an asylum seeker has been defined as a person who, for fear of persecution for reasons of race, religion, social group, or political opinion, has crossed an international frontier into a country in which he or she hopes to be granted refugee status.<sup>8</sup> According to the Migration Watch United Kingdom, there is much confusion in the media and in public debate generally about asylum seekers, refugees and economic migrants.<sup>9</sup> Thus, it defined an asylum seeker as a person who has applied for asylum under the 1951 Refugee Convention on the Status of Refugees on the ground that if he is returned to his country of origin he has a well-founded fear of persecution on account of race, religion, nationality, political belief or membership of a particular social group. He remains an asylum seeker for so long as

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<sup>5</sup>Draft of I.C.P.D Cairo, Egypt 1994 in U.N Program of Action of I.C.P.D.:67.

<sup>6</sup> UNHCR, Convention Relating to the Status of Refugees, UNHCR, Geneva, 2007, p. 16 viewed 28 October 2015, <http://www.unhcr.org/3b66c2aa10.pdf>.

<sup>7</sup> This is the extant law on refugees in Nigeria. The law set out the above in the First, Second and Third Schedules to Cap. N21 LFN 2004.

<sup>8</sup> <http://www.thefreedictionary.com/Asylum%20seeker> Retrieved on 22 March 2015.

<sup>9</sup> 'The Distinction between Asylum seekers and Refugees', *Migration Watch UK*. Retrieved on 22 March 2015

his application or an appeal against refusal of his application is pending.<sup>10</sup> The definition applies to countries which are parties to the 1951 United Nations Convention on the Status of Refugees (1951 Refugee Convention). Refugee" in this context means an asylum seeker whose application has been successful. In its broader context, asylum seeker means a person fleeing from e.g. civil war or natural disaster but not necessarily fearing persecution as defined by the 1951 Refugee Convention. On the other hand, economic migrant means a person who has left his own country and seeks by lawful or unlawful means to find employment in another country. The position of unsuccessful asylum seekers is similar to that of those who enter on short term visas and overstay. They are granted temporary admission while their applications/appeals are pending, but once they have exhausted their rights and are still unsuccessful, they no longer have any lawful right to remain in the country in question.

### 3. Causes of Displacement

The immediate cause of forced displacement today remains the insecurity that arises out of conflict. This issue of displacement further precipitates unacceptable levels of suffering and misery to those displaced; hostility and tension within the community that hosts them; and occasionally, threatens international peace and security. This phenomenon, before now was not, for the most part, a violation of human rights norms. Indeed, until fairly recently, it was not even seen as human rights problem. Even presently, displacement is not construed consistently as a human rights violation and thus, does not trigger international concern in a coherent manner.<sup>11</sup> One would invariably ask; why has human rights law responded so slowly to situations of displacement? One explanation is that certain forms of displacement are so horrendous that they are considered violations of international customary law as well as international common morality.<sup>12</sup> Therefore, these violations do not need specific articulation. Another possibility is that there exists no specific human rights framework addressing the problems of displacement<sup>13</sup>. A third explanation is that the problems of displacement are so diverse and complex that even defining displacement as a term is often times difficult. This has been the issue with displacement over the years. As stated above, conflicts have been the greatest cause of displacement. Dating back to the First World War<sup>14</sup> which was a global war centered in Europe, empires were dismantled and ethnic minorities persecuted. The Second World War came even with more devastation than the first. Since then, wars have become more proliferated and have taken a terrible toll not only on men but also on women and children. Following World War I, people were displaced *en masse* from Asia Minor, the Russian Empire, and the Balkans<sup>15</sup>. In the 1930s, many fled from China because of the Japanese invasion and from Spain because of the Fascist victory.<sup>16</sup> Also, before, during and after World War II<sup>17</sup>, it was estimated that about 7 million Jews and some others who were threatened by the Nazis had to flee their homelands<sup>18</sup>. In the aftermath of the wars, many Western countries established programmes to take care of and cater for refugees who fled from the Communist countries of Eastern Europe. On the African continent, wars and conflicts have ravaged nations and have rendered millions homeless. This century has in fact been regarded as the century of refugees.<sup>19</sup> These wars and conflicts in Africa (Rwanda, DRC<sup>20</sup>, Angola, or Liberia) have made Africa one of the Third World continent's with one third of the world's refugees. Internally displaced persons (IDPs) have also been on the increase on account of the ever-rising numbers of inter-ethnic conflicts and disasters within the region.

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<sup>10</sup> *Ibid*

<sup>11</sup> Maria Stavropoulou, "The Right not to be Displaced", *American University ILR*, Vol. 9, no.3 (1994) 691.

<sup>12</sup> *Ibid* p. 700.

<sup>13</sup> *Ibid* p. 701.

<sup>14</sup> The First World War started on 28 July 1914 and lasted till 11 November 1918.

<sup>15</sup> Elizabeth Ama Oji, *op cit* p.148.

<sup>16</sup> *Ibid* p.148.

<sup>17</sup> Started in 1939 and ended in 1945.

<sup>18</sup> Elizabeth Ama Oji, *op cit* p.149

<sup>19</sup> Andreas Demuth, "Some Conceptual Thoughts on Migration", in Agozino B, *Theoretical and Methodological Issues in Migration Research* (London: Ashgate Publishing Ltd 2000) p. 25. <<http://www.en.refugeelawreader.org/index.php>> accessed on 18 September 2012.

<sup>20</sup> The Democratic Republic of Congo was formerly known as Zaire and was headed by L.Kabila; the issues and problems of displacement had started as far back as when the country was still known as and called Zaire. This fact shows that displacement arose a long time ago.

While there globally may have been some estimated 125 million international, i.e. transborder migrants, in 1993, roughly 1000 million migrants, eight times as many, were internal migrants<sup>21</sup>. More than half of these internal migrants were found in Africa. Using other demographic data, the Forced Migration Studies Programme (FMSP) at the University of the Witwatersrand in Johannesburg has produced the following statistics<sup>22</sup>. Between 1994 and 2009, the cumulative total of recognized refugees migrating to South Africa was 47,596.<sup>23</sup> In 2009, there were 223,324 new applicants for refugee status. Of those, 4,567 were approved and 46,055 rejected - more than ten times the number approved. In addition, 172,702 were added to the backlog of pending cases. In 2007/8 individual work permits were issued to 32,344 economic immigrants. In the same year, 312,733 were deported.<sup>24</sup>

Because of its stability, highly developed infrastructure and first-world amenities, many elites from Nigeria, Congo, and other African countries travel to South Africa, and the wealthiest often have houses there. They are a population of high visibility. So too are the receptionists and others, born in Zimbabwe, who deal with the public. But, South Africa has a total population of more than fifty million, and the numbers of high profile migrants are relatively small.<sup>25</sup>

Again, the colonial histories of most African states have also contributed to the problems and causes of displacement. Colonialism stunted Africa's political, economic and social development. During the nineteenth century's "Scramble for Africa,"<sup>26</sup> European powers partitioned the continent into arbitrary territorial units called colonies. These colonies often lacked internal cohesiveness, and differences and antagonisms among various indigenous groups were frequently exploited and exacerbated. The struggle for independence was a bloody affair. There was the attendant problem of accepting the colonial borders. For this reason, the Organisation of African Unity (OAU)<sup>27</sup> had made a pragmatic decision that all African countries should accept their colonial borders under the doctrine of *uti possidetis*.<sup>28</sup> The existence of these colonial borders, which were poorly defined, throughout the continent contributed to conflicts and have posed greater problems as resources have become increasingly scarce.

From the foregoing therefore, it can be seen that the causes of displacement are numerous. It can be artificial, man-made and or natural. The artificial or man-made causes are often times characterized by wars, violence and conflicts. These wars and conflicts can either be ethnic, religious or political in nature. It can also be in the form of artificial scarcity created by human forces. The natural causes will include ecological disasters like erosions, earthquakes, drought, flood and tsunamis. In whatever mode or manner, the cause(s) of displacement may come, provisions ought invariably to be made, legally and institutionally for the victims.

#### 4. Gender Based Displacement

In cases of displacement, gender has always been an issue. The term "gender" refers to the socially constructed and assigned characteristics, roles and responsibilities of women and men in any given culture. These social characteristics are constructed on the basis of sex combined with other factors, such as age, religion, national, ethnic and social origin. Although gender is not static and responds to changes in the social, political and cultural environment,<sup>29</sup> the expression "gender based displacement", for the purpose of this study refers majorly to displacement suffered by the feminine gender. Owing to the vulnerability of women and girls, arguments have been made in favour of the group to the effect

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<sup>21</sup> Andreas Demuth, *op.cit* p. 27.

<sup>22</sup> J Campbell "Misconceptions About Cross Boarder Migrations in South Africa" (2013) *Africa in Transition* <http://blogs.cfr.org/campbell/2013/02/20/misconceptions-about-cross-border-migration-in-south-africa/> accessed on 15 May 2013.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

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

<sup>26</sup> E G Berman and K P Sams, *Peacekeeping in Africa: Capabilities and Culpabilities*. (Geneva, Switzerland 2000) p.12

<sup>27</sup> Now African Union (AU).

<sup>28</sup> Latin maxim which means "as you hold possession by right". See E. G. Berman and K. P. Sams, *op cit*. p. 13.

<sup>29</sup> See Para. 4.3.2 of the Handbook on Internally Displaced Persons.

that they, especially women should be specifically recognized as refugees and/or IDPs and special protection given to them. This is so because displacement has different and more severe consequences for women and girls than for men and boys. There is often a dramatic increase in the number of women heads of households and they bear the additional responsibility of meeting the needs of children and ageing relatives since the male members of their families have either joined the warring groups or have become captured. Women face new demands in providing for themselves and their children with increased workloads and limited access and control over the benefits of goods and services. Also, as a result of conflict and the breakdown in law and order, women and girls face increased risks in sexual violence and abuse. This breakdown gives rise to other causes of displacement peculiar to women and girls by the sheer reason of their gender and which have caused them to flee their immediate communities.

Furthermore, for the reason of gender, there is greater number of female asylum seekers, refugee and IDP women and girls in refugee and IDP camps because it is extremely difficult for women and girls to flee the war zones as they are or may be carrying babies. Women and girls in situations of displacement also need privacy in order to maintain their personal hygiene and dignity.<sup>30</sup> Thus, women and girls of menstruation age need supplies of culturally appropriate sanitary materials as they often flee without the possibility of taking such supplies with them.<sup>31</sup>

Again, one of the causes of this gender-based displacement which is sexual and gender-based violence is one of the most pervasive violations of the rights of women and girls before, during and after armed conflict and displacement. It is often employed as a strategy of war by armed actors to gain power. Women and girls are at risk of sexual and gender-based violence in most internal displacement situations. This can include rape, forced impregnation, forced abortion, trafficking, and sexual slavery. While men and boys may also be affected, research indicates that sexual and gender-based violence predominantly affects women and girls.

As a developing area of law, it has been more widely recognized that gender-related persecution is one, which can and should be assessed by the Refugee Division Panel hearing the claim<sup>32</sup> and that women and girls in situations of displacement face greater challenges than their male counterparts. Where a woman claims to have a gender related fear of persecution, the central issue becomes the need to determine the linkage between gender, the fearing persecution and one or more of the Convention grounds.<sup>33</sup>

### **5. Protection of Female Asylum Seekers, Refugee and IDP Women**

The protection of women is often seriously compromised in refugee and IDP camps. This is so because women frequently make up high proportion of refugee and IDP populations and there are large numbers of female-headed households, especially in conflict situations where men are either engaged in fighting or have been killed. The factors enumerated above<sup>34</sup> have been major causes of displacement and have also posed great problems in refugee and IDP camps.

Worthy of note is the fact that women are entitled to the same protection as men in international humanitarian and human rights law: “In addition, recognizing their specific needs, international humanitarian law grants women additional protection and rights... (often) related to their child bearing

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<sup>30</sup> As they have to share living quarters, washing and toilet facilities with many people (and these facilities are often easily accessible to men) many women are forced between maintaining personal hygiene and maintaining their dignity and security.

<sup>31</sup> Charlotte Lindsey, *Women Facing War*, (Geneva: ICRC, 2001) p. 17

<sup>32</sup> Elizabeth Ama Oji, “Protection of Refugee Women: Protecting the Particularly Vulnerable” in C Arinze-Umobi and OVC Ikepeze (eds), *Gender Rights Law in Nigeria* (1) (Onitsha: Folmec Printing & publishing Co., 2008) p.121

<sup>33</sup> The Convention grounds include grounds of race, religion, nationality, membership of a particular social group or political opinion.

<sup>34</sup> See 4.2. above.

role”.<sup>35</sup> The United Nations General Assembly in its initial attempts at safeguarding and protecting the rights of women proclaimed the Declaration on the Protection of Women and Children in Emergency and Armed Conflict vide its Resolution 3318 (XXIX) of 14<sup>th</sup> December 1974. In Article 6 thereof it states:

Women and children belonging to the civilian population and finding themselves in circumstances of emergency and armed conflict in the struggle for peace, self-determination, national liberation and independence, or who live in occupied territories, shall not be deprived of shelter, food, medical aid or other inalienable rights, in accordance with the provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration of the Rights of the Child or other instruments of international law.

The UN Security Council Resolution 1325 also makes reference to the protection offered to women and girls affected by armed conflict in the Geneva Conventions, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Refugee Convention and the Rome Statute Governing the International Criminal Court. These provide women and girls with rights as civilians. In relation to refugee and displaced women, the resolution urges that states, their armies and peacekeeping forces should receive training in the rights of women and girls to protection, and invites those responsible for camp design, protection and resettlement to take into account the special needs of women and girls.

In 1991, the UNHCR adopted the Guidelines on the Protection of Refugee Women,<sup>36</sup> which aimed to integrate the needs and resources of women into all programming to ensure protection and assistance. The Guidelines describe the process of assessing women’s protection needs in both emergency and long-term refugee and displacement situations, addressing such factors as the characteristics of the refugee and the displaced population and local attitudes towards them, the physical organisation of camps, social structures, physical safety provisions and access to services and legal systems. They describe typical protection needs and possible responses, presenting advice on gender-sensitive interviewing techniques and how humanitarian assistance projects can contribute to protection (e.g. through following guidelines when distributing relief items or the organising health care and education). An evaluation in 2000 noted that the Guidelines were not being adequately implemented and did not address current challenges. An update to the Guidelines was under way by the year 2004.

These Guidelines have now been replaced by the UNHCR Handbook for the Protection of Women and Girls. The UNHCR in 2004 developed Five Commitments to Refugee Women:<sup>37</sup>

1. To develop integrated national strategies to address sexual violence (including domestic violence);
2. To register women individually and provide them with individual documentation to ensure their security, freedom of movement and access to services;
3. To ensure that 50 percent of refugee representatives on management committees are women;
4. To ensure that women participate in the management of food and non-food distribution so that these goods are directly controlled by a household’s adult women; and
5. To provide sanitary materials to all women and girls as standard practice.

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<sup>35</sup> Charlotte Lindsey, *Women Facing War*, (Geneva, ICRC 2001) p.18

<sup>36</sup> ‘Guidelines on the Protection of Refugee Women’ (Geneva: UNHCR, 1991). 12 September 2004

<sup>37</sup> ‘Women, War, Peace, and Displacement’ (New York: UNIFEM, 2004). 8 July 2004

The protection of women and girls is very pertinent and the UN, state governments, NGOs and others are challenged to understand and respond to gender issues through analysis and comprehensive programme initiatives. These initiatives should effectively build on the capacity of women affected by armed conflict and other causes of displacement, support internally displaced women as they push for return to their homes and reconstruction, and encourage women's participation and protection in building a life of peace and dignity.

## **6. Issues and Challenges facing the Protection of Female Asylum Seekers, Refugee and IDP Women**

Situations of refugee and displacement pose particular challenges for receiving States, for other States affected in the region and, increasingly, for the international community. People have been uprooted by persecution, famine, conflict and other natural or artificial causes all around the world. States as well as UNHCR have grappled with the complexities of providing adequate protection responses in these circumstances. The need for greater clarity concerning the scope of international protection in mass influx situations is apparent, not least in view of the varying responses that have been used to address the problem. In displacement situations most countries have concerned themselves more with refugees rather than IDPs for the reason that they readily affect the population of the host state. Situations giving rise to refugees and IDPs and the refugees and IDPs themselves are often times unattended to. The problem is worsened by the definitional problems surrounding IDPs and the issue of them not having crossed international borders. Also, the issue of sovereignty has continued to restrain international humanitarian efforts. This is notwithstanding the fact that the number of IDPs in a particular country like Nigeria far outweighs the number of persons who have been accorded refugee status. It may reasonably be predicted that the problem of IDPs, for a number of different obvious reasons like the issue of assertion of national sovereignty, will increase even further in the future. The foregoing is also the problem attending the protection of female asylum seekers, refugee and IDP women. The international and national protection regime for asylum seekers, refugees and IDPs target male victims of the displacement or victims of displacement generally without specific attention to women and their special needs. The present writers therefore, advocate for a comprehensive approach to the global refugee problem which must, for both pragmatic and ethical reasons, also address the situation of IDPs with particular attention being had to female victims of displacement with specific regard to their needs. It appears that the problem of protecting asylum seekers, refugees and the internally displaced especially the female victims will continue to haunt both international and national community as long as effective human rights protection for all of the world's population cannot be assured. The plight of refugees and the internally displaced, male or female, is often due to poor interpretation and implementation techniques and as a result of the host government's actions or tacit acquiescence. The problem therefore cannot be resolved without considering the question of how far this same issue of sovereignty continues to restrain international humanitarian efforts. The resolution of this dilemma would be the key imperative for forging a meaningful solution to the problem of effective protection asylum seekers, refugees and IDPs generally and female asylum seekers, refugee and IDP women in particular.

## **7. Conclusions and Recommendations**

Protection of asylum seekers, refugees and IDPs especially female asylum seekers, refugee and IDP women, has been a major source of concern to national and international communities. The adverse effects of displacement are tremendous and affect women differently. It is only through the provision of adequate and specific legal and institutional framework and the proper utilization and implementation of the ones on ground, that the full protection of female asylum seekers, refugees, IDP women and other displaced persons can ever be achieved.

We recommend therefore that in addition to the existent legal and institutional framework for the protection of female victims of displacement, future refugee and IDP legislation must give proper attention to the particular needs of vulnerable groups especially women, young girls and children. In order to prevent future displacement, the immediate and underlying factors behind the causes of displacement especially the artificial or man-made causes like violence, conflicts and strife must be addressed and openly discussed. The discussion should include the recurrent issue of discrimination

between “indigenes” or “settlers”, ethnic and religious conflicts, economic injustices and disputes over political boundaries. This will indirectly reduce the increase in the number of female headed households which would be the case when the male members of the families have been caught up in the violence, ethnic conflicts and religious strife. Also, ensuring that the victims of displacement especially women and girls receive all necessary assistance and are provided with the basic necessities of life including food, shelter, basic sanitary and health facilities must be made a priority.