

EVALUATING THE LEGAL FRAMEWORK FOR THE PROTECTION OF INTERNALLY DISPLACED PERSONS IN NIGERIA

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Abstract

Force displacement is a daunting challenge facing the international community as a result of disaster, armed conflicts, insurgency and communal tension. In the same vein, Nigeria has been experiencing the problem of internal displacement as a result of Boko Haram insurgency and kidnapping. More than two million Nigerians have been displaced. Internally displaced persons (IDPs) differ from refugees, though they have similar characteristics. The sources of displacement of refugees and IDPs may be the same and requires equal treatment. However, IDPs have been excluded under the protection of International Refugee Law. This is because IDPs do not cross international borders and therefore they should be under the protection of their national government. Sometimes the national authorities are behind the reasons for their displacement or unable to protect them. This is one of the reasons IDPs have been experiencing neglect and inadequate protection. Accordingly, Nigerian IDPs have not been adequately protected, as there is no national or international legal frameworks that have directly addressed the plight of IDPs. Therefore, the objective of this paper is to assess the legal frameworks for the protection of IDPs in Nigeria. The researcher adopted a doctrinal method. It was found that Nigerian policy on IDPs is not effective as it has not been domesticated/implemented and finally recommended that there shall be a legally binding instrument specifically dealing with IDPs in Nigeria.

Keywords: Legal Framework; Internally Displaced Persons; Constitution; Civilians.

1. Introduction

The post-cold war era has witnessed the decline of the conflicts between states and that period coincided with the emergence of “new wars” such as insurgencies, civil wars, genocides, ethnic conflict and other violent conflicts perpetrated by human beings against their fellows. Unlike conventional wars that usually happen between states, “new wars” waged by organised armed

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groups against the states or other groups within the states. Mostly civilian becomes the target and that ensued mass casualties and forced displacement of the population from their homes or places of habitual residence. Also the period witnessed the brutal neglect of human rights and deliberates disrespect of the rule of international humanitarian law (IHL). This has led to the massive forced displacement of people within the borders of their own countries. This categories of people has been named as internally displaced persons (IDPs).

It has been noted that, the current trend of global forced displacement reveals that IDPs outnumbered refugees. According to Internal Displacement Centre for Migration¹ there were about 59.1 million IDPs across the world at the end of year 2021. As at the 31st December, 2021, there were total number of 3,335,000 (three million three hundred and thirty five thousand) IDPs in Nigeria facing serious protection problem.² The situation of IDPs in all locations across the Country is critical; there are few formal camps available for the IDPs. So many are residing in host communities. A greater percentage of the displaced population has no means of livelihood; most of the IDPs are in need of cash to pay their house rents, clothes and psychological support especially for those in Zamfara and Katsina states.³ More worrisome is the fact that, there are cases pointing to serious human rights violations committed against the IDPs ranging from insecurity, hunger, lack of shelter, portable water, and rape in some cases.⁴

However, IDPs have been legally exempted from the international protection afforded to refugees by virtue of their displacement within their own countries. The International Law Commission clearly shows that international law saddle more responsibility on state with regard to the treatment of its citizens. This means that the states have the primary responsibility to protect and assist the IDPs within their territorial borders. However, the degree to which IDPs can be protected is contingent to the legal framework for their protection. To this end, the task of this paper is to evaluate the legal framework for the protection of IDPs in Nigeria with a view to assess their adequacy for the protection of IDPs in Nigeria.

2. Conceptual Clarification of the Key Terms

2.1 Displacement

¹ IDCM/Grid/2021/2022 Global Report on Internal Displacement, <https://www.internal-displacement.org/global-report/grid/2022>. Accessed on 8th July, 2022, at 11:30pm

² IDMC, Figures Analysis 2021 – Nigeria, <https://www.Internal-displacement.org/countries/Nigeria>; Accessed 1st August, 2022 at 5:58pm.

³ Ibid

⁴ Nasa’I Muhammad Gwadabe, *et al*, (2018), Forced Displacement and Plight of Internally Displaced Persons in Northeast Nigeria. *Humanities and Social Science Research*. V.1; *Ideas Spread*, p.48.

Displacement simply means a situation in which people are forced to leave the place where they normally live. Article 1(1) of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)⁵ defines internal displacement as the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internally recognized state borders. To Ajigboye,⁶ internal displacement refers to the forced movement of people within the country they live in, to flee their homes or places of habitual residence, in the context of conflict, violence, development projects, disasters and climate change, and remain displaced within their countries of residence.

2.2 Internally Displaced Persons (IDPs)

IDPs are defined by Guiding Principles on Internal Displacement as persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situation of generalised violence, violations of human rights or natural or human-made disasters, and also who have not crossed an internationally recognized state border.⁷ While according to Hamzat, internally displaced persons are mostly victims of the inhumanity of man against man. They are victims of various kind of injustices or violence, confrontations, perpetrated by either their own government against them or by others, such as communal clashes, terrorism, riots, religious conflicts, natural disasters and so on.⁸ They are generally person that have been forced to flee their homes or place of habitual residence in order to avoid the outcomes of the armed conflict, situation of generalized violence, violation of human rights or natural or man-made disasters and must have remained within the borders of the country as IDPs or cross international borders as refugees.⁹

⁵ African Union Convention for Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 2009.

⁶ Ajigboye, O. (2018), International Law and the Responsibility to Protect: Legal and Theoretical Basis for International Intervention in Nigeria, *Journal of Sustainable Development, Law and Policy*, Vol. 3, Afe Babalola University, Ado Ekiti, Ekiti State, 3, p.87

⁷ Article 1 of the United Nation Guiding Principles on Internal Displacement, 1998

⁸ Hamzat, A.O. (2016), *Challenges of the Internally Displaced Persons and the Role of the Society*. <https://www.thenigerianvoice.com/news/113484/challenges-of-the-internally-displaced-persons-and-the-role.html>, Accessed on 8th October, 2020 @16:50hrs

⁹ Ladan, M. T. (2006), Protection of Displaced Persons under International Human Rights and Humanitarian Laws; A Case Study of Causes of Displacements in Nigeria. Being a Paper Presented at a 2-Days Workshop on International Humanitarian Law for Law Teachers in Nigerian Universities, Held at Nigeria Law School Bwari, Abuja, from August 14th – 16th, 2017, p.8.

However, it is to be noted that even though IDPs and refugees have been forced to flee from their homes, as individuals or groups and the experiences of refugees and IDPs are similar in many regards, there are also a significant differences. Refugees have cross international borders and are entitled to protection and assistance from the States into which they have move and from international community through the United Nations (UN) and its specialist agencies. IDPs on the other hand, are displaces within their own country, although international law generally provides them with protection, there is no international law or standard specifically covering IDPs and no UN agency is specifically mandated to ensure their welfare.¹⁰

2.3 Protection of Internally Displaced Persons

Protection is defined as all activities aimed at obtaining full respect for the right of the individual in accordance with the letter and spirit of the right of the relevant bodies of law, namely Human Rights Law, International Humanitarian Law and Refugee Law.¹¹ Protection is an objective which requires full equal respect for the right of all individuals, without discrimination, as provided for in national and international law. Protection is not limited to survival and physical security but covers the full range of rights, including civil and political rights, such as the right to freedom of movement, right to political participation, and economic, social and cultural rights, including the right to education and health. Protection is a legal responsibility.

3. The International Legal Framework for the Protection of Internally Displaced Persons

Despite not being beneficiaries of a specific convention IDPs are protected by various bodies of law, particularly domestic laws, International Human Rights Law (HRL) and if they are in a state experiencing armed conflict, IHL.¹² Therefore, it is imperative to examine the adequacy of these laws.

3.1 Customary International Law

Customary International Law reflects certain practices that states follow in a repeated and consistent manner and that they accept as law (*opinio juris*). In the international arena, States create legal norms not only by expressly stating their will through international conventions,

¹⁰ Ryan, J., and Childs, D. Refugees and Internally Displaced Persons. In: Ryan, J., Mahoney, P. F., *et. al.*, (Eds) Conflict and Catastrophe Medicine, Springer, London, (2002), p.7

¹¹ Protection of Internally Displaced Persons, Policy Paper Series, No. 2, 2000 and ICRC, Strengthening Protection in War. A Search for Professional Standards, 2001, p.1

¹²Helle, D., (2010), Enhancing the Protection of Internally Displaced Persons, In: Devies Wendy (Ed.), Right Have No Borders: Internal Displacement Worldwide, Norwegian Refugee Council/Global IDP Project, p.21

which is referred to as conventional law, but also through their conduct.¹³ Written law represents only a small part of international law. Certain behaviours or practices followed in a repeated and consistent manner by States and accepted and recognised by them as legitimate and beneficial create precedents and gain the legal authority as customary law.¹⁴

Customary law addresses situations and cases not specifically provided for in a treaty law by filling the voids left by written law, whether because it does not exist or because it cannot be applied for instance, owing to the complex procedure of signing, ratifying, and possibly issuing reservations to an international convention and deals with problems of contradictory interpretations.¹⁵ It equally plays a role in the law of armed conflict and humanitarian action because it codifies interactions and confrontations between States on the one hand and non-state actors on the other.¹⁶

In IHL, it is particularly important to avoid cases in which a person could be left without protection or assistance. This can happen if the relevant convention has no provisions for the situation in which the person finds him or herself or if it is not in force in the country in question.¹⁷ The 1949 Geneva Conventions and Additional Protocol I reiterate the fact that persons and situations not covered by the conventions nonetheless remain covered by international customary law.¹⁸

Regarding non-international armed conflicts, the Trial Chamber I of the ICTR, in *The Prosecutor v. Akayesu Case*,¹⁹ considered that “the norms in Common Article 3 have acquired the status of customary law in that most States, by their domestic penal codes have criminalized acts which if committed during internal armed conflict, would constitute violations of Common Article 3.”

¹³ Jean-Marie, H., and Doswald-beck, I. (2005), *Customary International Law*. Vol.3, Cambridge University Press, Cambridge, p.148

¹⁴ Koskeniemi, M. (2000), *Sources of International Law*. Aldershot, Ashgate, United Kingdom, p.367

¹⁵ Claude, B. “Custom in International Humanitarian Law.” *International Review of the Red Cross* 285 (November-December (1991), Pp.580.

¹⁶ Ibid, p.585

¹⁷ Jean-Marie, H. “Study on Customary International Humanitarian Law: A Contribution to the Understanding and Respect for the Rule of Law in Armed Conflict.” *International Review of the Red Cross* 857 (March 2005), Pp.175-212

¹⁸ Article 63 of the Geneva Convention I of 1949; Article 142 of the Geneva Convention III of 1949; Article 158 of the Geneva Convention IV of 1949 and Article 1.2 of the Additional Protocol I of 1977. Also See, Meron, T. “The Continuing Role of Custom in the Formation of International Humanitarian Law.” *American Journal of International Law* 90, (1996), Pp.238-49.

¹⁹ (1998), ICTR-96-4-T, p.616, paras.608-609.

This specifically includes its prohibitions on violence toward persons taking no active part in hostilities, hostage taking degrading treatment, and punishment without due process.²⁰

International customary law is as binding on states as the international conventions to which they are parties. The fact that a State has not signed an international convention has no bearing on its obligations under customary law.²¹

3.2 Geneva Conventions

Since antiquity, men have tried to control the effects of violence so as to limit the suffering and inevitable aftermath of the escalation. However, the modern IHL would be traced back to 17th century, when the Dutch legal scholar and diplomat Grotius wrote his *De Jure Belli ac Pasis*, as first attempt to draw up rules of international law protecting the victims of conflict. A century later, *Rousseau's*²² Social Contract set forth the basic principle on which the Geneva Conventions was founded. That “soldiers who have laid down their arms cease to be enemies. They again became mere men, and it is no longer legitimate to take their lives.” In the course of subsequent years, the rules of IHL continue to develop over time from the Geneva Convention of 1864 for the Amelioration of the Condition of the Wounded Armies in the Field²³ to the four Geneva Conventions of 1949, to 1977 Protocols Additional to the Geneva Conventions of 1949. The relevant instruments which apply to IDPs under this area of law are the four Geneva Conventions of 1949 and the Protocol II Additional to the Geneva Conventions of 12 August, 1949 Relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II). Additional Protocol II of 1977 supplements Common Article 3 to the four Geneva Conventions. It applies to all armed conflicts which are not covered by additional Protocol I, that is, non-international armed conflicts and to those which take place in the territory of a high contracting party between its armed forces and dissident armed forces or other organised armed groups which, under responsible command exercise such control over a part of

²⁰ Oscar, S. “New Custom: Power, ‘Opinion Juris,’ and Contrary Practice.” In: Makarczyk, J. Theory of International Law at the Threshold of the Twenty-First Century, Kluwer International Law, Boston, (1996), Pp.531-40

²¹ Jean-marie, H., and Doswald-beck, I. (2005), *Customary International Law*. Vol.3, Cambridge University Press, Cambridge, p.156

²² Rousseau, J. J. (1947), *Social Contract*, Penguin Books, New York. p.7

²³ Louise, D. B. and Sylvan, V. (2010), *International Humanitarian Law and Human Rights Law*, Texas Press, Washington D. C., p. 99

its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.²⁴

It thus binds both state and non-state actors in an internal conflict situation.²⁵ Civilians are to be treated humanely without discriminating against them on the basis of their “race, religion or faith, sex, birth or wealth, or any other similar criteria”. Acts of violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture are prohibited.²⁶ So also are the taking of hostages,²⁷ outrages upon personal dignity, in particular humiliating and degrading treatment,²⁸ and the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court.²⁹

Article 3(2) Common to the Geneva Conventions also provides for the wounded and sick to be collected and cared for. As IDPs form part of the civilian population, they are thus entitled to the protection which the civilian population are entitled to under IHL, for example, Article 13 of Additional Protocol II, prohibits the attack on civilians as long as they do not take a direct part in hostilities. Similarly, the civilian population shall not be displaced for reasons related to conflict unless the security of the civilians involved or imperative military reasons so demand.³⁰ Where displacement is carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.³¹ The Article also provides that civilians should not be compelled to leave their own territory for reasons connected with the conflict.³² Further, children should be educated, reunited with their families temporarily separated and children under the age of fifteen years shall not be conscripted in the armed forces or groups not allowed to take part in hostilities.³³

However, there are certain weakness of Article 3 *vis-a-vis* the protection of IDPs is that in some situations of tensions and disturbances short of armed conflict such as banditry, kidnapping,

²⁴Article 1 (1) Additional Protocol II Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8th June, 1977.

²⁵ Oppenheim, L. (1952), *International Law*, Longman, Vol. 1, p.34

²⁶Article 3(1)(a) Common to the Geneva Conventions, 1949.

²⁷ Article 3(1)(b) Ibid

²⁸Article 3(1)(c) Ibid

²⁹ Article 3(1)(d) Ibid.

³⁰ Article 17(1) Additional Protocol II.

³¹Ibid.

³² Article 17(2) Ibid.

³³ Article 4(3) Ibid.

flood etc., its provision is not applicable.³⁴ This point has been clearly made in Additional Protocol II. Article I(2) states that “This Protocol, shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature as not being armed conflicts. Consequently, IDPs who are not in areas of armed conflict cannot be protected by IHL. Notwithstanding the highlighted shortcomings, the Conventions remain one of the instruments for the protection of IDPs.

3.3 The Guiding Principles on Internal Displacement

For many decades, international humanitarian concerned for the refugees, has resulted in the advancement of an International Refugee Law and the formation of the 1951 Refugee Convention and its Protocol of 1967 in the office of the United Nations High Commissioner for Refugees (UNHCR) with the mandate to protect refugees.³⁵ However, IDPs as the largest group of forcibly displaced have not been granted special status similar to that of refugees. Hence, over the years, managing internal displacement has been considered as a matter of state sovereignty, though since 1920, IDPs have been receiving assistance from the international community.³⁶

However, internal displacement has begun to be recognized as the global problem during the late 1980s, when two international conferences were held on war refugees from Southern Africa and Central America. By 1998, the United Nations Guiding Principles on Internal Displacement by the former Special Rapporteur on IDPs, Francis Deng and his team members.³⁷

The GP on Internal Displacement bring together and give an overview for the protection of IDPs and responsibilities of national authorities and non-state actors towards them.³⁸ In section II, it provides principles relating to protection from displacement and articulates the right not to be arbitrarily displaced. In practice, therefore, states are under an obligation to avoid the

³⁴ Hingorani, R. C. (1985), *Modern International Law*, 3rd Edition, Oxford & IBIY Publishing Co., New Delhi, Bombay Calcutta, p.303

³⁵ Magaji, F. et. al., (2018), Assessing the Legal Framework for the Protection of Internally Displaced Persons (IDPs) in the North-Eastern Nigeria, *Asian Research Journal of Arts & Social Science, ARJASS*, 7(4): 1-10, p.2, <http://www.sciencedoman.org/review/history/27819>; Accessed On 3rd May, 2022, at 9:00pm

³⁶ Abebe A. M. (2016), *The Emerging Law of Forced Displacement in Africa: Development and Implementation of the Kampala Convention on Internal Displacement*, Routledge, p.4.

³⁷ Cantor D. J. (2018), The IDP in International Law? Developments, Debates Prospects. *International Journal of Refugee Law*; 30 (2), p.191. Also see Deng M. F., (2011) *Compilation and Analysis of Legal Norms*, Report of the Representative of the Secretary General on Internally Displaced Persons, E/CN/4/1996/52/Add.2.

³⁸ Walker, K. (2000), The Basis in International Law for Each Principle is Summarized in Guiding Principles on Internal Displacement: Annotation, *American Society of International Law*, www.brookings.edu/reports/2008/spring_guiding_principles.aspx, Accessed 30th June, 2022.

displacement of population³⁹ and in particular to protect against the displacement of groups with a special dependency on, or attachment to, their lands.⁴⁰ When displacement is unavoidable, the GP specify minimum guarantees to be observed.⁴¹

Further Section III provides for the civil, political, economic, social and cultural rights that all persons, including IDPs, should enjoy. This includes the rights to be protected against acts of violence, such as rape, mutilation, torture and cruel, inhuman or degrading treatment or punishment as well as the right to be protected against slavery, act of violence intended to spread terror among IDPs etc.⁴² Not only that, it also categorically provides for the IDPs right to vote and to participate in governmental and public affairs, and to associate freely and participate in community affairs whether or not they are living in camps.⁴³ The Principle provides for the IDPs right to an adequate standard of living, including ensuring safe access to essential food, potable water, basic shelter and housing as well as appropriate clothing and essential medical services and sanitation.⁴⁴ At the same time, it acknowledge that certain groups of IDPs especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons may require specific attention.⁴⁵ Finally the Section also state that special attention should be given to the prevention of contagious and infectious diseases, (including AIDS, COVID-19, among IDPs).⁴⁶

Section IV deals with the issue of humanitarian assistance and specifies that when governmental authorities are unable or unwilling to provide assistance to the displaced, international organization have the right to offer their services, and that consent for them to do so shall not be arbitrarily withheld.⁴⁷

The GP play a useful role by filling certain gaps relating to the protection and assistance of IDPs, which are implied under International Law. Such gaps, for example, relate to the prohibition of

³⁹Principles 5 & 6, of the United Nations Guiding Principles on Internal Displacement, 1998.

⁴⁰Principle 9, Ibid

⁴¹Principles 7 & 8, Ibid

⁴²Principle 11, Ibid

⁴³Principle 22 (c & d), Ibid

⁴⁴Principle 18, Ibid

⁴⁵Principle 4(2), Ibid

⁴⁶Principle 19(3), Ibid

⁴⁷Principle 25, Ibid

forced displacement and the right not to be forced to return or resettle.⁴⁸ For instance, Principle 6 is explicit with regard to the non-displacement of human beings. Though IHL prohibits ordering the displacement of the civilian population,⁴⁹ it is not clear whether such prohibition includes indirect displacement. This is now provided for under Principle 6. Secondly, the GP explicitly provides that IDPs have "the right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk"⁵⁰. None of the international instruments have such a provision which could directly be applied to IDPs.⁵¹

However, it should be noted that the GP are neither a binding treaty nor a declaration adopted by the General Assembly, but a set of non-binding guidelines. Nonetheless, it is the view of the researcher that the GP have set important global principles that serve as a soft law for the protection of IDP. Although, the principles are not legally binding instrument, but have played an important role in promoting separate body of IDPs law.⁵² In addition, some African states have domesticated the convention into their material laws such as Uganda. Indeed, the principles have helped the materialization and the development of different bodies of IDP laws at both national and international fora.⁵³

4. Regional Instrument for the Protection of Internally Displaced Persons

Due to the effects of displacement crises that significantly disadvantaged the socio-economic development of various countries and often put the stability of entire continent at serious risk, the member states of the African Union (AU) decided, in October 2009, to establish a common framework for responding to internal displacement. The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention) was adopted. It is the world's first continental instrument that legally binds governments to protect the rights and ensure the wellbeing of people forced to flee their homes by conflict,

⁴⁸ United Nations General Assembly, 2005, World Summit Outcome Resolution adopted by Head of States UN doc. A/RES/60/1, 15th September, 2005, para. 132; Also See United Nations Commission on Human Rights Resolution 2003/1, 23th April, 2003; and United Nations General Assembly Resolution 58/177, 22nd December, 2003.

⁴⁹Article 17, of Additional Protocol II, 1977.

⁵⁰Principle 15(4) of the United Nations Guiding Principles on Internal Displacement, 1998

⁵¹ Handbook for Protection of Internally Displaced Persons. <https://www.un.org/ruleoflaw/file/IDP%20Handbook-Complete-FINAL%2008.pdf>; Accessed on 5th June, 2022 at 6:00pm. p.9

⁵² Meron, T., (2009), Movement Policy on Internal Displacement. *International Review of Red Cross*, p.26

⁵³ Abebe, A.M., (2016), *The Emerging Law of Forced Displacement in Africa: Development and Implementation of the Kampala Convention on Internal Displacement*, Op. Cit., p.16, Ft.59

violence, disasters and human rights abuses. The Kampala Convention came into force on 6th December, 2012, many member States have become party to it.⁵⁴

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

The AU Convention guarantees humanitarian assistance by mandating State Parties to assess or facilitate the assessment of the needs and vulnerabilities of IDPs and of host communities in cooperation with international organisations or agencies.⁵⁵ The States Parties are required to cooperate with each other upon the request of the concerned state party or the Conference of States Parties (COSP) in protecting and assisting IDPs.⁵⁶ In particular, they are obliged to respect the mandates of the African Union and the United Nations, as well as the roles of international humanitarian organisations in providing protection and assistance to IDPs, in accordance with international law.⁵⁷

The AU Convention contains the right to protection from arbitrary displacement. Some of the provisions on prohibition and prevention of arbitrary displacement are directly related to those on displacement induced by projects.⁵⁸ Thus, state parties must equally take all measures to minimize displacement and to mitigate the adverse effects of development induced displacement,⁵⁹ as the Convention enjoins states parties to act as much as possible to prevent displacement caused by projects carried out by public or private actors,⁶⁰ and also provides individual criminal responsibility for acts of arbitrary displacement. Article 3(g) enjoin states parties to undertake to ensure individual responsibility for acts of arbitrary displacement, in accordance with applicable domestic and international criminal law.

⁵⁴The Kampala Convention: Key Recommendations Ten Years on Report Provides an Update to the ICRC's 2019 Report 'Translating the Kampala Convention into Practice: A Stocktaking Exercise'; <https://www.icrc.org/en/document/kampala-convention-key-recommendations-ten-years?amp/amp>; Accessed on 1st July, 2022, at 5:48pm

⁵⁵Article 5(5), of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 2009

⁵⁶ Guistiniani, F. Z. (2011), New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa. (2011), 39 *Denver journal of international law & policy*, p.303

⁵⁷Article 5(3), of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 2009

⁵⁸Article 3(a), Ibid

⁵⁹ Adeola, R. (2019), The Impact of the African Union Convention on the Protection and Assistance of Internally Displaced Persons in Africa, 19 *African Human Rights Law Journal*, p.595.

⁶⁰Article 10(i), of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 2009.

It should be noted however that most often such development-induced displacement are justified by compelling and overriding public interest and development. However, the Convention is silent on this requirement.⁶¹ Furthermore, one would expect that specific institutions or organizations would be identified to oversee the implementation of policies and laws, ensure effective coordination, and guard against duplication or gaps in activities. The failure to identify the actors responsible for particular activities leaves IDPs and their advocates without any effective recourse for complaints.⁶²

The Convention also enjoins state parties to provide a legal framework for the defence of the rights of IDPs. For instance, it provides for states parties' obligations to incorporate their obligations under this Convention into domestic law by enacting or amending relevant legislation on the protection of, and assistance to, IDPs, in conformity with their obligations under international law.⁶³

Finally, since the adoption of the Convention in 2009, norms have emerged at the national level as a direct substantive effect of the treaty. At least seven countries have developed laws and policies (including draft laws and policies) leveraging on the Kampala Convention.⁶⁴ Liberia, Malawi, Niger, Nigeria, South Sudan, Somalia and Zambia.

5. Domestic Legal Framework for the Protection of Internally Displaced Persons

National laws form the primary legal basis for IDPs protection activities. However, all States have a responsibility to ensure that their national laws and policies respect and reflect their obligations under international law, including those contained in HRL and IHL. States, therefore, must take action, by all appropriate means, to give effect to their international legal obligations at the national level.⁶⁵ Below are the domestic legal instruments related to IDPs in Nigeria:

5.1 Constitution of the Federal Republic of Nigeria 1999 (As Amended)

A Constitution is regarded as the national legal document which normally specifies the rights and duties of the government. It states the functions and responsibilities of the government, including

⁶¹ Guistiniani, F. Z. New Hopes and Challenges for the Protection of IDPs in Africa: The Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa. *Op. Cit.*, Ft. 79, p.312

⁶² Ekpa, S. and Dahlan, N. H. (2020), Toward the Evolution of Right to Reparation for Loss of Housing and Property of Internally Displaced Persons (IDPs) in Nigeria, *UDUS Law journal*, Vol.2, No.2, (2021), p.180

⁶³Article 3(2)(a), of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 2009.

⁶⁴Adeola, R. (2019), The Impact of the African Union Convention on the Protection and Assistance of Internally Displaced Persons in Africa, *Op. Cit.*, p.15. Ft.53

⁶⁵ Ibid

the role of protecting the citizens of the country. It empowers people to legally claim protection against any potentials or real danger.⁶⁶ Basically, it is the existing national law where IDPs being citizens of Nigeria can legitimately proclaim their rights to sufficient and decent protection against any threat to their lives. The Constitution obligates the national government to safeguard the citizen of the country. Consequently, Chapter IV of the Constitution,⁶⁷ provides for fundamental rights of the peoples (include IDPs) which are rights to life, human dignity, personal liberty, fair hearing, privacy, religion, conscience and thought, expression, association, movement, freedom against discrimination, own movable and immovable property and enforcement of these right, the Constitution can serves as the national legal framework for the protection of IDPs.

5.2 National Emergency Management Agency (Establishment) Act

National Emergency Management Agency (NEMA) Act⁶⁸ was established via Act 12, as amended by Act 50 of 1999 to handle a disaster in Nigeria. The main objectives of NEMA are to manage human and material resources to achieve effective disaster prevention, training, alleviation, and resilience to disaster in Nigeria. Even though, the NEMA Act produces an essential legal framework for IDPs protection in Nigeria. Nevertheless, the Act does not mention “Internally Displaced Persons”, but they have been recognized as the victims of disaster.⁶⁹ As provided under the functions of NEMA in section 6(1) (j) where it states among other things: the Agency shall ... “distribute emergency relief materials to victims of natural or other disasters and assist in rehabilitation of the victims where necessary”.

In practice, IDPs management is part and parcel of disaster management, as IDPs are products of natural and manmade disasters.⁷⁰ NEMA have to date been one of the leading management and humanitarian support activities for IDPs as well as search and rescue missions in disaster situations in Nigeria, and provided some assistance to IDPs across the borders.⁷¹

⁶⁶ Chemerinsky, E. (2016), *Constitutional Law*, Wolters Kluwer & Business, Lagos, p.6

⁶⁷ Federal Republic of Nigeria, Cap. C23, *Laws of the Federation of Nigeria*, 2004

⁶⁸ Cap. N34 *Laws of the Federation of Nigeria*, 2004

⁶⁹ Abegunde, B. (2019), Humanitarian Law and Internal Displacement in Nigeria: An Urgent Need for Legal Framework. *International Journal of Law and Legal Jurisprudence Studies*, Vol.4(3), Faculty of Law, University of Krisnadwipayana, Jakarta, Indonesia, p.7

⁷⁰ Makolo, H. and Collins, M. (2019), Legal and Institutional Framework for the Protection of Internally Displaced Persons: The Nigerian Case Study, *University of Abuja Law Journal*, p.10

⁷¹ Mashi, S. A. et. al. (2021), Disaster Risk and Management Policies in Nigeria: A Critical Appraisal of NEMA Act, *International Journal of Disaster Risk Reduction*, p.19; <http://doi.org/10.1016/j.jdr.2021.10.011>, Accessed on 12th October, 2022, at 10:28pm

5.3 National Commission for Refugees, Migrants and Internally Displaced Persons (NCFRMI) Bill/Act

The Commission does not have an Act but a bill awaiting presidential assent, it is currently in its final phase. The bill provides that the Commission shall ensure that policies, strategies and mechanisms are put in place to prevent arbitrary displacement of persons in Nigeria by state and non-state actors; and ensure individual responsibility for acts of arbitrary displacement, in accordance with applicable domestic and international criminal law; it also prohibit discrimination against persons in the enjoyment of any right or freedom on the grounds that they are IDPs; and ensure they live in satisfactory conditions of safety, dignity and security; it also provide special protection for and assistance to IDPs with special needs, including separated and unaccompanied children, female heads of households, pregnant women, mothers with young children, the elderly, and persons with disabilities, mental disorder or with communicable diseases.⁷²

Where a case of arbitrary displacement is established, the accused parties shall provide persons affected by displacement with effective remedies or the affected persons shall petition to the Internally Displaced Persons Committee to seek just and fair compensation and other forms of reparations, where appropriate, for damages incurred as a result of displacement in accordance with international standards.⁷³ Similarly the Bill mandate under S. 33 every host community to cooperate and collaborate with Government in the provision of adequate security and safety for IDPs settled or resident in their communities; and shall not prevent them from accessing social services available within their communities including education, health care, water and sanitation and other social amenities; and where land is required for construction of resettlement or temporary shelter, shall provide same to government through negotiations with relevant government and humanitarian agencies.

5.4 National Policy on IDPs of July 2012

In 2003, the Nigerian government establishes presidential committee with the mandate to draft national policy on internal displacement in order to address the existing legal gap about IDPs

⁷² Section 25 of the National Commission for Refugees, Migrants and Internally Displaced Persons (Establishment) Bill, 2019

⁷³ S. 26 Ibid

protection and the policy was drafted in the same year.⁷⁴ The policy therefore, without prejudice to other existing frameworks and policy guidelines for protection and assistance of vulnerable populations specifically seeks to address:⁷⁵ All causes of internal displacement as identified in Section 1.3 of the policy; All groups of IDPs including those with special needs and vulnerabilities including host communities; All needs of IDPs, including assistance and protection needs thereby ensuring the realization of the full range of their political, civil, social, economic and cultural rights; All the phases of displacement spanning from the emergency and relief phases to recovery including rehabilitation, re-integration, return and resettlement phases thereby creating conditions for durable solutions; All levels and arms of government from the Local to State and Federal levels, including all ministries, departments and agencies of government charged with diverse responsibilities of guaranteeing the rights of IDPs and adequately meeting their assistance and protection needs; All affected areas by opening up the humanitarian space as well as facilitating, coordinating and ensuring access to internally displaced persons by all state and non-state humanitarian actors, irrespective of where internal displacement has occurred within the country.

The policy has been revised twice in 2009 and 2012 but regrettably, it has become mirage given the fact that it is yet to be domesticated by the legislatures.⁷⁶

6. Conclusion

One of the salient means of guaranteeing protection to IDPs lies in the adequate provision and implementation of laws and policies insofar as it relates to protection of IDPs' and their consequential enforcement upon actual breach or threatening infraction of the same. Most of these laws and policies that entrench protection for IDPs in Nigeria are either in the nature of soft laws and treaties which also lacks effective monitoring system to ensure implementation and compliance by states party, in addition to their domestic application which is evidently limited also by the provisions of the national law.⁷⁷

Nigeria's dualist system in particular where international law and domestic law are considered as two distinct legal system require reception legislation before treaty becomes applicable in

⁷⁴ Akanmu, A. A. National Policy on Internally Displaced Persons (IDPs) in Nigeria: The Grave Exclusion. Being a Paper Presented at the First National Conference of the Family of Environmental Studies, Held at Oke-Ogun Polytechnic, Saki, on 16th – 18th February, 2016, p.12

⁷⁵ S. 1(3) of the National Policy on IDPs of July, 2012

⁷⁶ ⁷⁶ Magaji, F. *et. al.*, (2018), Assessing the Legal Framework for the Protection of Internally Displaced Persons (IDPs) in the North-Eastern Nigeria, p.16, Ft.58

⁷⁷ Section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Cap. C23, LFN, 2004

national courts also contribute to the growing concerns regarding non-implementation of IDPs norms in Nigeria as it were in other jurisdiction like Uganda where the National Human Rights commission is saddle with this onerous responsibility.⁷⁸ To this end, it was found that both the international, regional and domestic legal frameworks provide sufficient provisions for the protection of IDPs in Nigeria:

- i. Even though Customary International Law and IHL are binding international legal framework for the protection of IDPs, the compliance by Nigeria or enforcement remain the problem probably due to many reasons that include weak enforcement mechanism. While on the other hand, the GP and Kampala Convention are non-binding instruments and therefore not enforceable on states. Even though Nigerian government has signed and ratified the Kampala Convention but it is yet to be domesticated. Thus, IDPs suffer from the poor compliance of its obligation by Nigeria under international law and the absence of binding regional legal frameworks for their protection when their states fails to do so.
- ii. The GP and Kampala Convention clearly state that, the States have primary responsibility to protect IDPs. However, this can be achieved where there is national legal framework for their protection. Even though, the national assembly have passed the National Commission for Refugees, Migrants and IDPs Bill, it is yet to be assented by the president. As such there is no dedicated national legal instrument for the protection of IDPs in Nigeria. Notwithstanding the above mentioned predicaments, both the domestic and international legal framework provide sufficient provisions for the protection of IDPs in Nigeria ranging from protection from displacement, protection during displacement, provisions for humanitarian assistance, provisions relating to return and reintegration of families. In view of the foregoing, the following are recommended:
- iii. There is need for a proper sensitization to the public of the existence of legally binding international instruments for the protection of IDPs and the Nigerian government should provide easy, efficient and effective enforcement mechanism so as to meet its obligation under international law. On the other hand, the Kampala Convention should be domesticated by Nigeria so that, IDPs may have an option of accessing their right to protection under both international and domestic laws.

⁷⁸ Article 2.3.1 of the Ugandan National Policy on Internally Displaced Persons, 2004

- iv. As the national assembly passed the National Commission for Refugees, Migrants and IDPs Bill earlier last year, the president should pass track to sign same into law so that IDPs can access same to ensure their protection. Also the draft national policy for the protection of IDPs should be domesticated in line with the Kampala Convention and the Constitution of Nigeria should be amended to incorporate the right of IDPs so that IDPs enjoy their rights equally with other citizens or habitual residents of the country. Further, the various federating units should enact state laws for the protection of IDPs in their respective states.