

PROTECTION OF INTERNALLY DISPLACED PERSONS IN NIGERIA: WHOSE LEGAL RESPONSIBILITY?

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Abstract

This article examines the question as to whether the obligation and responsibility to protect and assist Internally displaced persons (IDPs) in Nigeria lies with the Nigerian state or the international community. The study relies on the provisions of the existing normative frameworks for the protection of IDPs in examining the topic of study. IDPs are persons usually forced to leave or flee their homes due to various manmade or natural occurrences. IDPs do not cross national borders but are displaced within their national territories. In Nigeria, forced displacement of persons has been on the increase over a decade now and has been linked to the various violent armed conflicts and other manmade and natural disasters witnessed in almost every region and part of the country. Predominantly among these causes of the spate of internal displacement in Nigeria is the deadly Boko Haram terrorism activities in the North, the Fulani militia herdsmen attacks, the banditry attacks, agitations and insurrections in some part of the country, flooding, oil spillage among others. IDPs in Nigeria for reason of displacement are generally subjected to heightened vulnerabilities and life threatening challenges that include loss of home and means of livelihood, human right abuses, discriminations, break-up of family ties, insecurities, hunger and starvation, psychological trauma, lack of basic necessities of life like water, adequate health care, access to education and no hope of durable solution among others. As exposed in this article, the primary obligation and responsibility to protect and assist IDPs lies with the national government, however the menace of internal displacement of persons has also become a problem of international concern requiring adequate international legal responses. In the face of the heightened vulnerabilities and protection risks associated with internal displacement of persons all over the world, the study concludes that the problems of internal displacement of persons behooves an obligation and responsibility to protect through improved preventive and management measures and through specific legal and institutional regimes.

Keywords: Protection, Internally Displaced Persons (IDPs), Responsibility to Protect

1. Introduction (Overview of Internal Displacement in Nigeria)

Internal displacement of persons has today become one of the most pressing global problem affecting almost every nation of the world. Triggered by unresolved conflicts and disasters, great number of people all over the world have been forced to flee their homes, becoming internally displaced in their own countries. It was reported in May 2023 that the number of internally displaced people (IDPs) around the world reached 71.1 million as of the end of 2022, an increase of 20 per cent from the previous year.³ The aggravated incidence of the global

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³ IDMC, Global Report on Internal Displacement 2023 (GRID 2023) on Internal Displacement and Food Security of 11 May, 2023. <<https://reliefweb.int/report/world/global-report-internal-displacement-2023-grid-2023-internal-displacement-and-food-security>> accessed on 25th July, 2023.

displacement of people was predominantly linked to conflicts and disasters combined. In the IDMC 2023 report, it was indicated that conflict and violence alone triggered about 28.3 million internal displacements worldwide with 9 million or 32 per cent of the global total recorded in sub-Saharan Africa, while the number of disaster triggered displacement estimated at 32.6 million.⁴ The report summed up by noting that conflict and disasters combined last year (2022) to aggravate people's pre-existing vulnerabilities and inequalities, triggering displacement on a scale never seen before.⁵

In Nigeria, like in every other nation, there have been rising incidences of forced and internal displacement of persons resulting from varying causative factors. Insurgency in the northeast part of Nigeria, various ethno-religious crisis, resources struggles, communal clashes, herders and farmers grazing land disputes, banditry attacks, natural disasters like flooding, poverty, developmental projects, bad government policies and other manmade and natural disasters have been noted to be the major causes of internal displacement in Nigeria.⁶ In early 2022, United Nations High Commissioner for Refugees (UNHCR) noted that in Nigeria, Boko Haram and other non-state armed groups as well as clashes between herders and farmers have pushed some 3.0 million Nigerians (as of November 2021) out of their homes, especially in parts of North-East Nigeria and the country's Middle Belt, but increasingly also in North-West Nigeria.⁷ Moreover, in April 2022 the United Nations High Commissioner for Refugees, the UN agency for refugees posited that over 80,000 refugees and 3.2 million internally displaced persons were in Nigeria and in dire need of help.⁸

The International Organisation for Migration's (IOM's) Displacement Tracking Matrix (DTM) as of February 2023 identified a total of 2,388,703 IDPs in 488,163 households and 2,110,039 returnees in 346,166 households. The IDP population included IDPs in camps and camp-like settings (834,836 individuals or 35%) and IDPs residing in host communities (1,553,867 individuals or 65%). The returnee population included IDP returnees (1,887,995 individuals or 89%) and returnees from abroad (222,044 individuals or 11%).⁹ In July 2023, it was also reported that Nigeria has over 3.5 internally displaced persons due to conflicts and disasters with Nigeria's North East accounting for half of the displaced population.¹⁰

Objectively, though there are actually more number of IDPs than the reported figures above; the data above show that Internal displacement has become a rapidly increasing phenomenon of both national and international concern. **IDPs are forced to flee their homes and unlike**

⁴ *Ibid.*

⁵ *Ibid.*

⁶ SC Unachukwu, 'An Appraisal of the Challenges and Legal Protection Available for Internally Displaced Persons in Nigeria' (2022) Volume 6 Issue 3 *International Journal of Trend in Scientific Research and Development (IJTSRD)*, 91-96. See also OJ Beida Peter & A Aroge, 'Legal and Institutional Framework for the Operations and Management of Internally Displaced Persons (IDPS) in Nigeria' (2019) *Bingham University Journal of Business Administration (BUJBA)*, 99-116 at pp 99-100.

⁷ UNHCR, <<https://www.unhcr.org/ng/idps>> accessed on 8th August, 2023.

⁸ O Nnodim, 'Nigeria has over 80,000 Refugees, 3.2 Million IDPs, says UN,' *Punch Online News*, 7th April 2022. <<https://punchng.com/nigeria-has-over-80000-refugees-3-2-million-idps-says-un/>> accessed on 8th August, 2023.

⁹ The International Organisation for Migration's (IOM's) Displacement Tracking Matrix (DTM), <<https://dtm.iom.int/reports/nigeria-north-east-mobility-tracking-round-44-idp-and-returnee-atlas-april-2023-north-east>> accessed on 9th August 2023.

¹⁰ L Okoji, 'UNHCR Nigeria: Addressing IDPs' Ordeals via Sustainable, Durable Solutions,' *Punch Online News*, 7th July 2023. <<https://punchng.com/unhcr-nigeria-addressing-idps-ordeals-via-sustainable-durable-solutions/>> accessed on 10th August, 2023.

refugees who cross internationally recognized border, they stay within their countries displaced and heavily relying on humanitarian assistance for survival. Forced to flee their homes, IDPs are part of the population that are exposed to various protection risks and deprivations. IDPs are exposed to all forms of protection risks and deprivations like: breakdown of family structure, attacks and violence, massive destruction of lives and properties, gross violation of their rights, insecurity, poor health care, hunger and malnutrition, psychological trauma, lack of basic necessities of life, lack of access to education, family separation, poverty, arbitrary deprivation of land and homes, displacement into inhospitable environments, marginalisations and discriminations, heightened risk of sexual and gender-based violence on women and girls among others.¹¹

IDPs protection in Nigeria till date is not linked to any specific binding legal framework at both national and international levels. Legal protection of IDPs in Nigeria majorly hangs on analogical application of pre-existing national laws, IHRL, IHL, international and national Refugee Laws, IDPs’ Regional (African) framework and IDPs’ Policies at national and international levels. In Nigeria, the quality of response developed to protect and assist IDPs are arguably in adequate. In the absence of a legally binding IDPs legal framework in Nigeria, the response to the plights of IDPs has been incoherent, fragmented, on *ad-hoc* basis and uncoordinated.¹²

Because the problems of internal displacement of persons behooves an obligation and responsibility to protect, the present article seeks to investigate and determine the following questions: whose responsibility it is to ensure adequate protection and assistance to IDPs in Nigeria? Whether IDPs in Nigeria are under the protection and responsibility of the Nigerian government or that of the international community? And the extent of fulfillment of this obligation and responsibility?

2. Definition and Conceptual Clarifications

The three key terms for clarification in the study are: Protection, Internally Displaced Persons (IDPs) and Responsibility to Protect (R2P).

2.1 Protection

Protection as a word means the act of being protected.¹³ The Collins Online English Dictionary defines protection to mean laws and other official measures intended to protect people’s rights and freedoms,¹⁴ while the Cambridge online English dictionary also defines protection to mean the condition or state of being kept safe from injury, damage, or loss.¹⁵ In clarifying the

¹¹ AF Ojonugwa, ‘The Challenges of Internally Displaced Persons and the Way Forward: The Nigerian Experience’ (2021) Vol. 01. Issue 01 *UCC FLJ*, 17-36. See also SC Unachukwu, *op. cit.*, pp 92-93.

¹² OJ Beida Peter & A Aroge, ‘Legal and Institutional Framework for the Operations and Management of Internally Displaced Persons (IDPS) in Nigeria’ (2019) *Bingham University Journal of Business Administration (BUJBA)*, 99-116 at p 101. S Ekpa & NH Md Dahlan, ‘Legal Issues and Prospects in the Protection and Assistance of Internally Displaced Persons (IDPs) in Nigeria’ (2016) Vol.49 *Journal of Law, Policy and Globalization*, 107-116 at p 109.

¹³ AU Abonyi, ‘Analysis of the Concept and Nature of Legal framework for Animal Welfare Protection in Nigeria’ (2018) Vol. 1, No 1 *COOU Journal of Commercial and Property Law*, 288-305.

¹⁴ Collins Online English Dictionary < <https://www.collinsdictionary.com/dictionary/english/legal-protection> > accessed on 8th August 2023.

¹⁵ Collins Online English Dictionary < <https://dictionary.cambridge.org/dictionary/english/protection> > accessed on 8th August 2023.

concept of protection, the ICRC (International Committee of the Red Cross) in 1999, describes the concept thus:

The concept of protection encompasses all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies (human rights, humanitarian law, refugee law). Human rights and humanitarian actors shall conduct these activities impartially and not on the basis of race, national or ethnic origin, language, gender...¹⁶

The IASC (Inter-Agency Standing Committee) in 2016 adopted the 1999 ICRC description of the concept of protection¹⁷ and further clarified that protection activities requires:

a continuous analysis of risks people face, of threats, vulnerabilities and capacities of affected persons, and of the commitment and capacities of duty bearers to address risk factors. It also requires the identification of measures to reduce those risks, avoid exacerbating risk, including to stop and prevent violations, avoid reinforcing existing patterns of violence, abuse, coercion or deprivation and restoring safety and dignity to people's lives.¹⁸

The concept of protection has both legal and social purpose. The Collins Online Dictionary explains that legal is used to describe things that relate to the law.¹⁹ Scholars have explained the legal purpose of protection as primary prevention of violations of legal norms,²⁰ while the social purpose of protection is to preserve social relations, their fundamental structure, as well as to ensure the stability of the social system in general.²¹

From the definitions and clarifications of the concepts of protection above it could be deduced that every legal protection is based on the rule of law or legal norms or legal frameworks. In affirming the above position, Syrykh rightly notes that law is one of the effective means of public administration of society and that it is always used to implement any social goals: the improvement of the well-being of population, provision of the conditions for active activity of an individual, involvement of everyone in the management of social affairs, provision of public order and state security.²²

Legal Protection in the context of internal displacement, therefore is all about ensuring that all displaced men, women, girls and boys enjoy their rights in full equality in all circumstances under the law. By reason of displacement, IDPs are exposed to heightened vulnerabilities and

¹⁶ International Committee of the Red Cross (ICRL), Geneva Report of 1999, on Third Workshop on Protection for Human Rights and Humanitarian Organizations: Doing Something about it and Doing it Well, 18-20 January 1999.

¹⁷ IASC Policy on Protection in Humanitarian Action, 2016 and reviewed in November, 2020, p2.

¹⁸ *Ibid*, p.3.

¹⁹ Collins Online Dictionary <<https://www.collinsdictionary.com/dictionary/english/legal-protection>> accessed on 8th August 2023.

²⁰ AE Semyonovykh, 'Legal Protection and Legal Defense: Approaches to the Study of Concepts' (2022) SHS Web of Conferences 134, 00122 *EURO-ASIAN LAW CONGRESS 2021*, p2. AM Vasiliev, 'Legal Categories: Methodological Aspects of the Development of a System of Categories of the Theory of Law: Monograph (Norm: INFRA-M, Moscow, 2021) p.264.

²¹ AE Semyonovykh *Ibid*, p.3.

²² VM Syrykh, *History and Methodology of Legal Science* (2nd edn, Moscow: Legal Norm: INFRA-M, 2020) p.512.

deprivations and thus are entitled to legal protection and assistance under established legal norms.

2.2 Internally Displaced Persons (IDPs)

Though the concept of Internal Displaced Persons has become a highly disputed subject among scholars, it has today been firmly embedded as global lexicon.²³ Notwithstanding the fact that the concept of IDPs has become of general usage, there is no internationally agreed definition of the term till date. However, this does not mean that term IDPs has not been severally defined and clarified. In 1992, the United Nations Secretary general provides a working definition of IDPs thus:

persons who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or human-made disasters, and who are within the territory of their own country.²⁴

The UN working definition of IDPs has been criticized as being narrow for restricting IDPs to those who are ‘forced to flee’ and ‘in large numbers’.²⁵ The Argument was that to limit the concept of IDPs only to those who had fled their homes ‘suddenly or unexpectedly and in large number’ overlooked that in some situations, the internal displacement of persons was not a spontaneous event but an organized state policy implemented over years or even decades.²⁶ The notion of people ‘fleeing in large numbers’ cannot also be sustained when matched with real situations of internal displacement because in reality many displaced people flee in small groups or even on an individual basis.²⁷ It has also been found that a great majority of the people do not flee ‘suddenly or unexpectedly’, but that different patterns of displacement exist. Moreover, it has been observed that people during violent conflict situations tend to flee in small groups in order not to attract attention.²⁸

The UN Guiding Principles on Internal Displacement²⁹ tried to cure the deficiency in the 1992 working definition of IDPs and describes IDPs thus:

persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of, or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.³⁰

²³ C Phuong, *The International Protection of Internally Displaced Persons* (UK: Cambridge University Press, 2004) p. 14.

²⁴ United Nations Commission on Human Rights, Analytical Report of the Secretary-General on Internally Displaced Persons, UN Doc. E/CN.4/1992/23 (14 February 1992), Para. 17.

²⁵ AF Ojonugwa, ‘The Challenges of Internally Displaced Persons and the Way Forward: The Nigerian Experience’ (2021) Vol. 01. Issue 01 *UCC FLJ*, 17-36 at p 21.

²⁶ E Mooney ‘The Concept of Internal Displacement and the Case for Internally Displaced Persons as a category of concern’ (2005) 24(3) *Refugee Survey Quarterly* 9, 11.

²⁷ AF Ojonugwa, *loc. cit.*

²⁸ Report of the RSG, Francis Deng on ‘Internally Displaced Persons: Profiles of Displacement Colombia’, E/CN.4/1995/50/Add.1, 3 October 1994 (First Colombia Report).

²⁹ UN Guiding Principles on Internal Displacement, 1998.

³⁰ *Ibid*, Introduction, para 2.

Unequivocally, the UN Guiding Principles on Internal Displacement description of IDPs does not constitute a legal definition of IDPs. The argument was that the fact that IDPs description was placed in the introduction indicates that it is not intended to be a legal definition.³¹ Besides, the UN Guiding Principles generally does not have the force of law but a mere guide.

The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)³² which happens to be the first legally binding Regional instrument on IDPs, adopted the description of IDPs under the UN Guiding Principles and transformed same into a legal definition by placing it under its definition of terms section.³³ It is only the Nigerian National Policy on IDPs 2012 that contains the definition of IDPs. The Policy replicates in verbatim the definition of IDPs as contained in the AU Kampala Convention.³⁴ Worthy of note is the fact that the Nigerian National Policy on IDPs is a mere policy that does not have the force of law.

From the forgoing definitions of the concept of IDPs, it is clear that the concept of internal displacement of persons has to do with persons who are involuntarily displaced or forced to leave their original places of habitual residence or homes or places of abode for whatever causes or reasons but do not cross over or move to another country.

2.3 Responsibility to Protect

The doctrine of Responsibility to Protect also known as R2P is a global political commitment which was endorsed by all member states of the United Nations at the 2005 World Summit in order to address its four key concerns to prevent genocide, war crimes, ethnic cleansing and crimes against humanity.³⁵ The doctrine of R2P is a principle that also seeks individual states to defend their people from crimes against humanity, ethnic cleansing and war crimes.³⁶

The United National Regional Information Centre for Western Europe (UNRIC) also described R2P as the enabling principle that first obligates individual states and then the international community to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.³⁷ The Centre also clarified that R2P principles is commonly based on the idea that sovereignty is not a privilege, but a responsibility to protect all populations.³⁸ Nolte in concurring with the above postulations notes that sovereignty as a responsibility means that

³¹ UN Guiding Principles on Internal Displacement, 1998, Introduction, para 2.

³² African Union (AU) Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 2009, referred to as the Kampala Convention which came into force on 6th October, 2012.

³³ *Ibid*, article 1 (K).

³⁴ Nigerian National Policy on IDPs 2012, chapter 1.2.

³⁵ The UN General Assembly in its 60th session adopted the 2005 World Summit Outcome Document in its resolution 60/1 of 2005. < <http://www.who.int/hiv/universalaccess2010/worldsummit.pdf>> accessed on 14th August 2023. Or <<https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml#:~:text=Paragraphs%20on%20the%20Responsibility%20to%20Protect&text=Each%20individual%20State%20has%20the,through%20appropriate%20and%20necessary%20means>> accessed on 14th August 2023.

³⁶ EA Ogbuvbu & UC Okolie, 'Responsibility to Protect and the Challenges of Displaced Men in Nigeria' (2020) Vol. 10 No.1 *Journal of Danubian Studies and Research*.

³⁷ The United National Regional Information Centre for Western Europe (UNRIC), 'Responsibility to Protect'. < <http://www.unric.org/en/responsibility-to-protect?layout=default>> accessed on 15th August 2023.

³⁸ *Ibid*.

national governments are duty bound to ensure minimum standards of security and social welfare for their citizens.³⁹

The Global Centre for the Responsibility to Protect (GCRP) highlights the three pillars of the doctrine of R2P to include:

- a. Pillar One: Every state has the Responsibility to Protect its populations from four mass atrocity crimes: genocide, war crimes, crimes against humanity and ethnic cleansing.
- b. Pillar Two: The wider international community has the responsibility to encourage and assist individual states in meeting that responsibility.
- c. Pillar Three: If a state is manifestly failing to protect its populations, the international community must be prepared to take appropriate collective action, in a timely and decisive manner and in accordance with the UN Charter.⁴⁰

Finally, from the above clarifications of the doctrine of R2P it is clear that the primary responsibility to protect and assist IDPs lies with the national government. However, the third pillar of the doctrine infers that where the national government manifestly fails to protect its populations; the international community should come in to take appropriate actions.

3. Applicable Legal Frameworks for the Protection of IDPs in Nigeria

This section will discuss the applicable legal frameworks for the protection of IDPs in Nigeria. As earlier noted, IDPs protection in Nigeria till date is not linked to any specific binding legal framework at both national and international levels. However, this does not mean that there are no pre-existing legal norms for the protection and assistance of IDPs like every other individual(s). Generally, IDPs like every other person(s) are protected under the pre-existing national laws, international human right laws (IHRL), international humanitarian laws (IHL), international and national Refugee Laws, Regional IDPs' Laws and IDPs' Policies at national and international levels. Discussions under this heading will be made under the following sub-headings:

- a. International Instruments Relating to Rights of IDPs,
- b. African Regional Instruments Relating to Rights of IDPs, and
- c. Nigerian Domestic Instruments Relating to Rights of IDPs.

3.1 International Instruments Relating to Rights of IDPs

Under international law, IDPs like every other individual (s) is protected under the three bodies of international law; namely: International Human Rights Law (IHRL); International Humanitarian Law (IHL); and International Criminal Law. IDPs as human beings are entitled to all the rights and privileges guaranteed under the International instruments because human rights norms apply to all individuals without distinction and discrimination.

International human rights laws (IHRL) are international norms designed to protect and promote the human rights of all persons, whatever the nationality, sex, colour, religion, status and race and including on the grounds of being or having been internally displaced. It is usually in the form of treaties, conventions, protocols, customary international laws and general principles. The key international human rights (IHRL) instruments which cover and reinforce

³⁹ G Nolte, 'Sovereignty as Responsibility?' (2005) Vol. 99 *Proceedings of the Annual Meeting of the American Society of International Law*, pp 389-392.

⁴⁰ Global Centre for the Responsibility to Protect, 'The Responsibility to Protect: A Background Briefing,' 14 January 2021. < <https://www.globalr2p.org/publications/the-responsibility-to-protect-a-background-briefing/>> accessed on 13th August 2023. See also Global Centre for the Responsibility to Protect, 'About RtoP'. <http://www.globalr2p.org/about_r2p> accessed on 15th August 2023.

the protection of IDPs are: the International Bills of Right⁴¹ which provides for both civil and political rights and the economic, social and cultural rights of all persons, Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1965⁴² which prohibits all forms all racial discrimination or different treatment of persons⁴³, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984⁴⁴ which prohibits torture under all circumstances⁴⁵ and also prohibits other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1 of the Convention⁴⁶, The Convention on the Prevention and Punishment of the Crime of Genocide, 1948⁴⁷ which declares genocide a crime under international, whether committed in time of peace or war⁴⁸, Convention for the Protection of All Persons from Enforced Disappearance, 2006⁴⁹ which generally provides that no one shall be subjected to enforced disappearance⁵⁰, the Convention on the Rights of the Child, 1989 and its two Optional Protocols, 2000⁵¹, Convention on Elimination of all Forms of Discrimination Against Women (CEDAW) 1979 and its Protocol 1999⁵² among others.

International humanitarian law (IHL) are sets of rules that seek to address the effects of international and domestic armed conflicts on the people and the society at large. International Humanitarian Law applies in conflict situation for the purpose of Protection of persons in conflict situation and restrictions on the means and the method, of warfare. International humanitarian law finds its source in treaties and customary international law and it is binding on all states.⁵³ Mainly, ICRC promotes and monitors the application of such laws.⁵⁴ The core instruments of IHL are the four Geneva Conventions of 1949 and their two Additional

⁴¹ The International Bills of Right was the name given to the United Nations (UN) General Assembly resolution 217A (111)⁴¹ and the two international treaties established by the U.N which consist of the Universal Declaration of Human Rights (UDHR) (1948) and the International Covenant on Civil and Political Rights (ICCPR) (1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966); with its two Optional Protocols

⁴² The Convention on the Elimination of All Forms of Racial Discrimination was adopted by the United Nations General Assembly in 1965 and it came into force on 4th January, 1969.

⁴³ *Ibid*, articles 1-6.

⁴⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted in 1984 and entered into force in 1987.

⁴⁵ *Ibid*, article 1.

⁴⁶ *Ibid*, articles 2-16.

⁴⁷ The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the General Assembly on 9 December 1948 and entered into force on 12 January 1951

⁴⁸ *Ibid*, article 1.

⁴⁹ Adopted by UN General Assembly Resolution 61/177 (XXX) of 20 December 2006.

⁵⁰ Convention for the Protection of All Persons from Enforced Disappearance, 2006, art. 1.

⁵¹ The International Convention on the Rights of the Child⁵¹ was adopted creating the independent and specific rights of children. On 25 May 2000, the General Assembly further adopted two Optional Protocols to the Convention, namely, the Optional Protocol on the sale of children, child prostitution and child pornography, and the Optional Protocol on the involvement of children in armed conflict.

⁵² The CEDAW on its own is aimed at elimination of all forms of discriminatory behaviour and practices against women on the basis of equality of men and woman in both private and public spheres of life.

⁵³ See the decision of the International Court of Justice on the North Sea Continental Shelf cases, ICJ Reports 1969m p. 3, where it was clearly pointed out that customary international law is one of the main source of international legal obligations.

⁵⁴ C Phuong, *The International Protection of Internally Displaced Persons* (London: Cambridge University Press, 2006) p.49.

Protocols of 1977.⁵⁵ The basic provisions of the Geneva Conventions and their additional Protocols relating to the protection and assistance of IDPs are found in common article 3 of the Convention and the Protocol II to the Geneva Conventions, 1997 and Relating to the Protection of victims of non-international armed conflict. The common article 3 of the Geneva Convention⁵⁶ Prohibits the following acts:

- i. Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.
- ii. Taking of hostages.
- iii. Outrages upon personal dignity in particular humiliation and degrading treatment.
- iv. The passing of sentences and the carrying out of executions without previous judgement pronounced by a regular constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

Protocol II to the Geneva Conventions⁵⁷ further provides for rules relating to the victims of non-international armed conflicts, of which IDPs are among. The Protocol provides for fundamental guarantees⁵⁸ and generally calls for the protection of the rights and humane treatment of persons who do not take direct part or who have ceased to take part in hostilities.⁵⁹ The Protocol absolutely prohibits murder, torture, mutilation or corporal punishment, collective punishment, taking of hostages, acts of terrorism and outrageous upon a person's dignity in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault, slavery and slave trade in their forms, pillage, threats to commit any of the foregoing acts⁶⁰. Part II of the protocol also provides for the wounded and the sick.⁶¹

IDPs are also protected under the International Criminal Law. Some grave violations of people's rights under the current international environment are classified as crimes of international concern which are usually brought under international criminal law.⁶² The Rome Statute of the International Criminal Court, 1998⁶³ provides for four core international crimes or crimes of international concern⁶⁴ namely: genocide, crimes against humanity, war crimes and crimes of aggression. The jurisdiction of the international criminal court for these crimes come into play after the exhaustion of local remedy or where the state is genuinely unable or unwilling to prosecute the alleged crimes.⁶⁵

⁵⁵ The text of these instruments is available at www.icrc.org. In 2006, the Geneva Conventions achieved universal ratification, i.e. every State in the world is now a party to, and therefore has committed itself to respect, these instruments.

⁵⁶ Common article 3 (1) (a-d) of the Geneva Conventions.

⁵⁷ Additional Protocol to the Geneva Convention of 12 August, 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 8 June, 1977 (Additional Protocol II to the Geneva Conventions).

⁵⁸ *Ibid*, article 4.

⁵⁹ *Ibid*, article 4(1).

⁶⁰ *Ibid*, article 4 (2).

⁶¹ *Ibid*, article 7-12.

⁶² See Article 1 of the Rome Statute which provides that the jurisdiction of the ICC shall be complementary to national criminal jurisdiction; see also Article 13 of the Rome Statute which provides for when the ICC may exercise its jurisdiction

⁶³ The Rome Statute of the International Criminal Court is a treaty that established the International Criminal Court (ICC).⁶³ The statute was adopted in Rome on 1st July, 1998 and came into force on 1st July 2002. Nigeria ratified the Rome Statute of the International Criminal Court on 27th September, 2001.

⁶⁴ *Ibid*, article 5.

⁶⁵ Article 13 of the Rome Statute provides for when the ICC may exercise its jurisdiction.

Finally, the UN in recognizing the growing challenge of IDPs globally and the lack specific legal protection mechanism adopted the Guiding Principles on Internal Displacement.⁶⁶ Although not a legally binding instrument, the UN Guiding Principles provides the framework for the protection and assistance during all the phases of internal displacement namely: protection before and against displacement,⁶⁷ protection during displacement⁶⁸ and protection in the durable solutions phase⁶⁹ and after displacement.⁷⁰

3.2 African Regional Instruments Relating to Rights of IDPs

The African Union (AU) has developed various sets of regional legislations, instruments and protocols with an objective of preserving and protecting the human rights and freedoms of the all people in Africa, including the IDPs. Some of these instruments which are applicable to the issue of internal displacement of persons in Africa include: the African Charter on Human and Peoples Rights, 1981⁷¹, African Charter on the Protection and the Welfare of the Child, 1990⁷², Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and the Solemn Declaration on Gender Equality in Africa, 2005,⁷³ and the AU Convention for the Protection of and Assistance of Internally Displaced Persons in Africa, 2009 (AU Kampala Convention). The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention),⁷⁴ is said to be the first legal continental instrument for the protection of the rights and wellbeing of IDPs.

The AU Kampala Convention provides a comprehensive framework for the protection and assistance of IDPs in Africa. The Convention makes provision for Prevention and protection against displacement by prohibiting arbitrary displacement of persons,⁷⁵ makes provisions on the protection and humanitarian assistance to IDPs,⁷⁶ provides for the right of IDPs to durable solution through sustainable return, local integration or relocation, compensation as well as ensuring registration and access to personal documentation for all IDPs⁷⁷ and for the rights of IDPs to effective remedies in the form of fair compensation and other forms of reparations, where appropriate, for damage incurred as a result of displacement, in accordance with international standards.⁷⁸

⁶⁶ United Nations Guiding Principles on Internal Displacement 1998.

⁶⁷ *Ibid*, Principles 5-9.

⁶⁸ *Ibid*, Principles 10-23.

⁶⁹ Durable solution has been described as the long term remedy for displacement made up of sub-components of return, resettlement and local integration.

⁷⁰ United Nations Guiding Principles on Internal Displacement 1998, Principles 28-30.

⁷¹ The African Charter on Human and People Rights was adopted in 1981 and entered into force on 21 October, 1986.⁷¹ Nigeria ratified and domesticated the African Charter through the Ratification and Enforcement Act⁷¹ in 1983. The Charter provides for the human rights and basic freedoms of all people in African (see articles 1-9 of the Charter).

⁷² African Charter on the Protection and the Welfare of the Child, 1990, adopted on 11 July 1990 and entered into force on 29 November 1999. The Charter provides for the independent and specific rights of children in Africa (see articles 1-27 of the Charter).

⁷³ The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and the Solemn Declaration on Gender Equality in Africa, 2005⁷³ (the Women Protocol) generally prohibits all forms of discrimination against women in Africa,⁷³ all harmful practices against women⁷³ and all forms of violence against women including unwanted and forced sex whether the violence takes place I private or public.⁷³

⁷⁴ African Union (AU) Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 2009, referred to as the Kampala Convention which came into force on 6th October, 2012

⁷⁵ *Ibid*, articles 3(1)(a) and 4(2) & (4).

⁷⁶ *Ibid*, articles 5 & 9.

⁷⁷ *Ibid*, article 11 (1).

⁷⁸ *Ibid*, article 12 (1) & (2).

3.3 Nigerian Domestic Instruments relating to Rights of IDPs

In Nigeria, though there is no specific binding legislation dedicated to the protection of IDPs, there exist some normative frameworks which relate to and can be applied in the protection and assistance of IDPs in Nigeria. Some of these frameworks include: The Constitution of the Federal Republic of Nigeria⁷⁹, The Nigerian Penal Laws⁸⁰, Violence Against Persons (Prohibition) Act, 2015, the National Emergency Management Agency (NEMA) Act 1999⁸¹ the National Commission for Refugees, Migrants, and Internally Displaced Persons (NCFRMI) Act 1989,⁸² and the Nigerian National Policy on IDPs.⁸³

The general frameworks within which Human rights are protected in Nigeria are enshrined in the Constitution.⁸⁴ The Nigerian Constitution provides for the fundamental human rights of all persons in Nigeria (including IDPs) under its Sections 33 to 46.⁸⁵ The Criminal Code Act⁸⁶ and the Penal Code Act⁸⁷ contain series of offences and punishments of the offender or offenders are liable to be punished when convicted. Some of the offences that may committed against IDPs in Nigeria include: culpable homicide punishable with death (murder), culpable homicide not punishable with death (manslaughter, infanticide, assault, slavery, causing grievous harm, assault and violence to person or stealing⁸⁸) among others. The Violence Against Persons (Prohibition) Act, 2015, in general provides for protection against any form of violence against all persons in Nigeria.

The NEMA Act created the National Emergency Management Agency (NEMA) with the general mandate to formulate policy on all activities relating to disaster management in Nigeria and coordinate the plans and programmes for the efficient and effective response to all disasters at national level.⁸⁹ The National Emergency Management Agency (NEMA) caters for IDPs in Nigeria as victims of disaster. However, it must be noted that NEMA Act is neither an IDPs-Specific national legal framework, nor the Agency created under Act an IDPs-specific institution. The National Commission for Refugee (NCFR) Act name was changed to National Commission for Refugees, Migrants, and Internally Displaced Persons (NCFRMI) Act in 2008, however, the Act was not amended to incorporate IDPs protection provisions. The Nigerian National Policy on IDPs 2012 was drawn extensively from the UN Guiding Principles on Internal Displacement 1998 and the AU Kampala Convention for IPDs, 2009 and serves as a Policy Framework for the protection and assistance of IDPs in Nigeria.

Furthermore, it must be noted that Nigeria has ratified and domesticated the Geneva Conventions 1949 with the optional Protocols of 1977 which are the major Humanitarian Laws.⁹⁰ Nigeria also has ratified the Convention on the Rights of the Child in 1991 and also

⁷⁹Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁸⁰ The Criminal Code Act and the Penal Code Act.

⁸¹ (Decree No. 12 of 1999 now Cap. N. 34 Laws of the Federation of Nigeria 2004.

⁸² Decree No. 52 of 1989, Cap.244 LFN 1990 now Cap. N. 21 Laws of the Federation of Nigeria 2004.

⁸³ Nigerian National Policy on IDPs 2012.

⁸⁴ Chapters II and IV of the Constitution of the Federal Republic of Nigeria 1999 as amended.

⁸⁵Constitution of the Federal Republic of Nigeria 1999, sections 33-46.

⁸⁶Cap C38 Laws of federation of Nigeria, 2004.

⁸⁷Cap P3 Laws of Federation of Nigeria, 2004.

⁸⁸Chapters 25, 27, 29, 31, of the Criminal Code Act, cap C38 Laws of Federation of Nigeria, 2004.

⁸⁹ NEMA Act, Cap. N. 34 Laws of the Federation of Nigeria 2004, section 6(a). see Sections 6(a-o) of the Act for other functions of NEMA.

⁹⁰ See the Geneva Convention Act cap 162 Laws of Federation of Nigeria, 2004.

enacted the National Child Rights Act, 2003, Nigeria has also ratified and domesticated the African Charter on Human and Peoples Right through the Ratification and Enforcement Act⁹¹ in 1983. The provisions of the Charter are thus enforceable against individual(s) and government in Nigeria.

4. Protection of Internally Displaced Persons in Nigeria: Whose Responsibility?

It has earlier been noted in this work that IDPs are entitled to legal protection and assistance having been exposed to heightened vulnerabilities and deprivations by reason of displacement. It also been clarified that legal protection in the context of internal displacement is all about ensuring that all displaced men, women, girls and boys enjoy their rights in full equality in all circumstances under the law. The next ultimate question would be: whose responsibility is it to protect IDPs in Nigeria?

In providing answer to the above question, both the UN Guiding Principles on IDPs and AU Kampala Convention on IDPs provide that it is the primary duty and responsibility of state parties to providing protection of, and humanitarian assistance to Internally displaced persons within their territory of jurisdiction without discrimination of any kind. The UN Guiding Principles on the subject provides thus:

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.
2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.⁹²

The AU Kampala Convention on its side provides that ‘State Parties shall bear the primary duty and responsibility for providing protection of and humanitarian assistance to internally displaced persons within their territory or jurisdiction without discrimination of any kind.’⁹³ The convention further provides that, ‘State Parties shall protect the rights of internally displaced persons regardless of the cause of displacement.’⁹⁴ The Kampala Convention also provides that State parties shall respect and ensure respect and protection of the human rights of internally displaced persons, including humane treatment, nondiscrimination, equality and equal protection of law.⁹⁵ The Convention also places the obligations assessing the needs and vulnerabilities of IDPs and host communities (or to facilitate such assessments) on States.⁹⁶

The AU Kampala Convention on the obligation to providing humanitarian assistance to IDPs also provides that:

States shall provide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include food, water, shelter, medical care and other health services, sanitation, education, and

⁹¹ Cap 10 Laws of Federation of Nigeria, 2004.

⁹² UN Guiding Principles on Internal Displacement 1998, principle 3.

⁹³ AU Kampala Convention 2009, article 5(1).

⁹⁴ *Ibid*, article 9 (1).

⁹⁵ AU Kampala Convention 2009, article 3 (d).

⁹⁶ *Ibid*, article 5 (5).

any other necessary social services, and where appropriate, extend such assistance to local and host communities.⁹⁷

The Convention finally provides that State Parties shall discharge these obligations, where appropriate, with assistance from international organizations and humanitarian agencies, civil society organizations, and other relevant actors.⁹⁸

Under the Nigerian normative framework, the Section 14 (2) (b) of the Nigerian Constitution generally provides that the security and welfare of the people shall be the primary responsibility of the government, while section 15 (3) (b) of the Nigerian Constitution also states that it shall be the duty of the state to secure full residence right for every citizen in all parts of the federation. Chapter four of IDPs' National Policy stipulates responsibilities and obligations of government, humanitarian agencies, host communities and armed groups to IDPs. The chapter provides that:

Government is considered the primary duty bearer with the responsibility for protection of internally displaced persons. Such protection will be *responsive*, i.e. aiming to prevent imminent or stop on-going violations, *remedial*, i.e. aiming to provide redress (e.g. access to justice, reparation or rehabilitation) for past violations, or *environment building*, i.e. aiming at creating the necessary legal and institutional framework, capacity and awareness that is necessary to promote respect for human rights of internally displaced persons and prevent future violations.⁹⁹

Moreover, The doctrine of Responsibility to Protect also known as R2P¹⁰⁰ is commonly based on the principle that sovereignty is not a privilege, but a responsibility to protect all populations.¹⁰¹ The R2P principle portrays sovereignty as a responsibility demanding that national government are duty bound to ensure minimum standards of security and social welfare for their citizens and be accountable both to the national body politic and international community.¹⁰² The doctrine of R2P is hinged on three pillars namely:

- d. Pillar One: Every state has the Responsibility to Protect its populations from four mass atrocity crimes: genocide, war crimes, crimes against humanity and ethnic cleansing.
- e. Pillar Two: The wider international community has the responsibility to encourage and assist individual states in meeting that responsibility.
- f. Pillar Three: If a state is manifestly failing to protect its populations, the international community must be prepared to take appropriate collective action, in a timely and decisive manner and in accordance with the UN Charter.¹⁰³

⁹⁷ *Ibid*, article 9(2) (b).

⁹⁸ *Ibid*, article 9 (3).

⁹⁹ Nigerian National Policy on IDPs 2012, chapter 4.1.

¹⁰⁰ The doctrine of Responsibility to Protect also known as R2P is a global political commitment which was endorsed by all member states of the United Nations at the 2005 World Summit in order to address its four key concerns to prevent genocide, war crimes, ethnic cleansing and crimes against humanity.

¹⁰¹ The United National Regional Information Centre for Western Europe (UNRIC), 'Responsibility to Protect'. < <http://www.unric.org/en/responsibility-to-protect?layout=default> > accessed on 15th August 2023.

¹⁰² G Nolte, 'Sovereignty as Responsibility?' (2005) Vol. 99 *Proceedings of the Annual Meeting of the American Society of International Law*, pp 389-392.

¹⁰³ Global Centre for the Responsibility to Protect, 'The Responsibility to Protect: A Background Briefing,' 14 January 2021. < <https://www.globalr2p.org/publications/the-responsibility-to-protect-a-background->

Flowing from the discussions above, it is clear that it is the primary responsibility of states to provide adequate protection and assistance to IDPs within their territory without discrimination. However, where the national government manifestly fails to protect its populations; the international community should come in to take appropriate actions in the form of sharing responsibility in the protection of IDPs. The international community should also assist especially where the national state has no capacity or fails to do so. It must be noted here that the suggested international community intervention and responsibility sharing in the protection of IDPs should not be taking as a replacement of the national governments' primary responsibility to protect all person within their territories. The Pillar three of the of R2P doctrine leans credence to the above submissions. Finally, M Silska in support of the above submissions observes that:

An examination of the current state of play with respect to internal displacement worldwide makes it apparent that IDPs can no longer be protected exclusively by their state of origin. In cases of an incapacity or failure of the state, the promotion and protection of IDPs' human rights should become an international concern and be covered by the shared competences of the international community.¹⁰⁴

5. Conclusion and Recommendations

IDPs in Nigeria are persons who are displaced or forced to leave their original places of habitual residence or homes or places of abode for whatever causes or reasons to another location within Nigeria. Because IDPs in Nigeria did not cross national borders, the primary responsibility to protect and assist them lies with the Nigeria state. The discussions in this study reestablishes that it is the primary duty and responsibility of the Nigerian government to afford adequate legal protection and assistance to IDPs in Nigeria. However, international community can intervene where the national governments and authorities fail or are unable to fulfill their responsibility to protect IDPs. Studies have shown that this primary responsibility to protect IDPs placed so many obligations on states. Core among these obligations stemming from the States' primary responsibility to protect IDPs include: taking positive steps to prevent displacement and minimize the adverse effects¹⁰⁵, developing a national legal framework for upholding the rights of IDPs¹⁰⁶, developing a national policy or plan of action on internal displacement¹⁰⁷ and establishing and designating an institution or a body that will be responsible for coordination and implementation of all activities relating to IDPs protection and assistance.¹⁰⁸

The examination of the existing and applicable legal frameworks for the protection of IDPs in Nigeria indicates that there is yet no IDPs' specific binding legal instrument at both national and international levels. There is also no established or specifically designated institution for

briefing/> accessed on 13th August 2023. See also Global Centre for the Responsibility to Protect, 'About RtoP'. <http://www.globalr2p.org/about_r2p> accessed on 15th August 2023.

¹⁰⁴ M Silska, 'Protection of Internally Displaced Persons: An International Legal Obligation? (2014) XXXIV *Polish Yearbook of International Law*, 249-271 at p. 269.

¹⁰⁵ The Brookings Institution–University of Bern Project on Internal Displacement, 'Addressing Internal Displacement: A Framework for National Responsibility' (April 2005) <www.brookings.edu/projects/idp/20050401_nrframework.aspx> accessed on 4th April 2023, Benchmark 1 at p.12.

¹⁰⁶ *Ibid*, Benchmark 5 at p.16.

¹⁰⁷ *Ibid*, Benchmark 6 at p.17.

¹⁰⁸ AU Kampala Convention for the Protection and Assistance of IDPs 2009, article 3 (2) (b).

the coordination and implementation of all activities relating to IDPs protection and assistance. The above situations portend the huge gaps in the legal and institutional frameworks for the protection of IDPs in Nigeria. The study further reveals that the menace of internal displacement has become a global challenge and a problem of international concern requiring improved management and preventive measures through specific legal and institutional regimes at both national and international level.

Over the years, responses and measures taking by the various Nigerian governments in fulfilment of her responsibility to protect IDPs have been marred by many inhibiting challenges like; lack of political will, lack of national IDPs specific legislation, lack of accurate and reliable data on IDPs, poor policy implementation, ineffective mechanisms for accountability and effective remedies/reparations for IDPs, uncoordinated institutional responses among others. Adding to these inhibiting challenges is the fact that the required national and international specific responsibilities and obligations to IDPs are not yet clearly spelt out in any binding legal instrument. Based on the following expositions, the following recommendations are made:

1. Nigerian government and authorities who has the primary responsibility to protecting IDPs should live up to their obligations stemming from the responsibility to protect by firstly enacting a binding national legislation for the protection of IDPs in Nigeria. This IDPs' national legislation to be enacted should provide for mechanisms for effective accountability, remedies and reparations for IDPs.
2. IDPs' specific institution should also be established and designated with the legal mandate to oversee the implementation of all activities relating to IDPs protection and assistance in Nigeria.
3. International community should also establish and adopt a specific binding international legal instrument setting forth the international protection, assistance and response standards for IDPs as the menace of internal displacement has today become a problem of international concern. An international IDPs' specific institution should also be established.
4. The international community based on the principle of sharing responsibility in the protection of IDPs should also assist states in taking appropriate actions regarding IDPs' protection activities.
5. The Nigerian government should also take proactive measures to tackling the root causes of displacement in Nigeria and adequate preventive measures put in place to prevent displacement of person in the first place. In doing this, Nigerian government may seek for international community's assistance in the face of incapacities and inadequacies.