CRITICAL REVIEW OF THE RIGHTS OF THE DISPLACED PERSONS IN THE COURSE OF NATURAL DISASTERS IN NIGERIA

BY

Maryam Mohammed HALIDU
LLM/LAW/7130/10-11

BEING A MASTER OF LAW(LLM) DISSERTATION SUBMITTED TO THE FACULTY OF LAW IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF A MASTER OF LAW(LLM) BY THE AHMADU BELLO UNIVERSITY ZARIA

DEPARTMENT OF PUBLIC LAW
FACULTY OF LAW
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MARCH2016

DECLARATION

I declare that this Dissertation entitled, CRITICAL REVIEW OF THE RIGHTS OF THE DISPLACED PERSONS IN THE COURSE OF NATURAL DISASTERS IN NIGERIA has been carried out by me in the Department of Public International Law. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this Thesis was previously presented for another degree or diploma at this or any other Institution.

Maryam Mohammed HALIDU _____ _____
(LLM/LAW/7130/10-11) Signature Date

CERTIFICATION

This Dissertation entitled, CRITICAL REVIEW OF THE RIGHTS OF THE DISPLACED PERSONS IN THE COURSE OF NATURAL DISASTERS IN NIGERIA by Maryam Mohammed HALIDU meets the regulations governing the award of the Master of Law (LLM) of the Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

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LIST OF ABBREVIATIONS

AU	-	Africa Union
CERF	-	Central Emergency Relief Fund
CRSR	-	Convention Relating to the Status of Refugees
DHA	-	Department of Humanitarian Affairs
DRR	-	Disaster Risk Reduction
ICESCR	-	International Covenant on Economic, Social and Cultural Rights
ICRC	-	International Committee Of The Red Cross
IDMC	-	The Internal Displacement Monitoring Centre
IDP	-	Internally Displaced Persons
IHL	-	International Humanitarian Law
IHRL	-	International Human Rights Law
IOM	-	International Organization for Migration
MCI	-	Mild Cognitive Impairment
NCIPDs	-	National Commission for the Internally Displaced Persons
NCR	-	National Commission for Refugees
NEMA	-	National Emergency Management Agency
NGOs	-	Non-Governmental Organizations
RSG	-	Representative of the Secretary General
SERAP	-	Socio-economic Rights and Accountability Project
UN	-	United Nation
UNDP	-	United Nations Development Program
UNHCR	-	United Nations High Commission for Refugees
UNICEF	-	United Nations Children's Fund
WFP	-	World Food Program
WHO	-	World Health Organization

ABSTRACT

The overwhelming increase of Internally Displaced Persons in situation of natural disaster in Nigeria in recent years has become an issue of grave concern. More worrisome is the fact that these persons are often victims of violations of human rights. Their plights have increased tremendously nowadays constituting a serious challenge of national and global implications. To address this problem, a myriad of legal, institutional and policy framework both at national international level have been enacted. This dissertation critically reviewed the rights of the displaced persons in the course of natural disasters in Nigeria. To achieve this, a doctrinal method was adopted for this research. Being a library oriented method of research, materials from both primary and secondary sources were analysed. The primary sources include information from national and international legal instruments as well as local and foreign judicial decisions on protection of the rights of IDPs. While the secondary sources include books, journals, articles, newspapers and internet materials. At the national level, it was found that there is no specific legal framework with the particular objective of assisting and protecting the rights of IDPs especially in situations of natural disasters in Nigeria. It was also found that the institutions for the protection of IDPs in Nigeria like NEMA and NHRC are not independent and does not have the financial and logistical capability to meaningfully function effectively. They seem to be in a more precarious position, being controlled directly or indirectly, by the government through funding, composition of membership, provision of operational guidelines, and tenure of officers among others. While at the international level, the Guiding Principles on IDPs are not legally binding document consequently, states cannot be held accountable if they disregard them and that they cannot be invoked in legal proceedings at the domestic level. Thus, states' compliance with the guiding principles is purely voluntary. Secondly, International humanitarian law apply only to internally displaced persons in situations of conflict. Against this background, the dissertation recommends, among others, that government needs to enact a specific justiciable legislation that would answer to the peculiar needs of IDPs in the country, particularly those relating to the provision of permanent shelters, well equipped medical facilities, safe drinking water, and schools among others. The National Policy on IDPs is not just enough particularly because of its non-binding nature. The government also needs to effectively address the problem of capacity building, adequate funding and of NEMA (including SEMA and LEMA) and NHRC. This way, NEMA would not only have the capacity to effectively address the overwhelming magnitude of internally displaced persons in the country, but also have adequate resources at its disposal to assist displaced persons for a longer period of time or to assist returnees. In the same vein, this would enable the NHRC to live up to its responsibilities as the nation's institutions for the promotion and protection of human rights particularly, those of the internally displaced persons and the Guiding Principles on IDPs needs to be revisited. There is the need to make it a legally binding document. This way, states that have domesticated or adopted it, can be held accountable if they refused to comply with its provisions. Finally, both the International humanitarian law and International Human Rights Law need to be reviewed through additional protocols to extend their application from situation of conflicts to those of non-conflict or natural disaster. This is important given the rate at which natural disasters raining raining havoc on human societies causing many to flee their homes.

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CHAPTER ONE
GENERAL INTRODUCTION

1.1 Background to the Study

One of the most distressing phenomena in the post-cold war era is the substantial growth of people displaced within their homelands, otherwise known as Internally Displaced Persons (IDPs).[1]IDPs constitute the largest group of vulnerable people in the world. It is estimated that an average of 36.4 million people have been displaced from their homes around the world, with the majority of these people in Africa and Asia.[2] As at February 2015 in Nigeria, the Displacement Tracking Matrix of the International Organization for Migration (IOM) identified nearly 1.2 million internally displaced people (IDPs) living in the northeast states of Adamawa, Bauchi, Gombe, Taraba, Yobe, and Borno, though security constraints barred access to large parts of Borno state. In addition, Nigeria's National Emergency Management Agency (NEMA) registered just over 47,000 IDPs in central parts of the country, including Abuja (Federal Capital Territory), Kano, Kaduna, Nasarawa and Plateau states, bringing the number of identified IDPs to more than 1.2 million in northern and central Nigeria.[3]

Displacement across countries is a common result of insurgency, communal violence, internal armed conflicts and natural disasters such as flooding or soil erosion.[4] Today, there have been monumental increases in the reports of internal displacement arising from natural disasters. And Nigeria, like the rest of the world, is exposed to a wide range of natural. While some of these disasters are rapid, others are slow-onset, resulting in catastrophic situations leading to loss of lives and property, degradation of environment. These disasters occur in form of drought, desertification, flooding, epidemics, coastal erosion, and dam failure,

[1]Protecting Internally Displaced Persons: A Manual for Law and Policymakers Brookings Institution University of Bern, Project on Internal Displacement (2008)
[2] Global Estimates 2015 ; People Displaced by Disasters , Internal Displacement Monitoring Centre Norwegian Refugee Council Chemin de Balexert 7–9 CH-1219 Châtelaine (Geneva), : www.internal-displacement.org/global-figures, print,11/4/15, p8
[3]Ibid
[4] Rodriguez-Orggia, E, Fuente De la, E, Torre De Le, R, The Impact of Natural Disasters on Human Development and Poverty at the Municipal Level in Mexico, Research for Public Policy, RPP LAC-MDGs and Poverty-09/2008, (2008), pp. 2-3

building collapse, oil spillage, maritime collision and other harmful effects of global warming amongst others.[5] The unprecedentedflooding that swept across 32 out of 36 states of the Federation beginning August 2012 displaced anestimated 2.1 million persons and impacted some 7.7 million.[6]

The plight of displaced persons has in recent years become a formidable problem of global significance and implications.[7]In every country of the world, internally displaced persons are victimsof violations of human rights. These span the whole rangeof civil, political, economic, social and cultural rights. At the same time, the internally displacedare also a group particularly vulnerable to violations of their rights, both during and after displacement.They face discrimination on account of their status as displaced persons, as well as exposureto discrimination on racial, ethnic and gender grounds.In legal terms, however, internally displaced persons do have rights, the very same rights as otherpersons in their country. They are protected not only by the human rights treaties in effect for thecountry where they reside, but also by basic norms of customary international law that bind allstates – standards such as th8e prohibition of torture, of racial discrimination, and of slavery.[8]

The consequences of internal displacement are manifold. They include loss of homes, employment, threat to life and liberty, deprivation of food, adequate healthcare, education, etc. These indeed have the tendency to deprive the displaced persons the essentials they need to survive.[9] To ameliorate this, non-state actors and civil societies have played an important

[5] Oduwole, T. A., and Fadeyi, A. O. (2013) Issues of Refugees and Displaced Persons in Nigeria, Journal of Sociological Research, Vol. 4, No. 1, p.2

[6]Coordination of Humanitarian Affairs (OCHA) situation report No. 2 (as of 15 November 2012) available at: http://reliefweb.int/report/nigeria/floods-situation-report-no-2-15-november-2012, accessed on 13th December, 2014. 12:17. P.M.

[7] Ladan, M.T., (2001) Introduction to International Human Rights and Humanitarian Laws, A.B.U Press, Zaria, Nigeria p.252

[8]David F., (2009)*Guide to International Human Rights Mechanisms for Internally Displaced Persons and their Advocates,* The Brookings Institution – University of Bern Project on Internal Displacement, p.9.

[9] Ladan, M. T. , (2006) Protection Of Displaced Persons Under International Human Rights And Humanitarian Laws: - A Case Study Of Causes Of Displacement In Nigeria, being A Paper Presented At A 2-Day Workshop On International Humanitarian Law For Law Teachers In Nigerian Universities, Abuja.

role in the area of humanitarian assistance.[10] In addition, Nigeria has ratified international and regional instruments for refugee protection includingthe Convention Relating to the Status of Refugees[11] as well as the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.[12]Nigeria has successfully domesticated international and African refugee conventions into theNational Commission for Refugees Act (NCFR Act).[13] The NCFR Act provides the legal andadministrative framework for refugee management. It also sets out guidelines for applicationand determination of refugee status in Nigeria.[14] Additionally, Nigeria has ratified the African Union Convention on the Protection and Assistance of IDPs in Africa (Kampala Convention)[15]. By ratifying the AU convention, Nigeria is committed ensuring the protection of the rights of IDPs' within her borders. It has also revised/updated the draft policy on IDPs in July 2012 to incorporate the provisions of the Convention.[16]The policy provides a framework for national responsibility towards prevention and protection of citizens and, in some cases, non-citizens, from incidences of arbitrary and other forms of internal displacement, meet their assistance and protection needs during displacement, and ensure their rehabilitation, return, re-integration and resettlement after displacement.

Furthermore, in 2013 Nigeria developed a Joint Humanitarian Action Plan (2013-2015) which seeks to address national humanitarian response challenges that may arise in emergencies and disasters. In addition, all sectors in the National Contingency Plan have been activated in 2013 and series of meetings were held to address humanitarian challenges in the country. Furthermore, a tripartite agreement was entered into in 2013 between three national agencies namely: National Orientation Agency (NOA), National Environmental Standards Regulations and Enforcement Agency (NESREA) and National Emergency

[10] Walter, K. Op.cit. p.121.
[11] 1951 and the 1967 Protocol.
[12] 1969.
[13]Cap 21 Laws of the Federation of Nigeria 2004.
[14] S.1(1) Ibid.
[15]In May 2012.
[16]Submission by the United Nations High Commissioner for Refugees (UNHCR) For the Office of the High Commissioner for Human Rights' Compilation Report – Universal Periodic Review: NIGERIA

Management Agency (NEMA) to collaborate in the development, implementation and organisation of projects and programmes targeted at sensitizing Nigerian citizenry on environmental and other natural and human induced hazards.[17] These agencies are further guided by the National Disaster Management Framework (NDMF) which provides the mechanism that serves as a regulatory guideline for effective and efficient disaster management in Nigeria. The framework defines measurable, flexible and adaptable coordinating structures, and aligns key roles and responsibilities of disaster management stakeholders across the nation. Section 1 of this framework[18] focuses on the establishment of necessary institutional arrangements for implementing disaster management within the Federal, State and Local Government levels.

1.2 Statement of the Problem

The rise in the number of IDPs in situations of natural disasters in Nigeria has become an issue of grave concern.More worrisome is the fact that, there are cases pointing toserious human rights violations committed againstthe IDPs in various camps across the country as they face diverse kinds of dangers ranging from insecurity, hunger, lack of shelter, portable water, and rape in some cases. Nigeria has ratified the African Union Convention on the Protection and Assistance of IDPs in Africa (Kampala Convention) and reviewed its National Policy on IDPs. Unfortunately however, the Federal Government is yet to effectively enforce the policy, and or enact a domestic law to implement the Convention. Furthermore, though the Revised Policy has giving NEMA the powers to coordinate all the other agencies in cases of disaster management, the Policy just like the previous one, has not categorically defined the jurisdiction of the other agencies in terms where and when they are expected to step in during disaster management. Consequently, in emergency situations arising from natural or man-made disasters, it is common to find almost all the agencies at the scene taking

[17]Ladan, M. T., National Framework For The Protection Of Internally Displaced Persons (IDPs) In Nigeria, being A Presentation Made At A Workshop For Judges And Kadis On Refugee Law Organized By The National Judicial Institute, Abuja, 20/4/13, p3

[18]National Disaster Management Framework, 2010.

instruction and directives from their respective heads instead of NEMA. Consequently, in emergency situations arising from natural or man-made disasters, it is common to find almost all the agencies at the scene taking instruction and directives from their respective heads instead of NEMA. Consequently, effective co-ordination of activities relating to disaster management in Nigeria still remains an issue of major concern.

Secondly, internal displacement is a humanitarian disaster, which requires an immediate and effective response by the national and international community. However, the responses are only ad hoc and thehumanitarian assistance is limited only to the provision of basic necessities like food, shelter andmedicine, while measures that ensure respect for the physical safety and the human rights ofIDPs remain inadequate. In fact, the present state of IDP issues in Nigeria indicates that these responses are inadequate when protection and assistance activities by aid agencies are considered. Furthermore, challenges encountered from the humanitarian impact of floods in Nigeria seems to bother on the lack of effective emergency management particularly as relates to planning, preparedness which include educating the masses and if possible relocating and settling them in areas that are safe.

Thirdly, it is important to note that though, the NDMF offers a holistic approach to disaster management and serves as a legal instrument to address the need for consistency among multiple stakeholders, however, the framework has not acquired the full force of law. Since its emergence in 2010, it has been awaiting legislative sanctioning. Until it elicits full legislative backing and signed into law, the document remains a mere guideline and not a legal framework. This poses a challenge to disaster management in Nigeria poses a challenge to NEMA in carrying out its statutory mandate. Another challenge arises from the inability of the states and local Governments in Nigeria to buy into the national disaster management agenda. The federal government had mandated the States to establish state Emergency Management Agencies (SEMAs). This is expected to be replicated at the Local Government

level by creating Local Government Emergency Management Agencies (LEMAs). This directive has not been quite fruitful. While some States and Local Governments are yet to come up with their own SEMAs and LEMAs, those that have established theirs have not been making much significant impacts, which raises concerns concerning the strategic importance of such an endeavour.

Furthermore, International law is primarily created and enforced by states. However, there are at least two problems with the international legal framework on IDPs. First, the current international framework seems very limited to effectively cover the necessities of IDPs as it focuses more on refugees. In fact, IDPs have no specific set of international Convention in their favour. Provisions stipulated in international laws only seem to provide foundation for giving protection and assistance to IDPs. But even at that, there are limitations and derogations when they are applied in actual IDP situations. For instance, International humanitarian law (IHL)[19] covers humanitarian issues directly arising from international and non-internationalarmed conflicts.[20] Unfortunately however, in situations of natural disaster and tensionsor disturbances short of armed conflict, IHL is not applicable. Consequently,IDPs who are not in areas of armed conflict cannot be protected by IHL. Furthermore, refugee law is also of interest to IDPs, but generally only by way of analogy because it applies only to persons who have crossed aninternational border or who seek to do so. This might be directly relevant to an IDP if he or she attemptsto cross a border but is prevented from doing so. In other cases, however, persons displaced within theirown borders are outside the scope of refugee law. Additionally, furthermore, International human rights law (IHRL), which is applicable both in times of peace and in situations of armed conflict, providesprotection for IDPs.[21]However, IHRL only binds states, not non-state actors, such as

[19]Also known as "the law of war".
[20]ICRC document 'International Humanitarian Law' available @http://:www.icrc.org, accessed on 10th December, 2015. 7: 46. P.M.
[21]See the International Convention on Social, Economic and Cultural Rights (ICESCR) adopted by General

insurgents.This therefore makes the law inadequate for the protection of IDPs as many human rightsabuses are committed by non-state actors. Further still, the United Nations Guiding Principles on Internal Displacementwhich incorporates the elements of the above three branches of public international law in a single document, have no binding authority, and therefore do not bind states, neither are they enforceable by the IDPs.

1.3 Aim and Objectives of the Study

The main aim of this study is to analyse the right of IDPs in situations of natural disasters in Nigeria with a view to making recommendations that would protect and enhanced the rights of the IDPs in various camps across the country. The research aimed to achieve this through the following specific objectives:

i. To assess the adequacy of the existing national and international legal regime in the protection of IDPs in Nigeria.
ii. To identify the challenges militating against the smooth implementation of the rights of protection of persons in situations of natural disasters.
iii. To analyse the impact of the inadequate legal protection on the rights of IDPs in Nigeria.
iv. To examine of the practical measures needed to enhance the rights of internally displaced persons in Nigeria.

1.4 Methodology of the Research

A doctrinal method has been adopted for this research. The doctrinal method being a library oriented method of research, only materials derived from both primary and secondary sources are analysed. The primary sources include information from national and international legal instruments as well as local and foreign judicial decisions on protection of the rights of IDPs. While the secondary sources include books, journals, articles, news papers and internet materials. The materials and information gathered from these methods provide

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Assembly Resolution 2200A (XXI) of 16/12/1966, for details on socio-economic rights provided for under international human rights law.

the basis for analysing the effectiveness of the law and other policy framework in protecting the right of IDPs Nigeria.

1.5 Justification of the Research

The protection of the rights of the internal displaced persons remains one of the greatest challenges in Nigeria today. This study is therefore of great significance in many respect. First, it is beneficial to the government as itproposes the way forward for the protection of the rights of IDPs. The study would help the Nigerian government to address the problem of internal displacement in all its ramifications, enable international organizations, regional bodies, national human right institutions, civil societies and the displaced themselves to evaluate the extent to which national responsibility is effectively exercised and become the basis for advocacy effects on behalf of the rights of the displaced.

Secondly, the consequences which would flow as a result of providing an effective remedy to the human right abuses often faced by the IDPs would not only be of particular benefit to the IDPs in particular, but the society at large. Furthermore, the issue of internal displacement is not peculiar to Nigeria. Therefore this research would also be significant in that it would act as a precedent for other jurisdictions contemplating providing urgent measures to contain gross human rights violations in respect of IDPs**.** This work is equally beneficial because it provides additional reference material for students, lawyers, parties in industrial relations and the interested public.

1.6 Scope of the Research

This research is restricted to the Analysis of the Rights of Internally Displaced Persons in situations of natural disasters. The study of the human rights protection of IDPs is a very wide area encompassing awide range of issues. However, this research placed particular attention to the protection of the human rights of IDPs in situations of natural disaster. Though, the studyhighlights other issues such as conflict or insurgency induced displacement but without exhausting all the details. Furthermore, there are a lot of legal instruments,

institutional mechanisms, and case laws as well as policy framework both at the national and international level on the protection of the rights of IDPs. However, the research is limited to the analysis of the provisions or part of these legal materials that are relevant to the subject matter of this research. Although the problem of internal displacement has assume a global dimension, territorially however, the study is limited to Nigeria being one theAfrican countries that is worst hit by the problem in the recent past. Though, reference is made to other jurisdictions for guidance where necessary.

1.7 Literature Review

The Rights of Internally Displaced persons in situations of natural disasters is an emerging field under International Law due to many recent crises across the globe which have attracted the attention of many jurists of International Law in an attempt to understand the types and causes of natural disasters and also proffer suggestions to the eradication of such crises at the international scene. In view of this many jurists of eminent standing have written on this area. No doubt, each of the jurists places emphasis on its own focus which when put together cumulatively, has relevance in one way or the other to this thesis as considered below.

Goodwin-Gill G. S[22] extensively dwelled on the definition and discretion of refugee as distinct from internally displaced person through the instrumentality of refugees in the sense of the 1951 Convention and the 1961 Protocol relating to the status of refugees and the statute of the office of the United Nations High Commission for Refugees (UNHCR). Goodwin-Gill practically explores the term, "refugee" for the purpose of general understanding in International law in relation to international, regional and other related instruments. In view of this, the researcher finds the work of Goodwin-Gill to be relevant to this thesis in the determination, analysis and application of the statutes of refugees in comprise of understanding of internally displaced persons in situations of natural disasters.

[22]Goodwin-Gill, G S, (1985) *The Refugee In International Law*, Clarendon Press Oxford, p. 1.

Ashiru, M. O. A.[23] examines the raising awareness of the problems faced by IDPs in general and the situation of IDPs in Nigeria in particular. The learned author observed that with the end of the Cold War, there was a dramatic increase in the number of Internally Displaced Persons (IDPs), thereby resulting in a growing concern within the international community as most IDPs live in destitute conditions, not receiving adequate humanitarian assistance and are vulnerable to the most serious human rights violations such as arbitrary killing, rape, torture and kidnapping. The author identified the causes of internal displacement such as armed conflict, religious and ethnic conflict, development projects as well as natural disasters like earthquakes, fires and floods. She argued that about 26 million people in the world are displaced with Africa still remains the continent worst affected by internal displacement, with 11.6 million IDPs in 19 countries. The author also examine legal frame for protection of IDPs such as International Humanitarian Law, International Human Rights Law, International Criminal Law, The Guiding Principles on Internal Displacement as well as the Effectiveness of the National Emergency Management Agency (NEMA). She concluded that even though there are plethora of international instruments guaranteeing the rights of IDPs the international community still has a long way in solving how to get States and privates actors in adhering to them. The author has no doubt examined some important issues affecting IDPs. However, as it concerns the legal frame work for protection of IDPs, there is need to go further and identify specifically the weaknesses or challenges in the law that inhibit its effective implementation in protecting the rights of IDPs in Nigeria. This research will therefore provide that missing link.

Natural disasters such as floods are occurrence that are difficult to prevent but can be managed inorder to reduce its physical, social and economic impacts. Michael, C. O.,[24] wrote

[23]Ashiru, M. O. A. (2010)*Caught within their borders: the Global crisis faced by the International Community of Internally Displaced Persons*,Nigerian Current Law Review.
[24]Michael, C. O., (2014),*Institutional Approach to Flood Disaster Management in Nigeria: Need for a Preparedness Plan, British Journal of Applied Science & Technology,* 4(33)

that in recent times, flood disastermanagement, like any other disaster, has shifted from relief, rescue, rehabilitation andrecovery to a new paradigm that stress on prevention, mitigation, preparedness andemergency response. He contended that nothing worthwhile is achieved without prior planning and flooddisaster management is no exception, but going through the history of institutional response arrangementsduring flood episodes, there is the absence of well-articulated, organizedinstitutional structure to co-ordinate response activities during emergency conditions.Existing response procedures were found to be ad-hoc, ineffective and poorly coordinatednotwithstanding the plethora of agencies involved. The author argued that apart from Lagos, no other state in Nigeria has apreparedness plan at present, upon which flood emergency conditions can be tackled. He maintained further that NEMA and other concerned agencies only provide relief materials and rescue victims. Michael concluded that theLagos model should be adapted by other states and the Nigerian nationbecause of the innovative flood management responsibilities contained therein. Suchresponsibilities include: (1) flood forecast and early warning (2) prevention through effectiveurban planning (3) assessment of flood extent (4) rescue and evacuation (5) relief provision(6) post flood impact assessment, recovery and rehabilitation.

The Sendai Framework for Disaster Risk Reduction[25] articulates the need for improved understandingof disaster risk in all its dimensions of exposure, vulnerability and hazard characteristics; thestrengthening of disaster risk governance, including national platforms; accountability fordisaster risk management; preparedness to "Build Back Better"; recognition of stakeholdersand their roles; mobilization of risk-sensitive investment to avoid

[25]United Nation: Sendai Framework for Disaster Risk Reduction (2015-2030) was adopted at the ThirdUN World Conference in Sendai, Japan, on March 18, 2015. It is the outcome of stakeholderconsultations initiated in March 2012 and inter-governmental negotiations from July 2014to March 2015, supported by the United Nations Office for Disaster Risk Reduction at therequest of the UN General Assembly. The Sendai Framework is the successor instrument to the Hyogo Framework for Action(HFA) 2005-2015: Building the Resilience of Nations and Communities to Disasters. TheHFA was conceived to give further impetus to the global work under the InternationalFramework for Action for the International Decade for Natural Disaster Reduction of 1989,and the Yokohama Strategy for a Safer World: Guidelines for Natural Disaster Prevention,Preparedness and Mitigation and its Plan of Action, adopted in 1994 and the InternationalStrategy for Disaster Reduction of 1999.The Sendai Framework is built on elements which ensure continuity with the work doneby States and other stakeholders under the HFA and introduces a number of innovationsas called for during the consultations and negotiations.

the creation of new risk;resilience of health infrastructure, cultural heritage and work-places; strengthening ofinternational cooperation and global partnership, and risk-informed donor policies andprograms, including financial support and loans from international financial institutions.

Opukri, C. O.[26] wrote on the linkages between oil based environmental degradation and internal displacements in the Niger Delta. The author just like Ashiru, observed that internal displacement has become an issue of topical concern, due to the human tragedy and insecurity associated with it. Opukri maintained that the theme that dominates discussions on IDP's at global and national levels is conflict-induced displacements. He however observed that the framework of displacement as a definite social condition that diminishes individuals and group capacity to pursue interests that may or may not involve relocation. The learned author concludes that oil related environmental problems – oil spillages, gas flaring, among others, have diminished the productivity of Oil Producing Communities, resulting to occupational and income losses that set in both voluntary and involuntary migration. Again, for this reason, some individuals live as aliens in their own communities, where they are unable to actualize their interest or aspirations. Though, this research is primarily concern with internal displacement arising from natural disaster, other causes of internal displacement would nonetheless form an integral part of this course. To this end, the researcher agrees that it is true that the relationship between oil related environmental problems and displacements have to a large extent been neglected by many observers and researchers in favour of conflict induced displacement. However, this being the case, it is important to recommend in specific terms how the present legal regime can protect the rights of persons displaced by environmental degradation since the law as it stands, does not take into consideration such circumstances.

[26]Opukri, C. O. (2008),Oil Induced Environmental Degradation and Internal Population Displacement in the Nigeria's Niger Delta, Journal of Sustainable Development in Africa, Vol. 10. No.1

Michael A. O., et'al[27] examines the effects of crisis induced internal displacement of persons in Nigeria on real estateinvestment decision among the displaced. This paper have established that crisis induced displacement of persons can hamper development in allramification and there is urgent need to curtail crises generators in Nigeria. The security situation in Nigeriaespecially in the northern states is getting more critical. Although governments at various levels have becomeconscious of this fact and taking steps to ameliorate same, it is doubtful if their combined efforts have actuallyallayed the fear of common Nigerians and restore their confidence in the capacity of government to provide therequired security of lives and properties. Domestic terrorism and social unrest do not only breed uncertainty inthe investment and financial climate but also increase security cost, reduce output and productive capacity,discourage tourism, damage infrastructure and displace foreign direct investment which has severe implicationfor economic growth and development of emerging economies. The plight of IDPs is rather pathetic and there is urgent need to assist these set of people. The support for localintegration of IDPs can mean offering land and housing solutions through social housing programme,construction grants in the affected place of displacement, new housing and cash assistance, and legal assistancein Nigeria. The government at various levels must intensify integration of local communities in providingsecurity solution in their domains.

One fact that is undeniable is that during internal conflicts, displaced victims are confronted with wide range of physical and psychological trauma to their personscoupled with loss of their homes and other life time investments. Relocating these victims to safe place (IDPs camps) alone willbe far from given them much touted hope for returning to normal lives. At the international level, there is a growing recognitionof the significance of extending reparation (which comprises of restitution, relocation, reintegration and compensation)

[27]Michael A. O., et'al (2014)*Crisis Induced Internal Displacement: The Implication on Real Estate Investment in Nigeria,Journal of Economics and Sustainable Development*, Vol.5, No.4.

tointernally Displaced Persons (IDPs) as means of assuaging the impact of wrongful acts committed against them. Shedrack, E. and Nuarrual H. D.,[28]generally examine the various contexts that reparation can begauged for internally displaced persons arising from recurring internal crisis in Nigeria. They argued thatinNigeria owing to multiple factors, compensating victims for loss of homes and other tangible properties in particular is yet toarouse the needed attention that it deserves as government primary attention has continually been overwhelmed by the needto provide immediate succour. The authors conclude that beyond thetraditional reparation sufficiently entrenched in applicable international, regional and domestic regimes, namely provision oftemporal shelters and other humanitarian needs, there is the need for a new twist that recognizesthe importance of reparation for movable and immovable properties lost in the heat of internal crisis.

Oduwole T. A. and Fadeyi A. O.[29] in his article "Issues of Refugees and Displaced Persons in Nigeria" examines the state of internally displaced persons in Nigeria. The authors contended that there neglects on the part of the State apparatus (government) in ensuring better, effective and functional policies. They argued that the magnitude of neglect is capable of threatening national cohesion of the country and endangering high rate of internally displaced persons across the country. This according to the authors, has affected the country from achieving Millennium Development Goals number eight (8) which is geared toward achieving rights to safety of lives and properties as equally enshrined in other international treaties, creative life and to enjoy a decent standard of living, freedom, dignity and self-respect and the respect of others. The authors concluded that given the magnitude and complexity of crises of internal displacement, working in partnership with regional bodies and the international community may prove valuable to ensuring effective responses. The

[28]Shedrack, E. And Nuarrual, H. D. (2015) *Towards the Evolution of Right to Reparation for Loss of Housing and Property of Internally Displaced Persons (IDPS) in Nigeria, Mediterranean Journal of Social Science,* Vol. 6 No 3.
[29] Oduwole, T. A. and Fadeyi A. O., (2013)*Issues of Refugees and Displaced Persons in Nigeria*, *Journal of Sociological Research*, Vol. 4, No. 1

interplay of prompt intervention, constructive vibrant institutions embedded in the value of good governance, social-welfare and functional agencies should be ensued. Also, the government should address the root causes of displaced persons and internal conflicts by taking appropriate measures with respect to the resolution of conflict, the promotion of peace and reconciliation, respect for human rights. The researcher also agrees that these are indeed challenges for national and local authorities. However, it is imperative to identify the particular areas of weaknesses in the agencies established to take care of IDPs in Nigeria and then determine which area needs to be strengthened.

Mc Coubrey, H.[30] observes that, "since armed conflicts of various kinds are constant features of our times, this area of law should be of public importance. His ideal is founded upon the legitimate scope of military action is not unlimited and that those who have been or are rendered combatant are entitled to impartial humanitarian and that both they and those charged with their care and welfare in the rendering of humanitarian aids are not legitimate targets in hostilities. Evidently, it is clear that the work of MC Coubrey is important to this study as it provides reasons and the need for the recognition and of the Rights of internally displaced persons.

Marion T.[31] dwelt on the understanding of the press**,** nature and the full complexity of the manifold human right in relation to civil and political rights on one hand and economic, social and cultural rights on the other which are both enforced under International Law in times of armed conflicts as it is useful to compare to them to the original human right that exist in peace times with such comparison as a yard stick. Meran concluded that while it is correct to suspend some human rights in war times some human rights are not subject to suspension even in war times which is the centre focus of this Dissertation.

[30]MC Coubrey H, (1990) International Humanitarian Law; The Regulation of Armed Conflicts, Gower Publishing Company, USA.
[31]Meran T., Human Rights in International Law, Legal and Policy Issues, Oxford University Press, New York (1992) pp. 115-438

Brookings-Bern,[32] is considered to be relevant to the theme of this dissertation by providing general guiding principles on internal displacement, measures to prevent displacement and minimizing its effects encouraging national human rights institutions to integrate Internal Displacement into their work and considering measures needed in promoting and disseminating the guiding principle as an important way to give recognition to the rights and special needs of internally displaced and to reinforce government obligation towards these populations.

Walter, K., in his book,[33] also considered extensively, the Rights of Internally Displaced Persons in situations of natural disasters by having recourse to Asia experience which may be adopted by modification to suit the Nigerian circumstances and this note the researcher finds the work of Walter relevant to this study.

1.8 Organizational Layout

Chapter One states the general introduction of the research, Statement of the Problem, Justification of the Research, Objectives of the Research, Scope of the Research, Research Methodology and the Organizational layout of the Research. Chapter two deals with Conceptual Clarifications of key terms such as displacement, internally displaced persons, and disaster. Chapter three analyses the Legal and policy framework for the protection of IDPs in Nigeria. Chapter four examines the institutional mechanism for the protection of internally displaced persons in situations of Natural Disasters and discusses agencies like NEMA, NHCR, etc. Chapter five outlines the general conclusions of the dissertation by examining the summary, observations, challenges and stating the suggestions thereto, together with the found conclusion of the research topic vis-à-vis writers' positions on the subject matter in Nigeria.

[32] Brookings-Bern, Project On Internal Displacement, A Framework for National Responsibility. University of Bern, Massachusetts Avenue, NW, Washington, DC, (2005), pp. 5-39

[33] Water, K, Protection of Internally Displaced Persons In Situations of Natural Disasters Office, United Nation High Commission for Human Rights, Switzerland,(2005), pp. 5-30

CHAPTER TWO

CONCEPTUAL ANALYSIS OF THE DYNAMISM AND CAUSES OF INTERNAL DISPLACEMENT IN NIGERIA

2.1 Introduction.

Displacement simply put is a situation in which people are forced to leave the place where normally live. Article 1 (1) of the African Union Convention for Protection andAssistance of Internally Displaced Persons in Africa (Kampala Convention,)[1]defines internal displacement as the involuntary or forced movement, evacuation orrelocation of persons or groups of persons within internationally recognized stateborders.Article 1(k) ofthe African Union (AU) Convention For The Protection And Assistance Of Internally Displaced Persons In Africa (Kampala Convention)[2], defined Internally Displaced Persons (IDPs) 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, situations of generalized violence, violations of human rights or natural or human made disasters, and who have not crossed an internationally recognized State border.They are generally persons that have been forced to flee their homes or places of habitual residence in order to avoid the outcomes of armed conflict, situations of generalized violence, violation of human rights or natural or man-made disasters and must have remained within the borders of their country as Internally Displaced Persons or cross international borders as refugees.[3] The term "internally displaced persons" are often wrongly referred to as refugees.[4] Unlike refugees, IDPs have not crossed an international border in search of refuge but have remained in their home countries. Even if they have fled for similar reasons as refugees (armed

[1]2009.

[2]African Union (AU) Convention For The Protection And Assistance Of Internally Displaced Persons In Africa (Kampala Convention), 2003. See also Workshop on the Protection of Internally Displaced Persons (IDPs), Merka, Internal Displacement Centre, 2006, Guiding Principles on Internal Displacement, Introduction, 2nd Edn., OCHA, UN., New York, September (2004).

[3] Ladan, M. T. (2006), Protection of Displaced Persons Under International Human Rights and Humanitarian Laws; A Case Study of Causes of Displacements In Nigeria. Op Cit.

[4] http://www.unhcr.org/pages/49c3646c146.html

conflict, generalized violence, human rights violations), internally displaced persons (IDPs) legally remain under the protection of their home governments - even though those governments might be the cause of their flight.[5]

Thus, from the foregoing definition, IDPs are often forced, against their will to move due to circumstances or events outside the sphere of their control such as natural disasters, wars, violence as well as human rights violation in order to seek safety elsewhere within their own country. Unlike refugees, internally displaced persons have not crossed an internationally recognized state border. While the above the definition stresses two important elements of internal displacement (coercion and the domestic/internal movement) it is important to note that rather than a strict definition, the Kampala Convention suggest that circumstances that could internal displacement of persons is non-exhaustive. However, despites indicate that the list of reasons for displacement is not exhaustive statistics on internal displacement generally count only IDPs uprooted by conflict and human rights violations.[6]

Generally, internal displacement may be forced or arbitrary displacement. A number of different terminologies have been used todescribe displacement stemming from development projects within different normativeframeworks, such as forced evictions, involuntary or coerced displacement, populationtransfers and internal displacement.[7] The National Policy on IDPs[8] defines arbitrary displacement by adopting the meaning given to the term in the UN Guiding Principles and the Kampala Convention. The UNGuiding Principles[9] and the

[5] Ibid

[6]Mooney, E. The concept of Internal Displacement and the case for IDPs as a category of concern, In: Refugee survey Quarterly (24) 3, 2005: 12. Print. See also Cohen, R, Kalin W. & Mooney E. (eds) (2003) The Guiding Principles on Internal Displacement and the Law of the South Caucasus: Georgia, Armenia, Azerbaijan : Studies in Transnational Legal policy No.34, The American Society of International Law and the Brookings Institution,: xiv. Print.

[7]Ferris, E., et al, (2012) *Development and displacement: hidden losers from a forgotten agenda*, In: Zetter, R., (ed. 2012), *World Disasters Report, Focus on forced migration and displacement*, International Federation of the Red Cross and Red Crescent Societies, p. 150.

[8] 2012.

[9]Principle 6

Kampala Convention[10] recognise andconstrue arbitrary displacement to mean:Displacement based on policies of racial discrimination or other similar practicesaimed at/or resulting in altering the ethnic, religious or racial composition of thepopulation;Individual or mass displacement of civilians in situations of armed conflict, unlessthe security of the civilians involved or imperative military reasons so demand, inaccordance with international humanitarian law;Displacement intentionally used as a method of warfare or due to other violationsof international humanitarian law in situations of armed conflict; Displacement caused by generalized violence or violations of human rights;Displacement as a result of harmful practices;Forced evacuations in cases of natural or human made disasters or other causes ifthe evacuations are not required by the safety and health of those affected; Displacement used as a collective punishment;Displacement caused by any act, event, factor, or phenomenon of comparablegravity to all of the above and which is not justified under international law,including human rights and international humanitarian law.

As article 3 of the KampalaConvention obligates State parties to refrain from, prohibit and prevent "arbitrarydisplacement" of populations, as well as to ensure the accountability of non-State actorsdoing the same, this is the term that I will be using in my interpretation of article. In fact, the Kampala Convention is thefirst internationally legally binding document to recognize the right not to be arbitrarilydisplaced.[11]While there is no specific right to protection against forceddisplacement as such, it is inherent in a number of human rights,including the rights to freedom of movement and choice ofresidence,[12] the right to

[10]Article 4

[11]*Cohen, R., (2013), Lessons Learned from the Development of the Guiding Principles on Internal Displacement*, Georgetown University Working Paper, p. 10.

[12]See , Art. 13 of UDHR; Art. 12 of ICCPR; Art. 5(d)(i) and (f) of ICERD; Art. 15 of CEDAW; and Art. 16 of ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries; and, at the regional level, Art. 12 of Af CHPR; Art. 22 of Am CHR; Arts. 20 and 21 of Ar CHR; and Art. 2 of Protocol 4 to the ECHR. See also Principle 14 of the Guiding Principles on Internal Displacement.

respect for the home and for privacy,[13] theright to an adequate standard of living, including food andhousing,[14] and the right to respect for the family.[15]

National Policy on IDPs define force displacement as involuntary movements of people due to conflicts,natural hazards or environmental disasters, chemical or nuclear disasters, famine, ordevelopment projects. This must be distinguished from forced eviction. The National Policy on IDPs quoting the UN Basic Guidelines on Development-based Evictionsand Displacement, provides that force eviction refers to acts and/or omissions involving the coerced orinvoluntary displacement of individuals, groups and communities from homes and/orlands and common property resources that were occupied or depended upon, thuseliminating or limiting the ability of an individual, group or community to reside or workin a particular dwelling, residence or location, without the provision of, and access to,appropriate forms of legal or other protection. The notion of forced evictions does notapply to evictions carried out both in accordance with the law and in conformity withthe provisions of international human rights treaties. Forced eviction does notautomatically mean arbitrary displacement, but can be the first step leading to it

Though, Forced displacement of people by the authorities can only be justified on an exceptional basisunder human rights law and subject to strict conditions. It must be provided for by law and benecessary and proportionate to achieve a legitimate aim, such as to protect national security orpublic order, public health or morals, or the rights and freedoms of others. It must be non-discriminatory and consistent with other human rights andinternational legal obligations of the State.Even when such displacement can be justified, it must meet certain

[13]Art. 12 of UDHR; Art. 17 of ICCPR; Art. 8(16) of CRC; and, at the regional level, Art. 10 of AfCRWC; Art. 11 of AmCHR; and Art 8 of ECHR.

[14]Art. 25 of UDHR; Art. 11 of ICESCR; Art. 5(e)(iii) of ICERD; and Art. 14(2)(h) of CEDAW; and Art. 27 of CRC; and, at the regional level, Arts. 15 and 16 of the Protocol to the AfCHPR on the Rights of Women in Africa. See also General Comments of the Committee on Economic, Social and Cultural Rights No. 4 (1991) on the right to adequate housing and No. 7 (1997) on forced evictions; and Principle 18 of the Guiding Principles on Internal Displacement.

[15]Art. 16 of UDHR; Art. 10 of ICESCR; Arts. 17 and 23 of ICCPR, Arts. 16 and 18 of CRC and at the regional level, Art. 18 of AfCHPR; Art. 17 of AmCHR; Art. 38 of ArCHR; Art. 5 of the Cairo Declaration on Human Rights in Islam; Arts. 8 and 12 of ECHR; and Art. 16 of the revised ESC. See also Principle 17 of the Guiding Principles on Internal Displacement.

substantive andprocedural safeguards and take place in conditions of safety and dignity. For example, anydecision to displace individuals or communities must be taken by competent authorities. Theauthorities must assure the basic conditions for security and well-being at the place ofdestination before people are moved (including in the case of returns). Those affected must beinformed of the reasons and procedures for displacement and given an opportunity tochallenge the decision, including through independent judicial review. Wherever possible,their informed consent should be sought, their participation in planning and implementing thedecision ensured and fair compensation given. Displacement should never be carried out in amanner that violates the rights to life, dignity, liberty and security of those affected.Particular care must be taken to protect indigenous peoples, minorities, peasants, pastoralists andother groups with a special dependency on, and attachment to, their lands from displacement.Certain human rights, such as freedom of movement, can be temporarily suspended by thenational authorities in times of a public emergency, such as during armed conflict.

2.4Disasters

The Internal Displacement Monitoring Centre (IDMC), Norwegian Refugee Council defines disaster as a serious disruption of the functioning of a community or a society causing widespread human, material, economic or environmental losses which exceed the ability of the affected community or society to cope using its own resources. It results from the combination of hazards, conditions of vulnerability and insufficient capacity or measures to reduce the potential negative consequences of risk.[16]Section 2 (2) of the National Emergency Management Act[17] disasters to include any disaster arising from any crisis, epidemic, drought, floods, tornado, earthquake, train, aircraft or other accidents and mass deportation or repatriation of Nigerians from abroad.

[16] Internal Displacement Monitoring Centre (IDMC), www.internal-displacement.org

[17]National Emergency Management Act

The essential element of this definition is that disasters are unusual events that overwhelm the coping capacity of the affected community. This concept precludes the universal adoption of a threshold number of casualties or victims. Disasters have continued to exact a heavy tolland, as a result, the well-being and safety of persons, communities and countries as a whole havebeen affected. Over 700 thousand people have lost their lives, over 1.4 million have been injuredand approximately 23 million have been made homeless as a result of disasters. Overall, morethan 1.5 billion people have been affected by disasters in various ways, with women, childrenand people in vulnerable situations disproportionately affected. The total economic loss wasmore than $1.3 trillion.[18] In addition, between 2008 and 2015, about 144 million people were displaced bydisasters. Disasters, many of which are exacerbated by climate change and which are increasingin frequency and intensity, significantly impede progress towards sustainable development.[19]

Recurring disasters particularly affect communities, households andsmall and medium-sized enterprises, constituting a high percentage of all losses. It generates particularly economic, social, health, cultural and environmental impact at local and community levels. All countries, especially developing countries, where the mortality and economic losses from disastersare disproportionately higher, are faced with increasing levels of possible hidden costs andchallenges in order to meet financial and other obligations.[20] Disasters can take many different forms, and the duration can range from an hourly disruption to days or weeks of on-going destruction. Below is a list of the various types of disasters – both natural and man-made or technological in nature – that can impact a community.

[18]Resilience is defined as: "The ability of a system, community or society exposed to hazards to resist, absorb, accommodate to and recover from the effects of a hazard in a timely and efficient manner, including through the preservation and restoration of its essential basic structures and functions", United Nations Office for Disaster Risk Reduction (UNISDR), "2009 UNISDR Terminology on Disaster Risk Reduction", Geneva, May 2009, available @ http://www.unisdr.org/we/inform/terminology, accessed on 12th December, 2014. 2:58. A.M

[19] United Nations, Sendai Framework for Disaster Risk Reduction (2015-2030), p.8.

[20] Ibid.

2.4.1 Natural disasters

Natural disasters are the end results of events that have been triggered by natural hazards that overpower local response capacity and seriously affect the social and economic development of a region. Traditionally, natural disasters are viewed as situations that create challenges and problems mainly of a humanitarian nature.[21]When weather patterns and geographical features of the earth change abruptly, disaster strikes and the consequences are devastating in loss of lives, injuries and property damage. Natural disasters are numerous and widespread.[22] Natural Disasters happen all around the world. They are not limited to one specific country or climate.

Worldwide, millions of lives have been lost and countless millions more have been injured and disrupted by natural disasters. The cost is often measured in billions of dollars per natural disaster. The likelihood of future volcanic eruptions, wildfires, firestorms, widespread flooding and landslides is irrefutable. The devastating results of earthquakes and hurricanes are well known. Although some natural events are predictable according to season, geographical location and by using sophisticated tracking systems, most occur with limited warning or develop rapidly, and planning for the mitigation and management of the sequel of natural disasters will always be valuable and timely[23].

Common natural disasters include earthquakes, volcanic eruptions, tornadoes, hurricanes, floods, and wildfires. Although this is not an exhaustive discussion of the potential etiologist of natural disasters, it does address a wide range of examples where disaster preparedness is crucial.

[21]Human Rights and Natural Disasters; Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster, Bookings-Bern Project on Internal Displacement, Washington DC, (2008)
[22] Ibid
[23] Graham C., Internally Displaced Persons, On The Run In Their Own Land, UNCHR, http://www.unhcr.org/pages/49c3646c146.html

2.4.2 Forms or Dynamism of Natural disasters

i. Earthquakes

An earthquake refers to the unexpected and rapid shaking of earth due to the breakage *and shifting of underneath layers of Earth. Earthquake strikes all of a sudden at any time of day* or night and quite violently. It gives no prior warning. If it happens in a populated area, the earthquake can cause great loss to human life and property.[24]Historically, earthquakes are one of the most devastating natural disasters. The number of lives lost, amount of property damage, and economic impact of earthquakes is tremendous.[25]

The cause of earthquakes is not completely understood. However, it is believed that part of the cause earthquake is the shifting of tectonic plates that form the earth's crust; the "fault line" is the geographic location where these meet. The San Andreas Fault in California is an example of one such fault line. As the plates move, stressed areas can rupture, resulting in a tremendous amount of energy being released as a seismic wave. The point of rupture is known as the focus, and the epicentre of the earthquake is the area on the surface of the earth located directly above the focus. The geographical location of the fault lines and the adjacent imperfections in the earth's crust near areas where the tectonic plates meet permit prediction of the most probable geographic locations for potential earthquakes, but not reliable predictions of when such an event might occur[26].

However, fault lines and the movement of tectonic plates do not completely explain the occurrence of earthquakes. In the Midwest and central United States, earthquakes have occurred emanating from the New Madrid fault, although this area is several hundred miles from a tectonic plate fault line. There are earthquake-prone regions whose etiology is not

[24]http://www.topemergencypreparedness.com/types-of-disasters/index.php, accessed on 23rd November, 2014. 2:21 P.M.
[25] Ibid.
[26]www.n-d-a.org/earthquake, 7/6/13

completely understood, which significantly broadens the potential number of earthquake locations[27].

ii. Tsunamis

Tsunamis are tremendously powerful ocean waves that usually are the result of an undersea earthquake. Less commonly, they can occur secondary to underwater landslides or underwater volcanic activity. Tsunamis are not a single wave, but rather a series of waves spaced minutes to more than 1 hour apart. They are sometimes referred to as "tidal waves," although they have nothing to do with the tides. They have been reported as occurring in all oceans, but the Pacific Ocean is the most common location. They can move at speeds of hundreds of miles per hour with minimal visible changes in the water surface. In fact, ships on the surface may not even notice a disturbance as a tsunami passes underneath them. Their eventual landfall can be devastating. They do not generally manifest in the commonly assumed form of a high wall of water crashing onto the shore. Most often the wave is like a tremendous tide coming in after an unexpected, rapid drawing in of water from the shore. The speed and force of a tsunami is difficult to describe. Imagine a series of 50-mile or longer waves moving at the speed of a jet aircraft, able to traverse the Pacific Ocean in a matter of hours, and overrunning islands and coastlines in their path nearly silently.[28]

The damage caused can range from little to massive devastation, as seen on December 26th 2004 when an earthquake measuring 9.3 occurred off the coast of Sumatra, Indonesia in which 300,000 people lost their lives due to the massive tsunamis that hit the surrounding land.[29]

iii. Volcanic Eruptions

Volcanoes are a reservoir of molten rock, or magma that periodically escapes to the surface. As magma rises in accordance with its own physical properties and the effects of the

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[27] ibid
[28] http://www.n-d.org/tsunami.php, accessed on 11th September, 2014. 1:13 P.M.
[29] www.n-d-a.org/earthquake,4/5/13

gases surrounding it, it may reach the point of eruption. No universal scale exists to quantify a volcanic eruption.[30] The speed and violence of a volcanic eruption has tremendous destructive potential. The initial explosion and subsequent flow of hot gases and materials, the lava, the massive amounts of hot ash, and blasts of superheated steam released are only some of the destructive forces of a volcanic eruption. Earthquakes, avalanches, landslides, and forest fires may also occur as a result.[31]

Volcanic activity is fairly well detectable, but even with sufficient warning the tremendous force and consequences of a significant eruption are devastating. Poorly defined evacuation routes, unreliable communication methods, and overall ineffective preparedness are stumbling blocks to effective attempts to mitigate the consequences.[32]

iv. Tornadoes

A tornado is defined as a 'violently rotating column of air which is in contact with the ground'[33], extremely violent natural events that contain winds that can exceed 100 mph, 200 mph or even, although rarely, 300 mph, and strike with little or no warning. This should be distinguished from hurricane. Hurricane like the tornado is also a wind storm, but it is a tropical cyclone. This is caused by a low pressure system that usually builds in the tropical. Hurricanes come with thunderstorms and a counter clockwise spread of winds near the surface of the earth[34]. The path of a tornado can be several hundred yards to nearly a mile across and up to several miles long, thus affecting a large geographical area. In addition, tornadoes are quite common, with several hundred reported annually in the US alone[35].

During certain thunderstorms, unstable weather conditions occur when a high-altitude, dry cold air mass comes into contact with a moist warm air mass near the surface of the

[30] http://www.alibris.com/Basic-Disaster-Life-Support-Provider-Manual-_Version-_2-6/book_/-157947881, accessed on 11th September, 2014. 2:01 P.M.
[31] ibid
[32] ibid
[33] http://www.n-d.org/tornado.php
[34] http://www.n-d-a.org/hurricanes, 4/5/13
[35] http://www.alibris.com/Basic-Disaster-Life-Support-Provider-Manual op cit

ground, creating "super cell" thunderstorms that can be more than 40,000 feet high[36]. Tornadoes are most likely the result of a rotating air torrent along the "dry line," the lateral boundary between the moist warm air and dry cool air. The exact cause of tornado formation is unknown, however, because these conditions do not always spawn a tornado.

The United States has the most severe tornadoes on earth due to their weather patterns and terrain. Tornadoes occur in all regions of the United States, making them a significant disaster response issue nationwide. The majority occurs in what has become known as "tornado alley," in the South Central and Midwest regions of the US, and these are generally seasonal in nature. Nevertheless, some of the most severe tornadoes have occurred outside of this geographic area. The significant number of deaths, injuries, and amount of property damage caused by tornadoes make them difficult to manage as either a Mild Cognitive Impairment (MCI) or a significant recovery event. In addition to the health care needs in the aftermath of a tornado, the impact on the community of hundreds, if not thousands, of newly homeless people can be tremendous. The cost can be astronomical when the health care, structural repairs, impact on local industry, and wages lost due to injury and death are taken into account. It should be noted that the damages that ensue usually run into several millions of dollars and consequently require federal and state funding and the designation of the event location and environs as disaster areas. Thus dealing with these commonly occurring events requires an "all-hazards" approach. All-hazards preparedness must include potential subsequent or secondary disasters following a primary natural disaster. A structurally damaged hospital with no immediately visible changes after an earthquake is an impending MCI with a significant potential need for evacuation. The consequences of prolonged power outages, contaminated drinking water, and infectious diseases incubating in and spreading from standing waters are other examples.

[36]ibid

v. Floods

Flood is generally perceived as a very large amount of water that has overflowed from a source such as a river onto a previously dry area due to the massive geographical distribution of river plains and low-lying coastal areas.[37] This includes the simple notion that a flood involves surplus water as compared with average water levels. Floods can be considered as either river floods or coastal floods. River floods are often atmospherically driven, caused by excessive rainfall. They can also occur due to landslides falling into rivers, and by dam failures. Coastal floods are often caused by storm flows caused by tropical storms[38]. The effects of a flood can be local to a neighbourhood or community. It can cast a larger impact, the whole river basin and multiple states could get affected. Every state is at its risk due to this hazard. There are many reasons why floods occur but these can be divided into categories which include flash floods, storm surge, and dam failures.

Flash floods take place with little or no warning and are usually very deadly because of the rapid rise in water levels and the high flow-speed of the water. Some of the factors which contribute to the occurrence of flash floods include high rainfall, duration of the rainfall, surface condition and the landscape. Urban areas are more prone to flash floods due to the lack of natural drainage systems and the high amounts of concrete surfaces that often tend to increase the rate of runoff into water systems.

In Nigeria, flooding is the most frequent and most widespread of natural disasters which accounting for about one-third of all disasters arising from geophysical hazards and adversely affect more people than any other natural hazard[39]. Flood disasters, according to Obeta[40] accounted for about 38% of all the federally declared natural disasters between 1995

[37] http://www.nssl.noaa.gov/education/floods, 12/8/14
[38] http://www.topemergencypreparedness.com/types-of-disasters/index.php, 12/3/13
[39] Adebayo, A. A., and Oruonye, E.D. (2013) An Assessment of the effects of the 2012 Floods in Taraba State, Nigeria, Paper delivered at the Annual National Conference, organized by the Association Hydrological Science at University of Agriculture, Abeokuta, Ogun, state, Nigeria. 2013;13-18
[40] Obeta, M.C. (2009) Extreme River Flood Events In Nigeria: A Geographical Perspective, Nigerian Journal Of Geography And The Environment, 1:170-179.

and 2005 in Nigeria and observed that 2012 flood disaster in Nigeria adversely affected more people in one year than the combined number of all the people affected by other natural hazards, including soil erosion between 2005 and 2010.[41] This dominance is not surprising since the overtopping of the natural boundaries of rivers together with the submergence of the low lying coastal areas, especially along the Lagos –Ibadan, Benin- Port-Harcourt and Calabar axis, is a more frequent occurrence when compared with the incidence of other hazards such as drought, soil erosion, earthquake and landslide.

In fact, the Director General of the National Emergency Management Agency (NEMA), in a visit to some areas that were affected by flood in Kaduna State, North West Nigeria, **warned that the recent flooding that wreaked havoc across the country may likely occur again in more frontline states as the Cameroonian government gets set to release water from its dams in the days ahead and** warned Nigerians to take seriously the recent prediction by the Nigeria Meteorological Agency regarding excessive rainfall in the zone this year and urged residents in various states and local government councils to prepare adequately against flood disasters during this year's rainy season, advising those still living along flood prone areas and river banks to vacate such places in order not to be caught unawares.[42]

vi. Wildfire

Wildfire is the term used to describe uncontrolled fires driven by natural vegetation[43]. They often start in rural wilderness areas but subsequently travel to rural-urban environments, affecting buildings, animals and people. Wild forest areas catching fire is a very big problem for the people who live around these areas. The dry conditions caused several times in the

[41] Hassan, S.M., and Tokula, A.E. (2013) Impact And Risk Assessment Management Of Flood Disasters In Lokoja, Paper delivered at the 5th Annual National Conference of the Nigerian Association of Hydrological Sciences (NAHS) at the University of Nigeria, Nsukka, p.31.

[42] http://www.channelstv.com/2015/09/22/nema-asks-states-to-prepare-for-more-flood/,accessed on 3rd December, 2014. 11: 41 A.M.

[43] http://www.n-d/0rg/fire, 19th December, 2014. 11: 23 P.M.

year in different parts of the world can increase the possibility for wildfires. If you are well prepared in advance and know how to protect the buildings in your area, you can reduce much of the damage caused by wildfire. It is everyone's duty to protect their home and neighbourhood from wildfire. Generally, wildfires are caused by a combination of factors such as high temperatures, drought conditions following a period of vegetation growth and a trigger which can be natural such as lightning or human influenced such as deliberate acts of arson.[44]

2.4.2 Man-Made Disasters

Man-made disasters are as a result of human intent, error or as a result of failed systems. These disasters can further be broken down into several categories and there are some that cause more pronounced damage when compared to others. A very good example is to look at man-made disasters such as transportation that is divided into different categories such as aviation, rail, road, sea, and space. More often than not, these are as a result of neglect or ignorance and over the years, they have claimed several lives.

Other forms of man-made disasters include nuclear bombs, chemical weapons, fires storms, etc. It is to be noted that the extent of the damaged caused by man-made disasters varies greatly and that others have notably high costs when compared to others.

2.5 Meaning of protection of Internally Displaced Persons

Protection is defined as all activities aimed at obtaining full respect for the rights of theindividual in accordance with the letter and spirit of the relevant bodies of law, namely humanrights law, international humanitarian law and refugee law.[45]Protection is an objective which requires full and 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

[44]Ibid

[45]This definition, which was originally developed over a series of ICRC-sponsored workshops involving some 50 humanitarian and human rights organizations, has been adopted by the IASC. See Protection of Internally Displaced Persons, Policy Paper Series, No. 2, 2000 and ICRC, Strengthening Protection in War: A Search for Professional Standards, 2001.

as the right to freedom of movement, the right to political participation, and economic, social and cultural rights, including the rights to education and health. Protection is a legal responsibility, principally of the State and its agents.[46]

In situations of armed conflict, that responsibility extends to all parties to the conflict under international humanitarian law, including armed opposition groups. Humanitarian and human rights actors play an important role as well, in particular when States and other authorities are unable or unwilling to fulfil their protection obligations.[47]Furthermore, protection is an activity because action must be taken to ensure the enjoyment of rights. There are three types of protection activities that can be carried out concurrently: responsive – to prevent or stop violations of rights; remedial – to ensure a remedy to violations, including through access to justice and reparations; and environment-building – to promote respect for rights and the rule of law.[48]

The primary responsibility for protecting IDPs and all persons within their own country rests with the national authorities of the country. National responsibility is a core concept of any response to internal displacement. It is a fundamental operating principle of the international community and is routinely emphasized by governments themselves, as a function of their sovereignty. Yet, it is sometimes the very governments responsible for protecting and assisting their internally displaced populations that are unable or even unwilling to do so and, in some cases, they may even be directly involved in forcibly uprooting civilians. Even then, however, the role of international actors is to reinforce, not replace, nationalresponsibility. This requires a two-pronged approach to encourage States and other authorities to meet their protection obligations under international law while also

[46] Ibid.
[47]Several international organizations, namely OHCHR, UNHCR, UNICEF and ICRC, have express protection mandates. All United Nations and partner agencies, however, have a responsibility to integrate human rights into their work and to approach their work with due regard to protection issues. See Renewing the United Nations: A Programme for Reform, Report of the Secretary-General to the United Nations General Assembly (UN doc. A/51/950) and IASC, Protection of Internally Displaced Persons, 2000. See also Part I.3 of this Handbook .
[48]ICRC, Strengthening Protection in War , 2001, p. 20.

supporting the development of national and local capacities to fulfil these protection responsibilities.[49]

Since protection is about securing human right, it requires an approach grounded upon and geared towards the full and equal enjoyment of rights. This way of working requires that we recognize individuals as rights-holders with legal ensure the protection and well-being of individuals. The State and other authorities are duty-bearers with responsibilities to respect and protect individuals' rights. These rights and responsibilities are firmly rooted in international law, particularly human rights and international humanitarian law and, where relevant, refugee law.[50] A rights-based approach means that all of our policies, programmes and activities: are based on rights, as provided in international law; further the realization of rights; and seek to strengthen the capacities of rights-holders (women, men, girls and boys) to claim their rights, and the capacities of duty-bearers (State and other authorities) to meet their obligations to respect, protect and fulfil those rights. A rights-based approach can strengthen our work by anchoring it in a system of rights and corresponding obligations established by international law. By empowering people to claim their rights and strengthening the capacities of duty-bearers to fulfil these rights, a rights-based approach also promotes and strengthens the sustainability of our efforts. While a "rights-based approach" to humanitarian action is a relatively recently coined expression, the concept behind it is based on decades-old principles. According to the Charter of the United Nations, one of the core purposes of the United Nations is to promote and encourage "respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion." Human rights are, therefore, a concern that cuts across humanitarian and development activities, entailing a

[49]Brookings-Bern Project on Internal Displacement, Addressing Internal Displacement: Framework for National Responsibility, 2005, p.10.
[50] Ibid.

responsibility for all parts of the United Nations and NGOs to integrate human rights into their work.[51]

[51]OHCHR, (2006) Frequently Asked Questions on a Human Rights-based Approach to Development Cooperation, Geneva, p. 35.

CHAPTER THREE

ANALYSIS OF LEGAL AND POLICY FRAMEWORK FOR THE PROTECTION OF THE RIGHTS OF INTERNALLY DISPLACED PERSONS

3.1 Introduction

The question of how IDPs are protected under international law against human rights violations isnot merely one of academic interest, as displacement in itself contradicts basic human rightsguarantees. The debate on IDP protection revolves around two sets of potentially contradictoryconcerns: (a) ensuring international protection of human rights and upholding stateresponsibilities, and (b) legal provisions for the protection of IDPs and the states' capacity toapply those provisions.[1] To this end, it is imperative to explore the adequacy of the existinginternational legal norms and institutions as basic components for the protection of IDPs.Consequently, this chapter examines the applicability of international human rights law,international humanitarian law and refugee law to internal displacement, and considers the extentto which each meets the protection needs of the IDPs. The chapter also gives an overview of theinstitutional framework for the protection of IDPs.

3.2. The international legal framework for the protection of IDPs

Despite not being beneficiaries of a specific convention, IDPs are protected by various bodies oflaw, principally national law, and human rights law and, if they are in a state experiencing anarmed conflict, international humanitarian law.[2] IDPs, like all other citizens, have rights, theentitlement to which they have not lost by virtue of having been displaced.[3] IDPs are nationals ofthe state in which they are displaced, hence they are entitled to the full protection of the nationallaw and the rights it grants nationals without any adverse distinction. Many international legal instruments including international human rights laws and international humanitarian laws contain clauses that could give protection and assistance to IDPs.

[1]Fitzpatrick Joan (ed) (2008) Human Rights Protection for Refugees, Asylum Seekers and IDPs: A Guide to International Mechanisms and Procedures. P.5

[2]International Committee of the Red Cross (ICRC) 'Legal Protection of Internally Displaced Persons' (2009), available at <http://www.icrc.org, accessed on 10th November, 2015. 6:12 P.M.

[3]Helle, D., Enhancing the Protection of Internally Displaced Persons, In: Davies Wendy (ed) (2010) Rights Have no Borders: Internal Displacement Worldwide, Norwegian Refugee Council / Global IDP Project, p.21.

However, these international laws are applied situation by situation. Therefore, it is necessary to see which international laws are applied in which situations.

3.2.1 International Humanitarian Law

International humanitarian law (IHL) is the body of rules which, in war time protects people who are not or are no longerparticipating in the hostilities. Its central purpose is to limit and prevent human suffering in timesof armed conflict. The rules of IHL are to be observed not only by governments and their armedforces, but also by armed opposition groups and any other parties to a conflict.[4] Thus, in situations of non-international armed conflicts, international humanitarian laws can be applied. Application of international humanitarian laws is extensive. Contrary to international human rights laws, which are binding to only states and their agents, international humanitarian laws are binding to rebel groups to a certain extent.

The relevant instruments which apply to IDPs under this area of law are the four 1949 Geneva Conventions and the Protocol Additional to the Geneva Conventions of 12 August, 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II). Additional Protocol II of 1977 supplements Article 3 Common 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 organized armed groups which, under responsible command exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.[5]

Situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature are expressly excluded by this Protocol as they are

[4]ICRC document 'International Humanitarian Law' available @http://:www.icrc.org, accessed on 10th December, 2015. 7: 46. P.M.

[5]Article 1 (1) Additional Protocol II Relating to the Protection of Victims of Non-international Armed Conflicts (Protocol II) of 8/6/1977.

not considered as being armed conflicts.[6] Article 3 common to all four Geneva Conventions applies to "armed conflict not of an international character occurring in the territory of one of the High Contracting Parties". It thus binds both state and non-state actors in an internal conflict situation. 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"[7] are prohibited. So also are the "taking of hostages",[8] "outrages upon personal dignity, in particular humiliating and degrading treatment";[9] and "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court".[10]

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 international humanitarian law. Additional Protocol II, Article 13, for example, prohibits the attack on civilians as long as they do not take a direct part in hostilities. Additional Protocol II, Article 17 deals with the issue of displacement. Article 17(1) spells out the primary aim of International Humanitarian Law in a nutshell, that is, preventing the displacement of the civilian population. 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".[11] 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.[12] The Article also provides that civilians should not be compelled

[6] Ibid. Article 1(2)
[7] Article 3(1)(a) Common to the Geneva Conventions, 1948.
[8] Article 3(1)(b) Ibid.
[9] Article 3(1)(c) Ibid.
[10] Article 3(1)(d) Ibid.
[11] Article 17 (1) Additional Protocol II.
[12] Ibid.

to leave their own territory for reasons connected with the conflict.[13] Article 4 of Additional Protocol II is of equal importance in the case of IDPs. In the case of children, for example, the article makes provision for the education of children, the reunion of families temporarily separated and the non-conscription of children under the age of fifteen years in the armed forces or groups not allowed to take part in hostilities.[14]

However, there are certain serious gaps particularly in Article 3 as it simply states the principle of assistance and protection of the wounded and sick and does not contain implementation clauses, such as respect for medical or the Red Cross emblem. Furthermore, judicial guarantees and conditions of detention of persons deprived of their liberty are not specified and no rule of protection of civilian population is included as such. Additionally, another weakness of IHL vis a vis the protection of IDPs is that in some situations of tensionsand disturbances short of armed conflict, humanitarian law is not applicable. Consequently,IDPs who are not in areas of armed conflict cannot be protected by IHL. In this respecttherefore, IHL cannot be said to be appropriate instrument for the protection of all IDPs.

3.2.2 International Refugee Law 1951

The starting point of international refugee law is that human rights violations have alreadyoccurred and that victims have already fled their country of origin. The objective is to convince anasylum state to respect minimal standards for certain foreigners who do not benefit from someother national protection.[15] The international refugee legal regime comprises of the 1951convention relating to the status of refugees[16], the 1967 protocol

[13] Article 17(2) Ibid.
[14]Article 4 (3) Additional Protocol II.
[15]Barutciski, M., (2008) Tensions Between the Refugee Concept and the IDP Debate, Forced Migration Review No. 3, p.13.
[16]United Nations Convention Relating to the Status of Refugees, July 28, 1951.

relating to the status ofrefugees[17], and in the African region, the 1969 Convention governing the specific aspects ofrefugee problems in Africa.[18]

For instance,Article 31 of the convention relating to the status of refugees (Convention)[19], which prohibits penalties on refugees who are in a country unlawfully, requires that contracting state not to impose penalties on account of illegal entry or presence, of refugees who are coming directly from a territory where their life or freedom was threatened, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. Furthermore, Article33, which sets out the fundamental principle of non-refoulmentprovides that no contracting state shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. By extension, this right is one of the crucial right for displaced persons as it tends to protect IDPs from involuntary movement and expulsion as well as from forcible return or resettlement to any place where their health, safety and liberty is at risk. Although there is no specific international convention affirming the right of internally displaced persons to return to their place of origin, from the provisions available in various international instruments it can be implied that at least there is obligation of States not to impede the return of people to their places of origin.

It should noted that in international law, refugees are granted a special legal status because they have lost the protection of their own country and, therefore, are in need of international protection not necessary for those who do not cross international borders. Hence, IDPs do not necessarily need a separate protection. Instead, as human who are in a situation of vulnerability, they are entitled to the enjoyment of all relevant guarantees of

[17]Protocol Relating to the Status of Refugees, January 31, 1967.
[18]Convention Governing the Specific Aspects of Refugees Problems in Africa , 1969.
[19]United Nations Convention Relating to the Status of Refugees, July 28, 1951.

human rights and humanitarian law, including those that are of special importance to them. This does not rule out the possibility of administrative measure such as registration on the domestic levels to identify those who are displaced and need special assistance. However, lack of such registration would not deprive IDPs of their entitlements under human rights and humanitarian law.[20]

Some of the remaining articles of the Convention providing numerous rights for refugees in asylum countries which are also of particular importance to IDPs include Article 3 which makes provision for non-discrimination. This article recognises that as human being, State Parties must accord refugees and IDPs alike the opportunity to enjoy physical and mental integrity and protection from discrimination on grounds such as race, gender, sexual orientation, gender identity, national origin, colour, ethnicity, religion, or disability. To effectively achieve this, State Parties should not only create the friendly environment which allows all refugees and IDPs to exercise their human rights, but should also accord the all refugees, asylum seekers, and IDPs the same treatment and privileges with the rest of the citizens irrespective of their status. It is rather unfortunate that the situation of IDPs in various camps across the country only seems to suggest that the government has not effectively guaranteed the IDPs this important right. This is particularly the case when one looks at the nature of at least security and humanitarian conditions in the camps with what obtains outside.

Article 15 of the Convention provides for the Right to Association. It allows refugees, asylum seekers and by extension, IDPs the right to form or join association for the protection of their interests. The idea is, IDPs whether they return or not, should enjoy full access to their rights to vote and to be elected to hold an office as well as their broader rights to participation in public affairs without discrimination relative to the rest of the population.[21]

[20]Ladan, Op cit
[21] IASC, "Benchmarks for Durable Solutions for Internally Displaced Persons," p. 9.

The essence of this right is to protect the freedom of refugees and IDP from unwarranted violation by governments and private organizations and seeks to ensure their ability to participate in the civil and political life of the state without discrimination.

Article 20, 21, 23 and 24 of the Convention provide forBasic Economic, Social and Cultural Rights. These rights guarantee that everybody must be provided with conditions that can enable them to meet their basic needs.[22] Economic, social and cultural rights are a broad classification of human rights. They include but not limited to Rights to work, particularly just and fair conditions of employment, protection against forced or compulsory labour and the right to form and join trade unions; Right to education. This includes ensuring that primary education is free and enforced and that education is sufficiently available, accessible, and acceptable and adapted to the individual; Cultural rights of minorities and Indigenous Peoples; The right to the highest attainable standard of physical and mental health: This implies the right to healthy living conditions and available, accessible, acceptable and quality health services; The right to adequate housing: This include security of tenure, protection from forced eviction and access to affordable, habitable, well located and culturally adequate housing; The right to food: This means the right to freedom from hunger and access, at all times, to adequate and nutritious food or the means to obtain it and the right to (clean) water. That is, the right to sufficient water and sanitation that is available, accessible (both physically and economically) and safe.

It should be noted that most of the provisions of Economic, Social and Cultural Rights, relate to issues bothering on the humanitarian needs of the IDPs such as access to good food, medical care and education among others. Unfortunately however, many people in Nigeria most especially the IDPs do not effectively enjoy these rights. The humanitarian situation in most of the IDP camps across the country is not only unfortunate but also pathetic.

[22] www.nesri.org/human-rights/economic-and-social-rights, *12/8/14*

Generally, looking at the Refugees Law critical, one may say some principles of the law may be applicable to IDPs by analogy. However, the strong and effectiveprotection accorded to refugees under the refugee conventions can not apply directly to IDPseven though their conditions are similar. For example a refugee is defined among other aspectsas a person who is outside the country of his nationality.[23] For this reason, international refugeelaw cannot be said to apply to IDPs because the latter have not left their country of origin.Laws seeking to deal jointlywith refugees and IDPs mayfail in adequately addressingthe specific needs of eachgroup. The lack of a logicaland conceptual boundarycould result in IDPs not actually getting the required protection they deserve.

3.3 The Guiding Principles on Internal Displacement

The United Nations Guiding Principles (Guiding principles) on Internal Displacement were prepared in response to arequest of the UN Commission on Human Rights (UNCHR) to the Representative of theSecretary-General on Internal Displacement to develop an appropriate normative framework forthe protection and assistance on IDPs.[24] The request was prompted by the conclusions of anelaborate study by a team of legal experts entitled "Compilation and Analysis of Legal Norms",which concluded that while existing international law covers, although in a dispersed manner, manyaspects of particular relevance to IDPs, there are many areas in which the law providesinsufficient legal protection owing to inexplicit articulation or normative and other kinds of gaps. Thus, based on international humanitarian law, human rights law and refugee law by analogy, the Guiding principles set forth the right of IDPs and explain the obligations of national authorities and non-state actors towards IDPs. They cover all phases of internal displacement: the pre-displacement phase during displacement; and during return or resettlement and re-integration.[25]

[23]See article 1A (2), United Nations Convention Relating to the Status of Refugees, July 28, 1951.
[24]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.
[25] Ibid.

The guiding principles begin with an introduction explaining their scope and purpose. The introduction highlights the two core elements of internal displacement: The coercive or otherwise involuntary character of the movement; and the fact that such movement takes place within national borders. It is also important to note that the list of causes of displacement is not exhaustive. It covers persons who are obliged to leave their home and place of residence because of conflict and large-scale human rights violations as well natural disasters and development projects. In this context, it is important to note that the notion of displacement is neutral in the sense of covering both situations where persons are forced to leave in violation of their rights and instances of evacuations and relocations/resettlements that are involuntary but perfectly legal.

Section 1 sets out general principles relating to the rights of IDPs and the responsibilities of national authorities. Importantly, principles 3 (1) explains that national authorities have the primary duty and responsibility to provide protection and assistance to IDPs within their jurisdiction. In addition, principle (1) stipulate that IDPs are entitled to enjoy in full equality the same rights and freedoms as other persons in their country and shall not be discriminated against because of their displacement. At the same time, the guiding principles 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.

Section II address the issue of protection from displacement and articulates the right not to be arbitrarily displaced. In practice, therefore, states are under an obligation to avoid the displacement of population and in particular to protect against the displacement of groups with a special dependency on, or attachment to, their lands. When displacement is unavoidable, the Guiding Principles specify minimum guarantees to be observed. The third and most extensive section of the Guiding Principles identifies the full range of civil,

political, economic, social and cultural rights that all persons, including IDPs, should enjoy. This includes, for instance, the rights according to principle 11 (2) (a) – to be protected against acts of violence, torture and cruel, inhuman or degrading treatment or punishment as well as the right to be protected against the use of anti – personnel land mines. Principle 22 (d) specifically identifies the rights of IDPs to vote and to participate in governmental and public affairs, whether or not they are living in camps. Principle 18 relates to the 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. The third section also state that special attention should be given to the prevention of contagious and infectious diseases, (including AIDS, among IDPs (Principle 19 (3)). The fourth section deals with the issue of humanitarian assistance and specifies that when governmental authorities are unable or willing 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.

Throughout the guiding principles special attention is paid to the protection, assistance and reintegration needs of women and children. These two groups typically comprise the overwhelming majority of displaced populations. They are currently estimated as comprising 70-80% of the IDP population worldwide. The guiding principles call for the participation of women in the planning and distribution of relief supplies. They require special attention to be paid to the health needs of women, including access to female health care providers and services, and special efforts be made to ensure the full and equal participation of women and girls in educational programmes. They also prohibit sexual violence, stress the need for family reunification, and highlight the right of women to equal access to personal identity and other documentation and to have such documentation issued in their own names. Principle 23 recognizes the right to education and states that special efforts must be made to ensure that

women and girls enjoy equal and full participation in educational programme in relation to children, principle 13 (2) adds that under no circumstances are children to be recruited or to be required or permitted to take part in hostilities. Recognising that women are often not included in community consultation and decision making process the principles therefore, Principle 19 calls for the full participation of women in the planning and management of their relocation and further affirmed access by women to female health care services.

The Guiding Principles 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 forced displacement and the right not to be forced to return or resettle. For instance, Guiding Principle 6 is explicit with regard to the non-displacement of human beings. It states that "every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence". It then goes on to provide what may constitute displacement. Though international humanitarian law prohibits ordering the displacement of the civilian population[26] it is not clear whether such prohibition includes indirect displacement. This is now provided for under *Guiding Principle* 6. Under human rights law, there is no explicit prohibition of forced displacement81 and in order to apply this prohibition, provisions such as right to free movement and right to non-interference with one's home were interpreted to amount to such a prohibition.

Secondly, Guiding Principle15(d) explicitly provides that internally displaced persons 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". None of the international instruments have such a provision which could directly be applied to IDPs. Provision against forcible return or resettlement is important because some states due to political agenda may put

[26] Article 17, Protocol II.

pressure on their IDPs to return home even when no proper provision have been made for their resettlement.

Unfortunately however, the adoption of the Guiding Principles results in an important unanswered question which is:Is there apenalty for failing to protect the rights of IDPs? The guiding principles are neither a binding treaty nor a declaration adopted bythe General Assembly after negotiations of the text by the member states, but a set of nonbindingguidelines.An obvious disadvantage of the non-binding nature of the guiding principles is the fact that thestates cannot be held accountable if they disregard them and that they cannot be invoked in legalproceedings at the domestic level. Therefore states' compliance with the guiding principles ispurely voluntary, and in my opinion the principles are of insignificant importance to the IDPs foras long as they are not legally enforceable.Referring to legally binding obligations also strengthens advocacy on behalf of the IDPs towardsthe authorities and, not least, empowers the IDPs themselves, rather than designating them as agroup receiving charitable aid.86 Therefore the need for a legally binding instrument specificallydealing with IDPs like the guiding principles need not be overemphasised.

To formulate a legal framework for the protection of IDPs, it is necessary to define the circumstances they face, failure of which the protection and assistance and the needs of IDPs will hardly be adequate. This is because the specific needs of IDPs in a given situation cannot be properly addressed if the beneficiaries themselves and the nature of their situation are not properly understood and distinguished. The essential thrust of the legal framework for the protection of IDPs is not the creation of a special group of people having special rights but to apply in an elastic manner existing rights of persons made vulnerable by the fact of displacement. The legal framework must identify the existing rights and guarantees for the protection of nationals that can be stretched to protect internally displaced persons and to fill

the legal gaps created by the reality of displacement while meeting the specifics of each instance of displacement.

3.4 AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)

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), 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, violence, disasters and human rights abuses.

The Kampala Convention came into force on 6 December 2012, and two years after 22 countries had ratified it and 20 others had signed it. In its Preamble, the Kampala Convention recognises the UN Guiding Principles on Internal Displacement, mentioning "the inherent rights of internally displaced persons as provided for and protected in international human rights and humanitarian law and as set out in the 1998 United Nations Guiding Principles on Internal Displacement, which are recognized as an important international framework for the protection of internally displaced persons." The convention reaffirms that national authorities have the primary responsibility to protect and assist IDPs. For instance, article 5 (1) of the Convention has given the state the primary duty and responsibility of providing protection and humanitarian assistance to internally displaced persons within their territory or jurisdiction without discrimination of any kind. Article 3 (j) of the Convention further commits states parties to "ensure assistance to internally displaced persons by meeting their basic needs as well as allowing and facilitating rapid and unimpeded access by

humanitarian organizations and personnel". These guarantees are strong in the Guiding Principles, particularly in principles 3 (1).

The Kampala Convention goes further in terms of guarantees in the area of humanitarian assistance by mandating State Parties in article 5 (5) to assess or facilitate the assessment of the needs and vulnerabilities of internally displaced persons and of host communities in cooperation with international organisations or agencies. The States Parties are required to cooperate with each other upon the request of the concerned state party or the Conference of States Parties in protecting and assisting internally displaced persons. In particular, they oblige under article 3 (3) 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 internally displaced persons, in accordance with international law.

In case of inadequate resources to respond to a particular disaster, states are enjoin by article 5 (6) to cooperate in seeking the assistance of international organisations and humanitarian agencies, civil society organisations and other relevant actors. Such organisations may offer their services to all those in need. Accordingly, where such assistance is offered, it is within the power of the States Parties to take necessary steps to effectively organise, relief action that is humanitarian, and impartial in character, and to guarantee security.

The Kampala 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. In Article 3(a) States Parties are required to refrain from arbitrary displacement of populations. Thus, State Parties must take all measures necessary to minimize displacement and to mitigate the adverse effects of development induced displacement. Specifically, article 10 (1) of the Convention enjoins

States Parties to act as much as possible as prevent displacement caused by projects carried out by public or private actors. Additionally, feasible alternatives are expected to be explored with full information and consultation of potential evictees, having done a prior "socio-economic and environmental impact assessment" of the project. Article 12 of the Convention is related to Article 10 in that it commits states parties to establish "just and fair legal frameworks" to manage issues of property, compensation and other forms of reparations for internally displaced persons, for "damage incurred as a result of displacement", even in cases of natural disasters.

A major part of the Convention is the provision for the respective "obligations, responsibilities and roles of armed groups, non-state actors and other relevant actors including civil society organizations, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons.[27] Accordingly, article 3 (h) and (i) requires Non-state actors, including multinational companies and private military or security companies, where the need arises, to be called to account concerning acts of arbitrary displacement or complicity in such acts. Furthermore, states parties are to ensure the accountability of non-state actors involved in the exploration and exploitation of economic and natural resources leading to displacement. The Convention 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.

It should be noted however that, most often such "development-induced displacement" are justified by "compelling and overriding public interest and development." Unfortunately, the Convention is silent this requirement. Furthermore, one would expect that specific institutionsor organizations would be identified to oversee the implementation of policies and

[27] (Article 2(e))

laws,ensure effective coordination, and guard against duplication or gaps inactivities. The failure toidentify the actors responsible for particular activities leaves IDPs andtheir advocates without any effective recourse for complaints.

The Convention also enjoins State Parties to provide a Legal Framework for the Defence of the Rights of IDPs. For instance, Article 3(2)(a) provides for States Parties' obligations to incorporate their obligations under this Convention intodomestic law by enacting or amending relevant legislation on the protection of, and assistance to, IDPs, in conformity with their obligations underinternational law.An important starting point in addressing displacement in laws and policies is the question of whether the current legislative frameworkneeds to be changed. Experience shows that an effective response to displacement usually requires legislative action. That is typically because (1)current international laws pose unintended obstacles to the ability of IDPs to realize their rights or (2) they do not, on their own, provide a sufficient basis foraddressing the needs of IDPs.

In compliance with the doctrines of state sovereignty and non-intervention, the protection and assistance of IDPs had been the province of individual states. Based on these doctrines, international law and actors can only intervene to protect and assist IDPs if the situation in question poses a threat to international peace and security. Humanitarian actors can "intervene" with their programs when the state concerned does not have the capacity to provide assistance and protection. They can offer their services and IDPs can seek international support and assistance. It is equally based on the doctrines that the international community has been reluctant to formulate global or regional treaties to safeguard the rights of IDPs. As such, the Kampala Convention – being a treaty that seeks to deal with an issue that ordinarily falls within the domestic jurisdiction of states – breaks off from this tradition. It seeks to chart a delicate balance between the protection and assistance of IDPs, on the one hand, and the respect for states' sovereignty and integrity, on the other.

To begin with, Kampala Convention upholds the sanctity of state sovereignty and integrity. It asserts that the primary duty and responsibility for providing protection and humanitarian assistance to IDPs rests with individual states within which they are found.[120] It also stipulates that nothing in the Convention shall be invoked for the purpose of affecting the sovereignty of a state or its responsibility to maintain or re-establish law and order within its jurisdiction or to defend its national unity and territorial integrity.[121] The Kampala Convention recognizes state sovereignty.

It must however be clearly stated that the Convention very specifically constrains state sovereignty with a strong framework on responsibility, recognition of regional intervention and the role of international cooperation. Thus, in keeping with the twin doctrines, a state, the AU or the Conference of States Parties established under article 14(1) of the Convention can only intervene to protect and assist IDPs in a state upon the request of the state. This condition raises the question whether states reserve the right under the Convention to reject humanitarian assistance for IDPs when it is unsolicited, or whether the international community can insist on providing assistance without the consent of the concerned state.

The Convention does not fully address this question, but it obliges States Parties to cooperate in seeking the assistance of international organisations and humanitarian agencies when they are unable to sufficiently protect and assist IDPs within their jurisdictions.[123] It also requires states to allow rapid and unimpeded passage of all relief consignments, equipment and personnel to IDPs.[124] The Convention, while upholding the sanctity of state sovereignty and non-intervention, recognizes that in certain situations internal displacement may pose a threat to the international community, or may amount to an international crime that shocks human conscience thus warranting international intervention. As such, article 8(1)

[120] Art. 5 (1) Kampala Convention.
[121] Art. 7 (2) Ibid.
[123] Art. 5(6) Ibid.
[124] Art. 5 (7) Ibid.

of the Convention stipulates that the AU shall have the right to intervene in a member State pursuant to article 4(h) of the AU Constitutive Act. Article 4(h) empowers the AU to intervene in a Member State pursuant to a decision of the AU Assembly in respect of three grave circumstances: war crimes, genocide and crimes against humanity. Thus, where displacement amounts to these crimes or where the commission of these crimes occasions it, the AU has a right to intervene. However, practice as shown that so far the AU is not quick to invoke article 4(h). Thus, the potential of article 8 of the Convention as read with article 4(h) of the AU Constitutive Act to be invoked in favour of IDPs is remote at best.

3.5 Domestic Legal and Policy Framework on the Protection of Internally Displaced Persons

In Nigeria, there is no specific legislation dedicated to the protection of IDPs in the country. However, in discussing issues relating to the protection of the fundamental rights of IDPs in Nigerian, recourse is often made to the constitutional provisions guaranteeing the rights of Nigerian citizens. Thus, sinceIDPs remain Nigerian citizens regardless of how they weredisplaced, it is the constitutional responsibility of governmentthrough its national institutions to ensure the promotion andprotection of the constitutionally guaranteed rights of IDPsunder sections 33-43 of the Constitution.[28] These are the Rights to life,human dignity, personal liberty, privacy and family life, fairhearing, freedoms of religion, expression, assembly,association, movement, from non-discrimination and toacquire and own immovable property. Further, as the primarypurpose of government, under section 14(2) (b) the State isconstitutionally obligated to ensure the promotion of thesecurity and welfare of all the people (including IDPs). Thiscan be done by ensuring the progressive realization of thefundamental, political, social, economic, educational,environmental and foreign policy objectives of the state listedunder sections 15-20 of chapter 2 of the Constitution.

[28] Federal Republic of Nigeria, Cap C23, LFN, 2004 (as amended)

3.5.1 Right To Life

In Nigerian, every citizen which also include the IDPs, has the right to life and may not be deprived of it except only in pursuance of a court judgment on a person that is found guilty of a criminal offence by a court of competent jurisdiction.[29] In essence, this section seeks to protect the sanctity of human life. By human life, it goes beyond mere physical existence to protecting every part of human body or means of livelihood without which life would be impossible. Thus, indeed the allegation made in support of deprivation such right must always be cogent. If not, to take the life of a person in circumstances not permitted by law is a criminal act and indeed, any conspiracy or act directed towards the fulfilment of the said objective for the purpose of taking the life of anyone, is also a criminal act.[30]

Looking at the above provision critically, it appears that the section merely intends to preserve the sanctity of human life and the limited circumstances under which right may be deprived. Unfortunately, the section says nothing on how this right can be effectively protected and preserved. The effect of this gap is more worrisome in situation of internal displacement. Internal displacements whether arising from natural disasters or any other cause in Nigeria, present one of the worse scenarios where the right to life is not often protected and guaranteed. For instance, in various IDPs camps across the country, it is common to hear of lost of lives due to inadequate protection and provision. Furthermore, even when the IDPs are resettled, in most cases, they are not always provided with the means of livelihood to make life easier. Situations like this cannot protect, preserve and guaranteed the right to life provided by the constitution.

3.5.2 Right To Human Dignity

Section34 (1) of the Constitution provides every citizen of Nigeria the Right to Human Dignity. This is in consonant with Article 5 of the Universal Declaration of Human Rights which prohibits torture, cruel, inhuman and degrading treatment, slavery or servitude

[29] Section 33 (2) Ibid.
[30] See Isagba v Ashiedu, (1982) 3 NCLR 784 at 801

and compulsory labour.[31] Hence IDPs just like any other Nigerian citizen should not be subjected to rape, gender specific violence, forced prostitution or other indecent assaults or inhuman treatment. The Guiding Principles also calls for protection from slavery, including sale into marriage, sexual exploitation and forced labour of children.

This right tends to protect the integrity of the human person and dignity through criminalizing illegal subjection of citizens to torture and any other form of inhuman and degrading treatments[32] Therefore in order to cater for right of internally displaced persons to human dignity, the State is expected to take extraordinary measures in preventing violence to life, health and physical or mental well-being of IDPs by special protection against murder, torture, rape, degrading treatment and punishment as well as prohibiting abductions, and permitting or tolerating the disappearance of individuals.

3.5.3 Right To Personal Liberty

This law guarantees the right of a citizen to freedom to act as they will as long as it is within the ambit of the law.[33]The right also instructs that no person lawfully detained while awaiting trial shall be kept in detention for a period longer than the maximum period of imprisonment prescribed for the offence. The right to liberty guarantees arrested or detained citizens access to legal practitioners of their own choice. Arrested persons under this right must be informed within 24 hours, the basis for which he/she is denied the enjoyment of this right and should a person be denied this right in the course of justice, it stipulates the duration beyond which it will be unlawful to detain such a person.

A ready example can be seen in the case of Oladipo vs Commissioner of Police[34]where the Court observed that: …it is only in relation to capital offence that the police will be justified in detaining a person without bringing him to a Constitutional Court

[31]Article 5 of the Universal Declaration of Human Rights which provides that no one shall be subjected to cruel, inhuman or degrading treatment or punishment
[32]Section 34 (1) (a-c) Constitution of the Federal Republic of Nigeria 1999
[33]Jennifer H. Op Cit
[34](1983) 4 NCLR 407

within a reasonable time, that is, within a day or two of his arrest or detention. In other words, a person who is detained or arrested for a bailable offence, that is, an offence which is not a capital offence must be brought to Court within a day or two days of his arrest or detention by the police.

3.5.4 Right to Fair Hearing

In Nigeria, IDPs just like other citizens have the right to fair hearing as guaranteed by Section 36 of the Constitution. The section categorically provides that "in the determination of his civil rights and obligations a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality". One of the most important ingredient of fair hearing is that, "hearing must be within a reasonable time". Thus determination of a case within a reasonable time is a necessary requirement of a fair hearing.However, the question is, what constitutes 'reasonable time'? Reasonable time within this context may be difficult to define in view of the fact that some cases may be easier to be disposed of as opposed to others considering the nature of evidence, circumstances, its simplicity or complexity.[35] Fair Hearing within a reasonable time ultimately depends on the nature and circumstance of each case.

Pursuant to the foregoing provision, it is necessary therefore, that under the right to fair hearing, every IDP that is deprived of his/her liberty by illegitimate arrest or detention have the right to seek redress in a court of competent jurisdiction. The challenge however is, do IDPs in Nigeria know that they have such right, even if they do, do they have the necessary resources to enforce this right in the court of law in Nigeria. One understands that, in Nigeria today, such cases are often taking up by Human Right Groups on behalf of the IDPs. But the challenge is would the government or any of its agency against whom judgement is given be willing to comply. This is where the problem lies.

[35] Ariori and Others v Elemo and Others (1983) 1SC at 24

3.5.5 Right to Private and Family Life

The constitution guarantees every citizen the right privacy in their homes, correspondence or even in their telephone conversations.[36] It guarantees the right of an individual to associate himself or herself with the people of his choice on the one hand and prevents the government or its representatives from collecting and gathering unnecessary information on persons generally (without their consent). Most importantly, under this right, the individual has the right to control the information that is personal to him.

However, looking at the nature of the various IDPs camps across the country (though with particularly reference to displacement caused by natural disaster where it is possible to have the whole family in one camp), it is difficult to say that the right of the IDPs to privacy is guaranteed and protected. This is because one block of temporary shelter for instance could house more that 20 people who are total strangers in blood with all having access to one toilet and bathroom if any. In situations like this, it is difficult to see how an IDP can carve out a family setting and further have and keep their conversation confidential. Right to family life is an important right as it is the foundation of every human society. Hence, one expects that the State would be made to protect the rights of families to stay together in camps and protect the aged and other vulnerable categories by giving them priority in the provision of relief materials in view of the fact that the lives of the IDPs are the most unsettled result of breakups of families.

3.5.6 Right to Freedom of Thought, Conscience and Religion

The Constitution guarantees these Rights to every citizen including the freedom to change religion and to propagate religious beliefs, teachings and practices.[37]The court reaffirmed this in *Jebeba Ojonye v. Adegbda,*[38] where it observed thatthe Constitution guarantees Freedom of Religion to every citizen and the Courts must guard jealously any

[36]Section 37 Constitution of the Federal Republic of Nigeria 1999
[37]Section 38 (1) Constitution of the Federal Republic of Nigeria 1999(as Amended)
[38](1983) 4 NCLR 492 at 494

attempt directly or indirectly to erode this freedom which is essential to maintain peace and stability in a multi-religious society like Nigeria.

Volunteers that offer humanitarian services are often a feature of the IDPs settlements. These are mostly medical and or religious personnel. The State should therefore ensure that these persons and other volunteers are not compelled to carry out activities or other actions that are incompatible with their humanitarian goals and should also not take punitive actions against humanitarian workers that refuse to carry out actions incompatible with medical ethics regardless of who the beneficiaries are.Thus, since the Constitution is explicit in guaranteeing everyone the Right to choose his beliefs or religion, it will therefore be contrary to the spirit and letter of the Constitution to compel any person or group of persons to do otherwise.

3.5.7 Right to Freedom of Expression and the Press

Section 39(1) of the Constitution guarantees every citizen right to freedom prescribes expression, including freedom to hold opinions and to receive and impart ideas and information without interference.[39] Similarly, private ownership of the press, to the extent that it is consistent with the subsisting laws governing the operation of such media is also guaranteed by the constitution. This implies that every member of the society can hold and express his opinion and or ideas, whether alone or a group to the general public and to receive any opinion if he so wishes. For instance, in *Adikwu v. Federal House of Representatives*,[40]the Court held that the Right of Freedom of Expression and the Right of express freedom granted under Section 39 of the Constitution was meant to guarantee to every person and the press, freedom to express and communicate without interference.

Thus, IDPs in Nigeria equally have the right to freely relate their circumstances, experiences and conditions in the camps to the public through the press devoid of fear of

[39] Cap C23, LFN, 2004 (as Amended).
[40](1982) 2 NCLR 394

State repercussion. The State should also ensure that the media has unhindered access to the IDPs and also allows free access to information such as bulletins, newspapers, magazines etc by the IDPs.

3.5.8 Right to Peaceful Assembly and Association

This provision grants every citizen to liberty to assemble freely, associate with other persons and to form or belong to any political party, trade union or any other association with a view to protecting his interest(s).[41] In *Alhaji Balarabe Musa v. People's Redemption Party*[42] the Court held that the Right of every person to assemble freely with others is guaranteed by the Constitution by virtue of Section 37…Nothing stops the applicant from going where he likes, when he likes, how he likes within the law. If he decides to attend meetings with anyone whatsoever, no one has the Right to stop him.

It follows that every Nigerian citizen has the right to choose his associates, in like manner, he has the Right to leave them whenever he likes. Therefore, since internal displacement often brings different people together, the displaced persons as well have the right to form association for the protection of their legitimate interests or to find solutions to their dilemma. For instance, they form association for the purpose of advocating for adequate humanitarian assistance or effective protection of their human rights. Being a constitutional right, the State is not expected to prevent, either directly or indirectly, the formation of such associations to the extent that such associations are open and without prejudice to the attempts and efforts of the States toward finding lasting solutions to the challenges of IDPs.

[41] S. 40 Constitution of the Federal Republic of Nigeria, Cap C23, LFN, 2004 (as Amended).
[42] (1981) NCLR 734 at 743

3.5.9 Right to Freedom of Movement

The Constitution provides every citizen with the right to move freely throughout Nigeria and to reside in any part therein.[43] This is in consonant with Principles 14, 15, and 28(1) of the Guiding Principles as well as Principle 12 which prescribe that, "Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence…In particular, internally displaced persons have the right to move freely in and out of camps or other settlements", are meant to ensure that IDPs, once they have been displaced are able to move freely during displacement, both in order to avoid unsafe situations and to be able to undertake other necessary travel. IDPs should in principle be able to choose where to live while displaced and to voluntarily reassess such decisions once the reasons for their displacement or barriers to their voluntary return have ceased to exist.

Freedom of movement includes the right of everyone lawfully within a country to move freely and to choose his or her place of residence within its borders as well as the right to leave one's own country and to freely return to it. By implication, this right also includes freedom from involuntary movement or residence in a place not of one's choosing, implying the responsibility of states to facilitate the voluntary return of IDPs to their original place of residence as well as, if IDPs choose to do so, local integration or settlement in another part of the country.

These rights are subject to restrictions where necessary and proportional on the basis of national security, public order, public health or morals, or the rights and freedoms of others, and these rights may be temporarily suspended in cases of officially proclaimed public emergency**.** The right to leave one's country, in particular, is also related to the right to seek and enjoy asylum from persecution outside one's country of origin or habitual

[43]S. 41 Constitution of the Federal Republic of Nigeria, Cap C23, 2004 (as Amended).

residence.Internment and confinement of IDPs to camps can only be an exceptional measure in accordance with human rights and humanitarian law where it is absolutely necessary.[44]

5.5.10 Right To Freedom from Discrimination

Section 42 (1) of the constitution has granted every Nigerian citizen the right not to be discriminated against. The section provides that a citizen of Nigeria of any particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions are not made subject; or be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions.

Thus, wherever displaced persons choose to reside within the country, they should not face discrimination as a result of having been displaced but have the right and liberty to participate fully and equally in public affairs at the local, regional, or national levels and should also have the right to equal access to public services.

3.5.11 Right to Acquire and Own Immovable Property

Property right is not only an ancient right but a fundamental right. It is regarded as human right because it is inherent and compatible with human nature to have shelter. Accordingly, the right to acquire immovable property is the foundation of the ownership of shelter which is one of the basic necessities of life. Apart from shelter, government agencies and departments as well corporate and individual establishment needs immovable properties to set up offices and departments. The word property here is not restricted to immovable property but include

[44]Inter-Agency Standing Committee Policy Paper New York, December 1999

movable property which is necessary to make life easier and comfortable. Hence, section 43 (1) of the constitution provides that subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.

Although, the constitution has given Nigeria the right to acquire and own both movable and immovable property, however, there are instances where the interests in such properties may be taken possession of by government or any of its agencies to execute a project in the interest of the public. In situations like these, the law requires the government or its agencies as the case may be, to compensate the owner of such property accordingly. For instance, section 44 (1) of the constitution provides that no moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things requires the prompt payment of compensation therefore and gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

It is clear from the above that the law has envisaged a situation where there may be disagreement in arriving at what would be an appropriate compensation. Hence, in such a case, the owner of the property is given the right to approach the court for the determination of the compensation. The challenge is in most instances is that, though the court may help to determine the amount of compensation, but that is where the major problem begins, namely getting the money in time to secure alternative property. The frustration here is that the government determines when the compensation would be paid and not the owner of the property. That can be really frustrating for people of limited means especially where the payment takes years.

This presupposes that the State should not hinder IDPs from settling in the place of refuge which is not their place of habitual residence. The State should also not confiscate any such movable possessions of IDPs that are not instruments of violence. Upon return or resettlement, the returnee internally displaced persons therefore should have the right to regain their properties and possessions. However, where recoveries are not possible, they should be compensated for the loss or receive another form of just reparation.

Guaranteeing property rights is particularly important in situations of internal displacement especially in view of the fact that IDPs often forced to leave their homes and worst still, on short notice and without opportunity to secure their property. In flight and in displaced persons' camps their remaining physical possessions are exposed to theft, destruction, or arbitrary seizure by authorities. IDPs should therefore, not be arbitrarily deprived of property or possessions through booty, direct or indiscriminate attacks or other acts of violence being used to shield military operations or objectives, or being made the object of reprisals.

In particular, authorities must protect property and possessions left behind by IDPs against arbitrary and illegal appropriation, occupation, or use. A great deal of time and resources are expended in resolving ownership rights after peace settlements because of the frequent infringements of this right. When land and homes are occupied by others, it becomes all the harder to resolve tensions within societies and facilitate return. Resettlement may be in the immediate location to which they have fled, or in some third party location that agrees to take them in (often another community). Until a permanent home can be established, however, it is up to the State assisted by numerous non-governmental organizations, to provide food, medical care and other basic services to the displaced.

3.5.12 The Right of access to Court

A right can only qualify as one where it is capable of being enforced in any court of competent jurisdiction or tribunal established by law. Thus, to ensure that these laudable

rights guaranteed Nigerian citizens by the constitution are not just empty declaration, the constitution has empowered every Nigerian who feels that any of his right as provided in the constitution has been threatened, or is being threatened or is likely to be threatened, to approach the court for redress. For instance, section 46 (1) of the constitution states that any person who alleges that any of the provisions of this Chapter has been or is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.

In Nigeria, one of the major challenges for securing adequate representation in court is poverty. The constitution itself recognizes the possibility of having a situation where a person's fundamental right is violated, but the financial strength to secure the services of a lawyer may remain a huge challenge. In cases like these, provisions have been made to grant such persons financial assistance or legal aid. For instance, subsection 4 empowered the National Assembly if it considers necessary in the circumstance to make provisions for the rendering of financial assistance to any indigent citizen of Nigeria where his right under this Chapter has been infringed or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim. In Nigeria, most often, such cases are often taking up by Human Right Groups on behalf of the IDPs. For instance, in *Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP) v The Federal Republic of Nigeria & Ors*[45], the plaintiff brought the suit before ECOWAS Court of Justice on behalf of over the 3 million Internally Displaced Persons (IDPs) across Nigeria, against the Federal Republic of Nigeria asking the ECOWAS Court of Justice for a Declaration that the failure and/or lack of due diligence by Nigerian government to proactively and effectively implement and promote IDP policies and allocate sufficient resources to IDP protection and the corresponding failure to effectively address the magnitude of the problem, is unlawful as it constitutes serious

[45] Unreported SUIT NO: ECW/CCJ/APP/15/15

breaches of Nigeria's human rights obligations under the African Charter on Human and Peoples‟ Right; the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa and other international human rights treaties to which Nigeria is a state party. Consequent upon which the IDPs in Nigeria are inhumane and degrading and therefore unlawful as they amount to serious breaches of the international obligations and commitments of the Defendants to provide an effective remedy to victims of human rights violations, as recognized by the African Charter on Human and Peoples‟ Rights, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

The plaintiff seeks the court to among others grant an order directing the Defendants and/or their agents individually and/or collectively to pay adequate monetary compensation of $300 million (US Dollar) to the IDPs for the violation of their human rights the subject matter of this suit, and to provide other form of reparation, which may take the form of restitution, satisfaction or guarantees of non-repetition, and other forms of reparation that the Honourable Court may deem fit to grant.

The Plaintiff contended that the grave deterioration of the vulnerability of the living conditions of the over 3 million IDPs across the country, and the persistence of the impunity of those responsible for the violations the human rights of IDPs amount to serious breaches of the obligations and commitments of the Nigerian government under the African Charter on Human and Peoples‟ Rights; the International Covenant on Civil and Political Rights; the International Economic, Social and Cultural Rights; the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa; the Universal Declaration of Human Rights and the UN Guiding Principles on Internal Displacement. In

sum, the Plaintiff contends that the Nigerian government has failed and/or neglected to prevent violations of the human rights of the IDPs, contrary to: the obligation to protect the population, in order to avoid its expulsion from its usual place of residence and so that it can exercise its fundamental rights; the obligation to guarantee to those who have been victims of the violation the minimum conditions necessary for subsistence, which they were deprived of when they were displaced, in particular, food, housing and health care; and the obligation to create the conditions for the return of the displaced, not merely from a material point of view, but fundamentally creating the conditions to ensure that the facts are not repeated in the place from which they were expelled; in other words, that the facts are investigated and those responsible are prosecuted and punished. The matter is however pending before the court.

3.6 National Policy on IDPs of July 2012

This policy provides a framework for nationalresponsibility towards prevention and protection of citizensfrom incidences of arbitrary and other forms of internaldisplacement, meet their assistance and protection needsduring displacement, and ensure their rehabilitation, return,re-integration or resettlement after displacement. The draftpolicy spells out principles guiding humanitarian assistanceand implementation of durable solutions in situations ofinternal displacement in Nigeria. This policy has adoptedto a large extent the human rights-based approach and itsprinciples. The intension is to accommodate as much aspossible the provisions of existing international conventions,treaties and protocols on internal displacement, and guidedby the dictates of international humanitarian and human rightslaws.

The policy therefore draws extensively from theguidance of international and national frameworks on theprevention of internal displacement, as well as those onprotection and assistance of internally displaced persons. TheAfrican Union convention for the protection and assistance ofinternally displaced persons in Africa (Kampala Convention),the UN Guiding Principles on internal displacement and theSPHERE standards for humanitarian

assistance havesignificantly defined the direction of this draft policy. The draftpolicy therefore, without prejudice to other existingframeworks and policy guidelines for protection andassistance of vulnerable populations, specifically seeks toaddress:

i. All causes of internal displacement as identifiedin Section 1 (3) of the Policy;

ii. All groups of internallydisplaced persons including those with special needs andvulnerabilities including host communities;

iii. All needs ofinternally displaced persons, including assistance andprotection needs thereby ensuring the realisation of the fullrange of their political, civil, social, economic and culturalrights;

iv. All phases of displacement spanning from theemergency and relief phases to recovery includingrehabilitation, re-integration, return and resettlement phasesthereby creating conditions for durable solutions;

v. All levelsand arms of government from the local to State and federallevels, including all ministries, departments and agencies ofgovernment charged with diverse responsibilities forguaranteeing the rights of internally displaced persons andadequately meeting their assistance and protection needs;

vi. All affected areas by opening up the humanitarian space aswell as facilitating, coordinating and ensuring access tointernally displaced persons by all State and non-Statehumanitarian actors, irrespective of where internaldisplacement has occurred within the country.

To achieve these objectives, the following institutions are among others are required to integrate the responsibilities for protection andassistance of internally displaced persons into their core mandates. They includeNational Commission for Refugees;National/State Emergency Management Agency; National Human Rights Commission; National Security Agencies; Nigeria Security and Civil Defence Corps; National Agency for the Prohibition of

Trafficking in Persons; National Directorate of Employment; Institute for Peace and Conflict Resolution; International Institute for Tropical Agriculture; National Oil Spill Detection and Response Agency; National Environmental Standards and Regulations Enforcement Agency; UN Agencies; The Nigerian Red Cross Society and National Population Commission.[46]

It is unfortunate, despites the noble objectives seek to be realised by this policy, just like the previous one, the policy however did not solve jurisdictional issue often experienced during disaster coordination and management. For instance, the Revised Policy has giving NEMA the powers to coordinate all the other agencies in cases of disaster management, however, the Policy has not categorically defined the jurisdiction of the other agencies in terms of where and when they are expected to step in during disaster management. Consequently, in emergency situations arising from natural or man-made disasters, it is common to find almost all the agencies at the scene taking instruction and directives from their respective heads instead of NEMA. Consequently, effective co-ordination of activities relating to disaster management in Nigeria still remains an issue of major concern.

3.7 National Disaster Framework

The National DisasterManagement Framework (NDMF)[47] provides this mechanism that serves as a regulatoryguideline for effective and efficient disaster management in Nigeria. The frameworkdefines measurable, flexible and adaptable coordinating structures, and aligns key rolesand responsibilities of disaster management stakeholders across the nation. Itdescribes specific authorities and best practices for managing disasters, and explains aparadigm shift in disaster management beyond mere response and recovery.The NDMF offers a holistic approach to disaster management. It serves as a legalinstrument to address the need for consistency among multiple stakeholders. It is acoherent, transparent and inclusive policy for disaster management in Nigeria. TheFramework is written especially for

[46] Chapter National Policy on IDPs, 2012
[47] 2011

government officials, private-sector, Civil SocietyOrganisations, emergency management practitioners and community leaders on theneed to understand the concepts and operating guidelines for disaster management inthe country.

For instance, section 1 (Institutional Capacity) focuses on the establishment of necessary institutionalarrangements for implementing disaster management within the Federal, State andLocal Government levels.Section 2 (Coordination) of the NDMF specifies the Strategic and Operational types ofcoordination amongst stakeholders. The Strategic type covers the horizontal andvertical coordination mechanisms, while Operational defines field level coordinationmechanisms.Section 3 (Disaster Risk Assessment) addresses the need for disaster risk assessmentand monitoring hazards, vulnerabilities and measuring coping/adaptation capacities toset priorities for risk reduction and effectiveness of stakeholders efforts.Section 4 (Disaster Risk Reduction) introduces planning and implementation as DRRstrategies to inform development-oriented approaches to plans, programmes andprojects that reduce disaster risks.Section 5 (Disaster Preparedness, Prevention and Mitigation) deals with strategies toprevent the occurrence of such disasters from having devastating impact on people,infrastructures and the economy; curtail the occurrence of disaster events; and reducethe impact of disasters, if they do occur.Section 6 (Disaster Response) focuses on the requirements for an integrated,coordinated policy that address rapid and effective response to disastersSection 7 (Disaster Recovery) dwells on strategies required for bringing back disasteraffected area and victims to normalcy through rehabilitation and reintegration.Section 8 (Facilitators and Enablers) provides sufficiency conditions for, integratingroles of emergency management agencies; information management andcommunication; monitoring and evaluation; education and training; and publicawareness and research. It also covers requisite funding arrangement for disastermanagement.

On the whole, in Nigeria, the overall national response to the plight of displaced persons in the lasttwelve years has been criticized by research experts and international donors on variousgrounds, including lack of leadership for effective coordination, the lack of a proper registrationsystem for IDPs; inefficient use of resources despite available financial capacity; lack ofmedium/long term strategic planning, implementation, monitoring and evaluation framework;the politicization of humanitarian assistance; and the fairly adhoc UN assistance to IDPs inNigeria.90 Additionally, there appear to be lack of Comprehensive Data on IDPs and Implications for Planning in Nigeria.No one knows for sure how many IDPs exist in Nigeria, for many stay unseen, uncared forand unaccounted. Some governments deny their existence. Existing figures on the population of IDPs in Nigeria provided by both nationalauthorities and non-governmental organization (NGOs) are estimates referring to incidences oflocalized displacement and estimates based on registration exercises undertaken by theNigerian Red Cross Society. Thus, in Nigeria, the only numbers of IDPs known are those who have soughtshelter at temporary IDP camps.[48]But there is no record of those who are currently taking shelter with relatives and friends in cities and villages.

[48]Ladan M.T. (2011)" Overview of International and Regional Frameworks on International Displacement: - A case study of Nigeria. A paper presented at a 2-day multi-stakeholders conference on International Displacement in Nigeria. Organised by the Civil Society Legislative Advocacy Centre, Abuja in Collaboration with IDMC and the Norwegian Refugee Council, Geneva. Held on November 21-23, 2011, at Bolton White Hotels, Abuja, Nigeria, p.26.

CHAPTER FOUR

INSTITUTIONAL FRAMEWORK FOR THE PROTECTION AND ASSISTANCE OF INTERNALLY DISPLACED PERSONS: A CASE STUDY OF NIGERIA

4.1 Introduction

Article 3(2) (b) of the Kampala Convention[49] places an obligation on States Parties to designate an authority or body, whereneeded, responsible for coordinating activities aimed at protecting and assisting IDPs and assign responsibilities to appropriate organsfor protection and assistance, and for cooperating with relevant international actors and Civil Society Organisations, where no suchauthority or body exists.Appointment of a national focal point is a crucial step both to ensure sustained attention to internal displacement issues and tofacilitate coordination, both among various branches and bodies of government and between them and other relevant actors, particularlydomestic civil society groups, national human rights institutions, and international humanitarian agencies.

Nigeria has established some institutional mechanisms for the protection and assistance of IDPs in the country. This framework has made it relatively easier for the government to cater for the needs of its internally displaced population. Some of these agencies include National Emergency Management Agency (NEMA) and National Commission For Refugees (NCFR) with the mandate to offer material assistance to repatriated Nigerians and IDPs irrespective of the cause of displacement and to protect the interest of refugees in Nigeria among others.

4.2 National Emergency Management Agency (NEMA)

Section 1 (1) of the NEMA Act[50] established NEMA with headquarters in Abuja and with 6 Zonal offices in Enugu, Port Harcourt, Lagos, Jos, Maiduguri and Kaduna. Section of the Act goes further to among others, mandates the agency to organize, provide and

[49]Kampala Convention, 2009.
[50]National Emergency Management Agency (Establishment, etc.) Act, Cap. N34, LFN, 2004. .

coordinate emergency relief to victims of natural disasters throughout the Federation and matters incidental thereto. The Agency is empowered to provide direct material assistance to displaced persons and repatriated Nigerians irrespective of the cause of displacement.The 15 broadfunctions of the Agency as follows under section 6(1): - TheAgency shall – (a) Formulate policy on all activities relating todisaster management in Nigeria and co-ordinate the plansand programmes for efficient and effective response todisasters at national level; (b) Co-ordinate and promoteresearch activities relating to disaster management at thenational level; (c) Monitor the state of preparedness of allorganizations or agencies which may contribute to disastermanagement in Nigeria; (d) Collate data from relevantagencies so as to enhance forecasting, planning and fieldoperation of disaster management; (e) Educate and informthe public on disaster prevention and control measures; (f)Co-ordinate and facilitate the provision of necessaryresources for search and rescue and other types of disastercurtailment activities in response to distress call; (g) Coordinatethe activities of all voluntary organizations engagedin emergency relief operations in any part of the Federation;Receive financial and technical aid from internationalorganizations and non-governmental agencies for thepurpose of disaster management in Nigeria; (h) Receivefinancial and technical aid from international organizationsand non-governmental agencies for the purpose of disastermanagement in Nigeria; (i) Collect emergency relief supplyfrom local, foreign sources and from international and nongovernmentalagencies; (j) Distribute emergency reliefmaterials to victims of natural or other disaster and assist inthe rehabilitation of the victims where necessary; (k) Liaisewith State Emergency Management committees established under section 8 of this Act to assess and monitor wherenecessary, the distribution of relief materials to disastervictims; (l) Process relief assistance to such countries as maybe determined from time to time; (m) Liaise with the UnitedNations Disaster reduction Organization or such otherinternational bodies for the reduction of natural and

otherdisaster; (n) Prepare the annual budget for disastermanagement in Nigeria; and (o) Perform such other functionswhich in the opinion of the Agency are required for thepurpose of achieving its objectives under this Act.[51]

Thus, it is apparent that Nigeria as a State views the issue of repatriation and internal displacement of her citizenry with serious concern. Hence, the requirement that NEMA reacts to the occurrence of disasters in the country by sending relief materials and supplies to the affected communities and assists the victims to survive the immediate problems of displacement and dispossession.[52]

There are three bodies namely The Institute for Peace and Conflict Resolution, The National Emergency Management Agency and The National Commission for Refugees (NCR), which are coordinated by The Federal Ministry of Special Duties to respond to situations of internal displacement. NEMA is responsible for the overall disaster management in Nigeria. It coordinates emergency relief operations as well as assists in the rehabilitation of victims where necessary. NEMA can be found in most States. It has often supported IDPs in the emergency phase of a crisis such as the 2012 flood disaster.

In 2013 NEMA responded to the early warning from NIMET on the rainfall outlook for year 2013 and the possibility of floods disasters by activating its early warning mechanism which provides different roles for stakeholders in disaster management in the country. The agency undertook comprehensive initiative to reduce disaster risks through improved response mechanism which includes the mainstreaming of Disaster Risk Reduction (DRR) into Basic and Post Basic Educational curriculum in Nigeria in collaboration with the Nigerian Educational Research and Development Council (NERDC) by infusion of disaster risk reduction and Climate Change Adaptation (DRR/CCA) into 4 core subjects; and

[51]Section 6(1), NEMA, Op Cit

[52]Ayeni B., (2013) Challenges to mainstreaming Disaster risk reduction into the development process in Nigeria" in Mainstreaming Disaster Risk Reduction into Sustainable Development in Nigeria volume II (Abuja: Nema

establishment of Disaster Risk Reduction Clubs in Secondary Schools as part of strategies to inculcate the culture of prevention and risk reduction among the youth in Nigeria etc.[53]

Furthermore, NEMA has set up National Contingency Plan, a multi-hazard contingency plan with a focus on hazards with the highest probability of occurrence and severity in Nigeria. These include floods, conflicts, droughts and epidemics. The multi hazard scenario approach has been adopted to ensure the accommodation of forecasted hazard, as well as those that have not been forecasted, in view of recent global happenings and climate change and the uncertainty to determine occurrence of disasters and their impacts. The multi-hazard contingency plan, therefore, is a first step towards mitigating the impact of quick onset disasters when the level of forecast cannot be ascertained.[54]

However, despite the expectations that the agency would effectively Co-ordinate activities relating to disaster management at thenational level particular as it concerns proactive post disaster rehabilitation and reconstruction, the agency has had to struggle to fully perform the these mandates to the optimum. Furthermore, most of the States and the Local Governments have not seen the need to legislate and establish complementary functional emergency agencies to address the humanitarian challenges of citizens in their constituencies.

Though NEMA has in many instances responded to the plight of IDPs in the country, however, in most cases, its responses are only ad-hoc assistance and apart from being inadequate, it is limited only to the provision of basic necessities like food, shelter andmedicine, while measures that ensure respect for the physical safety and the human rights ofIDPs are not often given adequate attention. Problems like this may not be unconnected to lack of strong coordination and clear institutional mandate that encompasses a comprehensive

[53]National Emergency Management Agency and Stakeholders: National Contingency Plan (2014)
[54]Ibid.

approach that integrates assistance, protection and development support for the displaced persons. Furthermore, NEMA lacks the resources to assist people displaced for a longer period of time or to assist returnees. Since IDPs are also an important part of Nigerian citizens, it is imperative that government look into how to address the long-term needs of IDPs as soon as possible, in order to enable them establish their lives in safety and dignity.

4.3. National Commission For Refugees

The National Commission for Refugees (NCFR) was established by Decree 52 of 1989[55] (now Act) to provide for safeguarding the interestand treatment of persons who are seeking to becomerefugees in Nigeria or persons seeking political asylum inNigeria and other matters incidental thereto.[56]NCFR is mandated by the NCFR Act to lay down general guidelinesand overall policies on issues relating to Refugees and asylum seekers in Nigeria and to advisethe Federal Government on policy matters relating to refugees. In 2002, President Obasanjoinformally expanded NCFR's mandate to cover the management of the affairs of IDPs due totheir sheer volume, trend and impact of their plight on the Nigerian society. Although the NCFRAct of 1987 N21, Cap.244 Laws of the Federation of Nigeria 2004 incorporated the 1951 UNConvention relating to the status of Refugees, its 1967 Protocol and the 1969 OAU Conventiongoverning specific aspects of refugees problems in Africa, and together, they form the guide toprotection duties in Nigeria, the enabling law remains obsolete and does not incorporate newchallenges and additional mandate of the NCFR on IDPs, Returnees and Stateless Persons.[57]

Furthermore, practice, the strong and effectiveprotection accorded to refugees under the NCFR cannot be expected for IDPseven though their humanitarian conditions are similar because the agency by law is primarily concerned with safeguarding the interestand treatment of persons who are seeking to becomerefugees in Nigeria. Thus, to enjoy protection from the

[55] Now Cap 21 Laws of the Federation of Nigeria 2004.
[56] S.1 (1) Ibid.
[57] Ladan, M.T., (2011), op.cit. pp. 14.

agency, one must be an IDP strictly speaking. For this reason, therefore, NCFR cannot be said to be agency for the protection of IDPs legally speaking as this is completely outside the scope of their powers.Employing the current framework of NCFR to deal jointlywith refugees and IDPs mayfail in adequately addressingthe specific needs of IDPs because the logicaland conceptual boundarycould result in IDPs not actually getting the required protection they deserve.

4.4 National Human Right Commission

The National Human Rights Commission (NHRC) was established by the National Human Rights Commission Act,[58] in line with the resolution of the United Nations which enjoins all member states to establish Human Rights Institutions for the promotion and protection of human rights. The commission serves as a mechanism to enhance the enjoyment of human rights. Its establishment aims at creating an enabling environment for extra-judicial recognition, promotion and enforcement of human rights, treaty obligations and providing a forum for public enlightenment and dialogue on human rights issues thereby limiting controversy and confrontation.[59]

The Commission's Strategic Work Plan is based on above includes public education and enlightenment, training, mediation, on – the- spot assessment, policy oriented research and so on. It includes strategies targeted at promoting democracy and good governance, rights of vulnerable groups, conflict situation and issues relating to extra–judicial killings/torture and other violence. The commission's mandate rests squarely on two platforms: promotion and protection of human rights. Under promotions, the commission has held workshops, seminars, conferences, and interactive sessions with relevant institutions. A lot of sensitization, education and enlightenment programmes have been carried out by the Commission. The Commission hosted the first ever Nigeria Human Rights Summit that

[58]Cap N46 LFN 2004 Vol. II. It came into effect on 27th September, 1995.
[59] Preamble to the Act.

brought together all the stakeholders in the human rights community towards drafting the National Action Plan for the promotion and protection of human rights in Nigeria.[60]

The enabling Act was amended in 2010 by the National Human Right Commission (Amendment) Act[61]. Specifically, section 5 of the Act[62] mandates NHRC to: (a) Deal with all matters relating to the promotion and protection of human rights guaranteed by the constitution of the Federal Republic of Nigeria, the United Nations Charter and the Universal Declaration on Human Rights, the Internal Convention on Civil and Political Rights, the International Convention on the Elimination of all form of Racial Discrimination, the Internal Convention on Economic, Social and Cultural Rights, the Convention on the Elimination of all forms of Discrimination Against Women, the Convention on the Rights of the Child, the African charter on Human and Peoples' Rights and other international and regional instruments on human rights to which Nigeria is a party; (b) Monitor and investigate all alleged cases of human rights violations in Nigeria and make appropriate recommendations to the Federal Government for the prosecution and such other actions as it may deem expedient in each circumstance among others.

Despite the 2010 amendment NHRC has not been able to live up to expectation, particularly in the area of protecting the rights of IDPs in the country. A major weakness of NHRC is one of enforcement. Since the enforcement of human rights largely depends on the domestic machinery of the government, institution is not strong enough or capable of providing adequate and effective platform for meaningful human rights promotion and protection. This is especially so because it is not independent and does not have the financial and logistical capability to meaningfully function effectively. The NHRC seems to be in a more precarious position. Being controlled, directly or indirectly, by the government through

[60]National Human Rights Commission flier "About Us" p. 5.
[61] S. 1 (1) National Human Right Commission, 2010
[62] Ibid.

funding[63], composition of membership[64], and provision of operational guidelines, and tenure of office among others, government interference or influence becomes not a mere possibility but a reality.

4.5 The Nigerian Red Cross Society

Nigerian Red Cross Society (NRCS) wasestablished by the Nigerian Red Cross Act[65] as a Voluntary AidOrganisation. The Nigerian Red Cross Society in 2007drafted a three-year Strategic Development Plan (SDP)for the period 2008 to 2010. These efforts and thelifecycle of the documents produced made thedevelopment of this Strategic Development Plan (2011-2013) imperative. From the onset, S-2013 was designedto be fully participatory, taking into consideration inputsfrom 37 branches of the Nigerian Red Cross Society. Byso doing, all branches were able to take ownership of this document in its entirety and ensure implementation for the period under plan.[66]

The S-2013 addresses the fundamental challenges of NRCS in responding to victims of natural and manmade disasters in the country. It also focuses on the problems relating to volunteer management, human resource tool and management, financial and accounting system, problem of self reliance or donor dependency, strategic relief fund and warehousing, monitoring and evaluation. This document provides a strategic direction towards surmounting the aforementioned challenges and fulfilling the primary mandate of the National Society as enshrined in the Nigerian Red Cross Act[67]. S- 2013 is hinged on four pillars: Disaster Management (DM); health and care; dissemination and communication and organizational development Disaster preparedness and Restoring Family Links (RFL) activities are the bedrock of the DM plan while infectious diseases prevention and control; HIV/AIDS; water and sanitation; non-remunerated blood donor recruitment; maternal, neonatal and child health

[63] S. 12 Ibid.
[64] S. 2, 3, 4, Ibid.
[65] S. 1(1) Nigerian Red Cross Act, Cap. 324, 1961.
[66] Irobi, E. (2010) *Resolving the Niger Delta confliction in Nigeria,* Peace Studies Journal, Vol 3, p. 1
[67] S. 1 (1) Nigerian Red Cross Act, Cap. 324, 1961.

as well as in emergencies constitute the core of health and care components of this plan. On the other hand, promotion of respect for human dignity and diversity is rooted in systematic dissemination of the RCRC Principles and IHL, advocacy, partnering and networking and capacity building.[68]

However, despites all these laudable objectives of the NRCS, There are no official IDPs camps of a long lasting nature Nigeria. Instead, temporary shelters are often provided in army or police barracks, schools or hospitals and serve as IDPs camps only for a limited period with poor sanitary conditions. The vast majority of displaced people in Nigeria reportedly seek refuge with family, friends, or host communities especially in areas where their ethnic or religious group is in the majority[69] Many appear to return to their homes or resettle near their home areas soon after the violence or natural disaster which forced them to leave have subsided while an unknown number also resettle in other areas of the country.

Generally, though, in actual practice, Nigeria has a national coordinating institution for displacement management and other matters connected therewith. However, none of these agencies was established, mandated and empowered to manage IDP affairs in all phases by a specific national legislative or policy framework on internal displacement.

4.6 The United Nations High Commission for Refugees (UNHCR)

The UNHCR has often provided protection and assistance to the internally displaced persons in specific circumstances in liaison with the relevant national authorities the fact that displaced persons are not expressly within its basic mandate, notwithstanding,[70] thus playing the broadest role in addressing the problems of the internally displaced persons through offering protection, support for integration.[71] Although the statutes of the UNHCR do not

[68] Ibid.
[69] Je"adayibe, G.D. (2008). Religions Conflicts And Internally Displaced Persons In Nigeria (In Population Movements, Conflicts, And Displacement In Nigeria, Ed. T.Falola and O.Ochayi Okpeh, Jr).
[70]Deng, F., "The International Protection of Internally Displaced," in International Journal of Refugee Law, 1995 : 74-86; UNHCR"s Operational Experience with Internally Displaced Persons, Geneva, September, 1994; see also Cohen R., "International Protection for Internally Displaced Persons: Next Steps" Washington, D.C., January 1994, 112
[71]Bagshaw S., and Paul D., Protect or Neglect? Towards a More Effective United Nations Approach to the

comprise IDPs, the organization has increasingly been involved in the situations that confront them (IDPs) but at the instances of the General Assembly and with the consent of the State concerned.[72]

The General Assembly, in 1993, acknowledged the fact that the programmes and actions of UNHCR could be extended to IDPs when both refugees and IDPs were so intertwined that it would have been practically impossible to assist one group while leaving the other.[73] This can happen when refugees and the internally displaced are returning to the same area, or when external and internal displacements stem from the same causes and advantages exist in having one operation deal with both groups or when helping IDPs remain in safety in their own country could prevent a refugee flow.

4.7 International Committee of the Red Cross (ICRC)

The ICRC has the mandate of ensuring the application of International Humanitarian Law as it affects civilians that are in the midst of armed conflicts. Thus, they traditionally do not distinguish between civilians who are internally displaced and those who remain in their homes. In a 2006 policy statement, the ICRC stated that …the ICRC's overall objective is to alleviate the suffering of people who are caught up in armed conflict and other situations of violence. To that end, the organization strives to provide effective and efficient assistance and protection for such persons, be they displaced or not, while taking into consideration the action of other humanitarian organizations. On the basis of its long experience in different parts of the world, the ICRC has defined an operational approach towards the civilian population as a whole that is designed to meet the most urgent humanitarian needs of both displaced persons and local and host communities.[74]

Protection of Internally Displaced Persons Washington, D.C.: Brookings Institution and OCHA, 2004:49. Print.

[72]In such cases, UNHCR acts within the limits of its resources since activities for the internally displaced are not financed by UNHCR"s general program but from special trust funds.

[73]See General Assembly, "Office of the United Nations High Commissioner for Refugees," Resolution 48/116 (United Nations, December 20, 1993)

[74] www.(PDF). Internally Displaced People Q&A" (PDF) retrieved on 23rd July 2013.

However, the Director of Operations of ICRC recognized that IDPs "deprived of shelter and their habitual sources of food, water, medicine and money, they have different, and often more urgent, material needs".[75]

[75]www.icrc.org, position on internally displaced persons" (PDF). Retrieved ON 23rd July 2013

CHAPTER FIVE
SUMMARY AND CONCLUSION

5.1 Summary

This dissertation examines the legal and institutions frameworks for the protection of the rights of internally displaced persons in Nigeria in situations of natural disasters. This is predicated on the fact that, the plight of IDPs has increase in recent years, becoming a serious challenge of global implications. In Nigeria, internally displaced persons are often victimsof human rights violations, ranging from civil, political, economic, social and cultural rights. This is addition to right to life and right to private and family life. This violation is made more tragic where the State takes little or no action to prevent displacement as it leaves the citizens helpless and without hope of succour and restitution.

Protecting the rights of IDPs is a responsibility that rests foremost on government, though with the help of the international community. Therefore, in an effort to discharge this responsibility, there are myriad of legal, institutional and policy framework both at national international level enacted or established for the protection of the rights of displaced persons, this is in addition to efforts ofnon-state actors and civil societies in the area of providing humanitarian assistance. Thus, IDPs in Nigeria are protected not only by the law in thecountry, but also by basic norms of customary international law that bind allstates – standards such as the prohibition of torture, of racial discrimination, and of slavery. Despites these efforts however, the crisis of internal displacement in Nigeria continues to present challenges that seem overwhelming because of its magnitude.

5.2 Findings

The research makes the following findings:

i. There is no specific legal framework with the particular objective of assisting and protecting the rights of IDPs especially in situations of natural disasters in Nigeria. Failure to have a specific legislation that will impose a duty on the government to

commit a percentage of the national budget toward providing for instance permanent, shelters with safe drinking water and good health care services among others, have left many displaced women and children vulnerable.

ii. The National Policy on IDPs 2012 has giving NEMA the powers to coordinate the other agencies involve in disaster management. However, the Policy has not defined the jurisdiction of the other agencies in terms of where and when they are expected to step in during disaster management. Consequently, in emergency situations, it is common to find almost all the agencies at the scene taking instruction and directives from their respective heads instead of NEMA. This is most likely going to affect effective co-ordination of activities during disaster management. Furthermore, the policy is not a binding document. Compliance to it is voluntary, and that is its major disadvantage.

iii. NEMA is limited in capacity to effectively address the overwhelming magnitude of internally displaced persons in the country mostly because some States and the Local Governments have not seen the need to legislate and establish complementary functional emergency agencies to address the humanitarian challenges of citizens in their constituencies. Furthermore, NEMA lacks adequate resources to assist people displaced for a longer period of time or to assist returnees.

iv. The National Commission For Refugees (NCFR) as a national coordinating institution for displacement management is not established, mandated and empowered to manage IDP affairs in all phases. Hence, in practice, theprotection accorded to refugees under the NCFR cannot be expected for IDPsas the agency by law is primarily concerned with safeguarding the interestand treatment of persons who are seeking to becomerefugees in Nigeria.

v. National Human Rights Commission has not been able to live up to expectation. This is especially so because it is not independent and does not have the financial and logistical capability to meaningfully function effectively. The NHRC seems to be in a more precarious position, being controlled directly or indirectly, by the government through funding, composition of membership, provision of operational guidelines, and tenure of officers among others.

vi. At the international level, IDPs have no effective and comprehensive legal framework for the protection of their rights. For instance:

a. The Guiding Principles on IDPs are not legally binding document and this is considered as a serious lacuna for the protection and assistance of IDPs. The disadvantage of this is thatstates cannot be held accountable if they disregard them and that they cannot be invoked in legalproceedings at the domestic level. Thus, states' compliance with the guiding principles ispurely voluntary.

b. International humanitarian law as covered by the Geneva Conventions of 1949 and 1977 Protocols apply only to internally displaced persons in situations of conflict. These instruments do not apply to IDPs in situations of natural disaster. In other words, internally displaced persons in situation of natural disaster have no protection under this law. Furthermore, it was also found that International Human Rights Law only states, not non-state actors, such as insurgents. Consequently, this therefore makes the law inadequate for the protection of IDPs in situation of natural disaster as many human rightsabuses are committed by non-state actors.

c. International Refugees Law is principally aimed at convincing anasylum state to respect minimal standards for certain foreigners who do not benefit from

someother national protection. Consequently, even though some principles of the law may be applicable to IDPs by analogy, the strong and effectiveprotection accorded to refugees under the refugee conventions can not apply directly to IDPs because they are resident in their home country, and the Refugee Law does not apply to people who are within their home country.

d. A major challenge to the effective assistance and protection of the rights of IDPs is the doctrine of sovereignty. For instance, in keeping with this doctrines, a State, the AU or the Conference of States Parties established under article 14(1) of the AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa, can only intervene to protect and assist IDPs in a state upon the request of the state. However, it is not clear whether states reserve the right to reject humanitarian assistance for IDPs when it is unsolicited, or whether the international community can insist on providing assistance without the consent of the concerned state. The Convention does not fully address this question. Article 8(1) of the Convention also empowered the AU to intervene in a member State pursuant to article 4(h) of the AU Constitutive Act, that is, in situation of war crimes, genocide and crimes against humanity. Thus, where displacement is caused by these crimes, the AU has a right to intervene. It follows that where the displacement is caused by natural disaster, the AU has no right to intervene.

5.3 Recommendations

From the foregoing, it is hereby recommended that:

i. The government needs to enact a specific justiciable legislation that would answer to the peculiar needs of IDPs in the country. For instance, to make provision for permanent shelters, well equipped medical facilities, safe drinking water, and schools

among others. The National Policy on IDPs is not just enough particular because of its non-binding nature.

ii. The 2012 National Policy on IDPs should be amended to clearly define how, where and when the other agencies NEMA is coordinating are suppose to get involved during disaster management. This would no doubt help in solving jurisdictional issues and further leads to effective coordination of activities during disaster management.

iii. There is need for all the 36 States of the Federation and all the 774 Local Governments in the country to legislate and establish their SEMA and LEMA respectively to address the humanitarian challenges of citizens in their constituencies.

iv. The government also needs to effectively address the problem of capacity building, adequate funding and of NEMA (including SEMA and LEMA) and NHRC. This way, NEMA would not only have the capacity to effectively address the overwhelming magnitude of internally displaced persons in the country, but also have adequate resources at its disposal to assist displaced persons for a longer period of time or to assist returnees. In the same vein, this would enable the NHRC to live up to its responsibilities as the nation's institutions for the promotion and protection of human rights particularly, those of the internally displaced persons.

v. The National Commission for Refugees needs to concentrate solely on refugees as contained its mandate and avoid intermeddling in IDPs issues because applying the current framework of NCFR to deal jointlywith refugees and IDPs maynot adequately addressthe specific needs of IDPs because the conceptual boundarycould result in IDPs not actually getting the required protection they deserve.

vi. Article 14 of the Kampala Convention should be amended to clarify whether states reserve the right to reject humanitarian assistance for IDPs when it is unsolicited, or

whether the international community can insist on providing assistance without the consent of the concerned state.

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