

COMPARATIVE ANALYSIS OF NATIONAL LEGAL MEASURES FOR THE PROTECTION OF INTERNALLY DISPLACED PERSONS IN COLOMBIA AND KENYA VIS-A-VIS NIGERIA*

Abstract

This paper carried out a comparative analysis of the national legal measures to internal displacement of persons in Colombia, Kenya and Nigeria to determine the extent these three nations have accomplished their national responsibility to providing specific legal measures for upholding the rights of IDPs in Colombia and Kenya vis-a-vis Nigeria. The comparative findings disclosed that Colombia and Kenya have made advanced and progressive steps to develop national legal frameworks upholding the rights of IDPs in their countries, while Nigeria has not done the expected much. Because it is the responsibility of States to provide protection to all vulnerable sections of their population, research advocated for the development of a national IDPs-specific legislation in Nigeria to aid the Nigerian state discharge its obligations and responsibilities to IDPs in Nigeria. The study also recommended that Nigeria could borrow a leaf from Colombia and Kenya in development and expansion of its national legal frameworks for the protection and assistance of IDPs in Nigeria.

Keywords: Protection of Internally Displaced Persons, National Legal Measures, Nigeria, Colombia, Kenya, Comparative Analysis

1. Introduction

Experience shows that an effective response to displacement requires legislative action.¹ Because IDPs do not cross recognize national borders, national authorities have the primary duty and responsibility to provide protection and assistance to IDPs.² To fulfill their legal protection roles to IDPs, national governments and authorities are required to develop national laws and policies to address the specific rights needs of the IDPs. In order to assist national governments in developing effective IDPs laws and policies, the Brookings Institution–University of Bern Project on Internal Displacement (Brookings–Bern Project) developed a Framework for National Responsibility in 2005 to provide States with concrete benchmarks for addressing displacement.³ The major three benchmarks relating to States responsibility to developing national legal frameworks for IDPs protection demand that States should do the following:

- i. Take positive steps to prevent displacement and minimize the adverse effects.⁴
- ii. Create a legal framework for upholding the rights of IDPs.⁵
- iii. Develop a national policy or plan of action on internal displacement.⁶

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¹ Brookings-Bern Publication, *Protecting Internally Displaced Persons: A manual for Law and Policy Makers*, October 2008 <<https://www.brookings.edu/research/protecting-internally-displaced-persons>> accessed on 3rd July, 2025. [herein after, *The Brookings Manual*]. P. 27.

² UN Guiding Principles, principle 3.

³The Brookings Institution–University of Bern Project on Internal Displacement, ‘Addressing Internal Displacement: A Framework for National Responsibility’ (April 2005) <www.brookings.edu/projects/idp/20050401_nrframework.aspx> accessed on 4th April 2023.

⁴*Ibid*, Benchmark 1, p.12.

⁵*Ibid*, Benchmark 5, p.16.

⁶*Ibid*, Benchmark 6, p.17.

The Brookings Manual also provides that the development of a legal framework for responding to displacement can include at least two elements namely:

- i. The review and analysis of existing national legislation with a view to identifying and amending provisions incompatible with international human rights and humanitarian law underlying the Guiding Principles, and
- ii. Passage of national laws specifically regulating the response to all phases of internal displacement.⁷

In line with the above benchmarks and the required elements, this paper will carry out a comparative analysis of the national legal measures to internal displacement of persons in Colombia, Kenya and Nigeria, and herein makes its comparative findings and conclusion.

2. Colombia's National Legal Measures to Internal Displacement of Persons

The analysis of the Columbia's IDPs-specific national legal response to the problem of internal displacement in Columbia will be addressed under three major stages of responses, namely:

- a. Colombia before the adoption of IDP Law 387 of 1997.
- b. Between 1997 and 2004 (After the adoption of Law 387 of 1997.
- c. From 2004 onwards after the Landmark decision in T-025 of 2004.

Colombia before the adoption of IDP Law 387 of 1997

Before the adoption of IDP law 387 of 1997, the response to forced displacement of persons in Colombia was based on *ad hoc* basis.⁸ There was neither any specific law nor policy upholding the rights of IDPs in Colombia. Aids to IDPs were provided under the general social welfare and emergency response systems.⁹ However, the 1991 Colombia's Constitution¹⁰ contains some general provisions relating to States obligation to protect the rights of every person in Columbia including the IDPs. States obligation to prevent internal displacement of persons in Columbia as well as ensuring the protection of the rights of IDPs in Colombia could be derived from articles 13, 27¹¹ and 86¹² of the Colombia's constitution. Article 13 of the Constitution provides that:

All individuals are born free and equal before the law, shall receive equal protection and treatment from the authorities, and shall enjoy the same rights, freedoms, and opportunities without any discrimination on account of gender, race, national or family origin, language, religion, political opinion, or philosophy...¹³

Colombia Between 1997 and 2004 (After the adoption of IDP Law 387 of 1997

Between 1997 and 2004, due to the public protests by displaced populations and adverse reports on forced displacement of persons in Colombia, the Colombian government in the effort to ensure

⁷The Brookings Manual, p.28.

⁸ MJC Espinosa, 'The Constitutional Protection of IDPs in Columbia' in EA Rivadeneira (ed), *Judicial Protection of Internally Displaced Persons: The Columbia Experience* (Washington DC; USA: The Brookings Institution-University of Bern Project on Internal Displacement, 2009) pp. 1-48 at p.6.

⁹*Ibid.*

¹⁰Colombia's Constitution 1991 (as amended).

¹¹ Article 27 of the Colombia's Constitution 1991 (as amended) provides for the rights of every citizen to live, move about freely, enter and exit freely in Colombia.

¹² Article 86 of the Colombia's Constitution provides the mechanism for effective exercise of human rights named *the accion de tutela*. The *accion de tutela* is a petition procedure, which enables any person whose fundamental constitutional rights are being threatened or violated to request judicial protection of their fundamental rights.

¹³Colombia's Constitution 1991 (as amended), article 13.

effective response to internal displacements in Columbia adopted the IDP Law 387 of 1997.¹⁴The Law 387¹⁵ composes of 33 articles structured towards taking a comprehensive approach to addressing all phases of displacements: prevention of displacement, protection and assistance during displacement and conditions for return and re-establishment to achieving durable solutions to internal displacement of persons. Article 1 of the Law 387 firstly defines who an IDP is. Article 3 of Law 387 particularly provides that ‘it is the responsibility of the Colombian State to formulate policies and adopt measures for the prevention of forced displacement, and for assistance, protection, socio-economic consolidation and stabilization of persons internally displaced by violence.’¹⁶ Summarily, the general dictates and relevance of the IDP Law 387 are aptly captured in article 2 of the Law where it provides that the interpretation and application of this law is guided by key principles that include: the right of the displace and /or forcibly displaced to request and receive international assistance, the right to enjoy internationally recognized basic civil rights, the right not to be discriminated against due to their displaced status, or for reasons of race, religion, public opinion, place of origin, or physical disability, the right to family reunification, the right to consent to definitive solutions to their situation, the right to return to their place of origin, the right not to be forcibly displaced, the right for their freedom of movement and that it is the State’s obligation to support the conditions that facilitate coexistence among Colombians, equality and social justice.¹⁷

For the implementation and application of the IDP Law 387 various national institutions were established with their various mandates for the protection and assistance of IDPS in Colombia under the National System for Comprehensive Assistance to Populations Displaced by Violence.¹⁸ These institutions include: The National Council for Comprehensive Assistance to Populations Displaced by Violence,¹⁹ the Departmental, District, and Municipal Committees for Comprehensive Assistance to Populations Displaced by Violence,²⁰ National information Network (local information centres)²¹ and the Observatory on Internal Displacement by Violence.²² These institutions are to assure the prevention of displacement, protection and assistance of IDPs and that measures of immediate assistance are taken. Article 8 of Law 387 provides for preventive action by providing that municipal committees have the responsibility to provide guidance to communities that may be affected by an act of displacement as a result of conflict, and to take measures, such as analysing the viability of legal claims brought by IDPs and assessing the appropriate assistance measures, to minimise or eradicate the cause of persecution or violence which could eventually lead to forced displacement. Article 14 on preventive actions also provides a list of measures to prevent forced displacement caused by

¹⁴ E Fadnes & C Horst, ‘Responses to Internal Displacement in Columbia: Guided by What Principles?’ (2009) Vol. 26 Issue 1 *Refuge: Canada’s Journal on Refugees*, 111-120, at p.113.

¹⁵LAW 387 of the Republic of Colombia 1997, by means of which measures are adopted for the prevention of forced displacement, and for assistance, protection, socioeconomic consolidation and stabilization of persons internally displaced by violence in the Republic of Colombia (hereinafter referred to as Law 387 of 1997).

¹⁶*Ibid*, article 3.

¹⁷ Colombia Law 387 of 1997, article 2 (1-9).

¹⁸*Ibid*, articles 4-14.

¹⁹*Ibid*, article 6. The body will serve as an advisory and planning body responsible for formulating policy and ensuring budget allocation for the programs that the entities responsible for the functioning of the National System for Comprehensive Assistance to Populations Displaced by Violence are in charge of.

²⁰*Ibid*, article 7. The institutions shall be responsible for providing support to and cooperating with the National System for Comprehensive Assistance to Populations Displaced by Violence.

²¹ *Ibid*, article 12.

²²*Ibid*, article 13. The Observatory on Internal Displacement shall produce semiannual reports on the magnitude and trends of displacement, and the results of state policies for displaced populations.

violence.²³ Law 387 also provides for IDPs' rights to return, social and economic sustainability consolidation and protection.²⁴ The law also provides for creation of National Fund for Comprehensive Assistance to Populations Displaced by Violence.²⁵

Colombia from 2004 Upwards after the Landmark Decision In T-025 Of 2004

In 2004, the many obstacles that hindered the effective implementation of the Colombia's IDP Law 387 led to the landmark judicial intervention of the Constitutional Court of Colombia in 2004 and the development of the Colombia National IDP-Policy in 2005 as a complementary measure to effective implementation of the IDPs legislation.²⁶ The 2005 National IDP Plan provides a national institutional focal point (Acción Social and Inter-Institutional Early Warning Committee) which is responsible for IDP registration, local economic development and prevention and protection of displaced population's rights.²⁷ Article 4(1) of the National IDP Plan makes provisions for joint responsibility by national, local and regional authorities as well as complementary actions of civil society to ensure the effective implementation of the Plan. Both the Colombian IDP Law 387 of 1997 and 2005 National IDP Plan placed a particular emphasis on preventing arbitrary displacement, with specific measures elaborated for avoiding the conditions that cause displacement and minimizing displacement's adverse effects.²⁸

The Colombian Constitutional Court after consideration and reviewing of the over 100 *tutela* petitions filed by IDPs formally delivered a landmark decision to constitutionally protect and preserve the rights of IDPs in Colombia.²⁹ Among the notable pronouncements of the court in its Decision T-025 of 2004 include:

- i. That the State's response to IDP issues has serious deficiencies in regards to institutional capacity, which cross-cut all of the levels and components of the policy.³⁰
- ii. That the appropriation of fund or financial resources for the policy implementation was insufficient.³¹ The court called for sufficient budgetary appropriations.³²
- iii. That there exist certain minimum rights of the displaced population which must be satisfied under all circumstances by the authorities, given that the dignified subsistence of the people in this situation depends on it.³³
- iv. The court highlighted the minimum rights of IDPs of which the authorities have the obligation to secure through positive actions to include: right to life, rights to dignity and to physical, psychological and moral integrity, right to family life and to family unity and reunification, right to basic level of subsistence including food, water, shelter, clothing,

²³Colombia Law 387 of 1997I, article 8 and 14.

²⁴*Ibid*, article 16-18.

²⁵ *Ibid*, articles 21-25. This IDPs' national fund special account shall function as a special account, without legal capacity, administered by the Ministry of the Interior as a separate system of accounts.

²⁶ 2005 - Decreto No. 250 Por el cual se expide el Plan Nacional para la Atención Integral a la Población Desplazada por la Violencia y se dictan otras disposiciones, English version: National Plan on Comprehensive Assistance for the Population Displaced by Violence (hereinafter National IDP Plan).

²⁷*Ibid*, 2005 National IDP Plan principle 1 for funding mechanism, principles 26-27 for institutional focal point, principles 28-31 for the IDP registration system; <<https://www.refworld.org/docid/46d58ff92.html> > accessed on 30 March 2023.

²⁸ See articles 8 & 14 of Law 387 of 1997; article 4 of 2005 National IDP Plan.

²⁹ Colombian Constitutional Court, Decision T-025 of 2004, adopted by the third chamber of the Court, composed by Manuel José Cepeda-Espinosa, Jaime Córdoba-Triviño and Rodrigo Escobar-Gil.

³⁰ Colombian Constitutional Court, Decision T-025 of 2004, section 6.3.1.4 of the judgement.

³¹*Ibid*, section 6.3.2 of the Judgement.

³²*Ibid*.

³³*Ibid*, section 9. Through this, the court adopted the right-based approach for IDPs rights protection and enjoyment.

essential medical services and sanitation, obtained chiefly through the provision of emergency humanitarian aid, right to health care, particularly in cases of children and infants, right to protection from discrimination based on conditions of IDPs, rights to basic education for children under 15, right to self-sufficiency through identification of alternatives for dignified socioeconomic stabilisation and the rights to return and re-establishment.³⁴

- v. The court affirmed that the authorities have obligations to secure a minimum level of protection of IDPs' rights regardless of the circumstances, and the state has a duty of preserving the minimum public order conditions to prevent the forced displacement of persons and guarantee the personal security of the members of society.³⁵

The Colombian Constitutional Court's decisions especially the decision in T-025 of 2004 have influenced the decisions of the Inter-American Court in further development of the standards for the assistance and protection of the rights of the IDPs in the region. The Inter-American Court has held that forced displacement is a serious and complex phenomenon that violates several human rights.³⁶ It has also pointed out that whenever a State allows forced displacement to occur, it fails to comply with its obligations to protect its citizens' rights. The Inter-American Court of Human Rights (IACHR) in *Mapiripán Massacre v Colombia*³⁷ case established two types of responsibility for States namely: One derived from the act or the omission of its agents whenever they are in a position of guarantors and the state's international responsibility that arises from the acts of private persons which are, on principle, not attributable to the State but have been carried out with the support or permission of State agents.³⁸

Moreover, in the case of the *Pueblo Bello Massacre v Colombia*,³⁹ the Inter-American Court, 2006) also held that there were several violations of rights with respect to the relatives of the forty-five victims who disappeared during the event of the paramilitary Pueblo Bello massacre in January 1990. In *Ituango Massacre v Colombia* case, the court also explicitly interpreted that the right to freedom of movement and residence protects the rights not to be forcibly displaced within a State party to the Convention.⁴⁰ Furthermore, the Colombian Constitutional court in Decision T-821 of 2007 affirmed that *tutela* was admissible on the case because displaced persons enjoy special constitutional status as a vulnerable group, determined that displaced persons have right to restitution under the Colombian and International law (Pinheiro Principles) and ordered the government to ensure respect for victims'

³⁴ Colombian Constitutional Court, Decision T-025 of 2004, section 9. All these rights are specifically guaranteed under the UN Guiding Principles on Internal Displacement and the Constitution of the Republic of Colombia (as amended).

³⁵ The Court highlights that by virtue of Article 2 of the Constitution, the State has the duty to protect the population affected by this phenomenon, and in this way it is bound to adopt a response to such situation. See Decision T-025 of 2004, Section 5.2. para 17, p.221; also see Section 6, p.230.

³⁶ T Rincón, 'The Judicial Protection of Internally Displaced Persons in Colombia: National and Inter-American Perspectives' in RA Rivadeneira (ed), *Judicial Protection of Internally Displaced Persons: The Colombian Experience* (Washington Dc; USA: The Brookings Institution – University of Bern Project on Internal Displacement, 2009) 149-174 at p. 149.

³⁷ IACHR, *Mapiripán Massacre v Colombia*, Series C No. 134(2005), para.111.

³⁸ Inter-American Court of Human Rights, Case of the *Mapiripán Massacre v Colombia*, Judgment of September 15, 2005 (Merits, Reparations, and Costs) para. 111.

³⁹ IACHR, *Pueblo Bello Massacre v Colombia*, Series C No. 140 (2006).

⁴⁰ *Ituango Massacres v Colombia*, Judgment of July 1, 2006 (Preliminary Objections, Merits, Reparations and Costs), Inter-American Court of Human Rights, paragraph 207.

rights to reparation and property restitution.⁴¹ The court also ordered for the establishment of a registry of displaced persons in order to identify that they have right to reparation. The implementation of the Constitutional Court's decision T-821 of 2007 led to the introduction of the Victims Law and National Restitution Plan by the Colombia Legislatures in 2009.⁴² The law creates reparations programmes for displaced persons in Colombia. In 2011, the said Victims' Reparation Law was passed into Law as Law of Victims and Land Restitution.⁴³

3. Analysis of the Kenya's National Legal Measures to Internally Displaced Persons

Since after independence in 1963, there have been efforts from the Kenyan government authorities to address the issue of internal displacement of persons in Kenya. These government efforts will be discussed under two main levels, namely: a) Before the 2007/2008 post-election violence; b) After the 2007/2008 post-election violence till date.

Before the 2007/2008 post-election violence.

Before the 2007/2008 Post-Election Violence, Kenya has had a long history of forced displacement of persons linked to conflicts over land among different ethnic group.⁴⁴ The Kenyan government overall response during this period lacked special focus on IDPs protection and assistance. The issue of internal displacement of person was generally overlooked while the government failed to openly recognise the protection needs of IDPs in Kenya. Some of the fragmented national approaches to forced displacement of person in Kenya include: i) The establishment of the Kenyan Human Rights Commission in 2002⁴⁵ which has the mandate to ensure the protection and preservation of the human rights of all persons in Kenya, IDPs inclusive; ii) Kenya as a member of the Great Lake Region ratified the Great Lake Pact and its Protocols⁴⁶ on the Protection and Assistance of Internal Displaced Persons in the Region in 2006.⁴⁷

Finally, it will be worthwhile to note that though Kenya has ratified the Great Lake Pact and its Protocols on IDPs, it is yet to sign and ratify the Kampala Convention.⁴⁸

⁴¹Inter-American Court of Human Rights Judgement T-821/07. The Inter-American Court of Human Rights in another case (*Rachela Massacre v Colombia*, Judgment of 11 May 2007, Series C, No163, para 266) brought by the victims and survivors of a paramilitary massacre in 1989 also held that; 'it is a principle of international law that any violation of an international obligation which causes damages give rise to a duty to make adequate reparation...'

⁴²*Ley de Victimas se hunde ante presion del Gobierno*, *El Espectador*, 18 June 2009. <www.elespectador.com/noticias/politica/articulo146500-ley-de-victimas-sehunde-presion-del-gobierno> accessed on 9th April, 2023.

⁴³Government of Colombia, Ley 1448 del 10 junio de 2011 (Law 1448 of 10 June 2011). Available at Brookings-LSE Project on Internal Displacement, "National and Regional Laws and Policies on Internal Displacement: Colombia. <www.brookings.edu/projects/idp/Laws-and-Policies/idp_policies_index.aspx> accessed on 19th April, 2025.

⁴⁴ IDMC and NRC's Report (2012), 'Kenya, IDPs' significant needs remain as inter-communal violence increases', p.3 <<https://www.internal-displacement.org/publications/kenya-idps-significant-needs-remain-as-intercommunal-violence-increases>> accessed on 15th April 2025. Natural and manmade disasters like flooding, drought, developmental projects and environmental conservation projects have also caused forced displacement of persons in Kenya.

⁴⁵ Established by the Kenya's National Commission on Human Rights Act 2002.

⁴⁶ Great Lakes Region Protocol on the Protection and Assistance to IDPs adopted on November 30, 2006 and entered into force in 2008.

⁴⁷ The Great Lake Protocol in its article 6 (3) mandates member States to enact national legislation mirrored through the UN Guiding Principles on Internal Displacement.

⁴⁸ There are arguments that Kenya no longer needs to ratify the AU Kampala Convention since Kenya is a party to the Great Lakes Protocol and has developed an IDPs Act and a National Policy on IDPs adopting the UN Guiding Principles and the Great Lake Protocol in their provisions.

Kenya after the 2007/2008 Post-Election Violence till Date

The post-election violence that ensued after the disputed Kenyan presidential of December 2007 triggered a large-scale displacement of persons in Kenya. It was reported that over 600,000 Kenyans fled their homes and were displaced during the 2007/2008 post-election violence.⁴⁹ The Kenyan government then initiated some measures to assist the IDPs with the support of international organisations. First was the establishment of the Ministry of State for Special Programmes (MoSSP) in 2008 to provide assistance and ensure IDPs protection under some initiated programmes.⁵⁰ In the effort to develop a comprehensive national legal framework for the protection and assistance of IDPs in Kenya, the Kenyan National Policy on IDPs was drafted in 2010, revised in 2011 and presented to MoSSP and the relevant cabinet committee.⁵¹ Thereafter was the adoption of the IDPs Act in 2012⁵² in fulfillment of the Kenya's obligation under the Great Lakes Protocol. The Kenyan National Policy on IDPs and the IDPs Act are the two specific national frameworks for the protection and assistance of IDPs in Kenya. The two Kenyan specific frameworks for upholding the rights and needs of IDPs in Kenya provide comprehensive measures to addressing issues relating to internal displacement of persons in Kenya. The two frameworks while adopting the Great Lake Protocols and the UN Guiding Principles make provisions covering all stages and causes of displacements.⁵³ The Kenyan IDPs Act 2012 adopted the UN Guiding Principles definition IDPs.⁵⁴ However, the Kenyan National Policy on IDPs 2011 while adopting the UN Guiding Principles definition IDPs expanded the definition to incorporate Kenyan specific issues on internal displacement. The Kenyan National Policy on IDPs defines IDPs and expanded the IDPs definition to align with Kenyan specific IDPs related issues.⁵⁵

The Kenya's IDPs Act makes provision for public awareness, sensitization, training and education,⁵⁶ while the National Policy provides for creation of common understanding of who IDPs are in Kenya.⁵⁷

Moreover, both the Kenyan National Policy on IDPs 2011 and the IDPs Act 2012 acknowledged that it is the primary responsibility of the Kenyan government and authorities to prevent displacements of persons, provide effective protection and assistance to IDPs in Kenya and provide conducive conditions to providing durable solution to internal displacements in Kenya.⁵⁸ The National Policy on IDPs on equality of treatment and non-discrimination elaborately provides that IDPs shall not be

⁴⁹ N Chege, 'Kenya: The Case of Internally Displaced People following the 2007 Post-election violence' (2010), *Beyond Intractability Resources* <<https://www.beyondintractability.org/casestudy/kenya-case-internally-displaced-people-following-2007-post-election-violence>> accessed on 11 April, 2023.

⁵⁰ These initiated programmes to assist the displaced were categorized in different forms; namely: the form of Operation *Rudi Nyumbani* (Return Home) Operation *Tujenge Pamoja* (Build Together) and Operation *Ujirani Mwema* (Good Neighborliness).

⁵¹ Draft National Policy on the Prevention of Internal Displacement, Protection and Assistance to Internally Displaced Persons (IDPs) in Kenya, August 2011, (hereafter Draft IDP Policy). The Draft Policy was endorsed by the cabinet in 2012.

⁵² Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012 (hereinafter IDP Act 2012).

⁵³ Kenya's IDPs Act 2012, section 3 (a & b).

⁵⁴ *Ibid*, sections 2 (1).

⁵⁵ Kenyan IDP Policy, chapter 2.1 (6).

⁵⁵ *Ibid*, chapter 2.1 (7).

⁵⁶ Kenya's IDPs Act 2012, Part IV.

⁵⁷ Draft National Policy, introduction, objective 2.

⁵⁸ Kenya's IDPs Act 2012, section 11(4) and the Draft Policy on IDPs, chapter 3.1 (15).

discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced...⁵⁹

The Kenyan IDP Act and the Draft IDPs Policy also established the institutional frameworks for the implementation of the Act and Policy.⁶⁰ Both first outlined the roles and responsibilities of government for the protection of IDP rights.⁶¹ The Act established the National Consultative Coordination Committee (NCCC) with the main responsibility of ensuring the effective implementation of the IDP Act.⁶² The Policy established National Institutional Focal Point within the Government⁶³ as the Department responsible for internal displacement and the National Consultative Coordination Committee (NCCC) as the institution supporting the Department responsible for Internal Displacement in the coordination of the implementation of this Policy and bringing together focal points from relevant Departments, other national actors, IDP representatives, civil society and the international community.⁶⁴ The Policy further outlined the roles of the relevant stakeholders to be involved in the IDPs protection and assistance. The stakeholders include the government, national actors, community-based organisations, international community, regional institutions such as the African Union, humanitarian and development partners.⁶⁵

On funding of IDPs activities relating to IDPs protection and assistance in Kenya, the IDPs Act provides for the restructuring of the existing National Humanitarian Fund which shall include the remaining existing funds from the national humanitarian funds before the commencement of the Act and subsequent monies to be received, earned or mapped out for the purpose.⁶⁶ The National Policy on funding generally mandates the Kenyan Government to provide for adequate and sustainable resource allocation to ensure an effective implementation of this Policy, including human and financial resources and necessary equipment.⁶⁷ The Policy further mandates the Kenyan Government to engage in fundraising for sustained allocations to the IDP-fund.⁶⁸ Furthermore, the Kenya's IDPs Act provides that the Government and any other organization, body or individual shall prevent internal displacement in all situations, put into place measures and structures to prepare for emergency disaster and ensuing internal displacement and mitigate its consequences, protect every human in Kenya from arbitrary displacement and provide protection and assistance to IDPs and communities in rural and urban areas where IDPs find refuge.⁶⁹

Both the Kenyan National Policy on IDPs and the IDPs Act provides for IDPs protection from development induced displacement⁷⁰ and that it is the primary responsibility of the Government to provide IDPs with a durable solution to their displacement.⁷¹ Both the IDPs Act and Policy criminalised arbitrary displacement and provide the punishment for the crime.⁷² The IDPs Policy goes

⁵⁹ National Policy on IDPs 2011, chapter 1.2 (3).

⁶⁰ Kenya's IDPs Act 2012, part III and National Policy on IDPs 2011, chapter 3.

⁶¹ *Ibid*, part III, section 11 and chapter 3 respectively.

⁶² *Ibid*, part III, section 12.

⁶³ National Policy on IDPs 2011, chapter 3.2(18).

⁶⁴ *Ibid*, chapter 3.2(20).

⁶⁵ *Ibid*, chapter 3: Institutional Framework, Roles and Responsibilities.

⁶⁶ Kenya's IDPs Act 2012, section 14.

⁶⁷ National Policy on IDPs 2011, chapter 10 (180).

⁶⁸ National Policy on IDPs, chapter 10 (180)

⁶⁹ Kenya's IDPs Act 2012, part II, sections 5,6,7 & 8.

⁷⁰ IDPs Act 2012, sections 21 & 22.

⁷¹ National Policy on IDPs 2011, chapter 9.

⁷² IDPs Act 2012, section 23 and IDPs Policy 2011, chapter 5.3.

further and provides for criminal responsibility of non-state actors for acts of arbitrary displacement and other violations of the human rights of IDPs.⁷³

Finally, the Kenya's judiciary have also contributed in the enforcement of the rights of IDPs in Kenya through some court decisions. In *Peter O. Nyakundi & 68 Orthers v Principal Secretary, State Department of Planning, Ministry of Devolution and Planning & Anor*,⁷⁴ the court lamented that lack of a gazetted register for IDPs and accountability for money appropriated for IDPs. The court lamented that the government agency could not provide the list of verified IDPs even after given ample time to do so. In this case the petitioners who had been displaced by the post-election violence of 2007 and 2008 claimed that the government discriminated against them when compensating other victims of post-election violence. The court allowed their petition after the government failed to any of the allegations they made. In *Internally Displaced Persons & Kisii Committee v Cabinet Secretary, Ministry of Devolution & Planning of National Government*,⁷⁵ the petitioners in this case claimed to be victims of the 2007 and 2008 post-election violence that occurred in Kenya. However, their case was dismissed because they failed to adduce evidence that they were affected by the post-election violence. Moreover, in *Internally Displaced Persons Initiative Support v Permanent Secretary Ministry of Devolution and Planning*⁷⁶ some post-election violence victims sought the High Court order to be included in the list of the people to be compensated by the Government. The court allowed their application and ordered the government to profile them and include them in the compensation package.

4. Analysis of the Nigeria's National Legal Measures to Internal Displacement of Persons

Nigeria is one of those States facing the challenge of increasing internally displacement of persons necessitated by multiplicity of causes that include: ethnic and religious violence, the Boko Haram terrorism, the banditry and herdsmen attacks, natural disasters like flooding, negative effects of oil explorations and other models of internal conflicts among others.

Nigeria before the 2012 Nigerian National Policy of IDPs

During the period before the 2012 Nigerian National Policy of IDPs, there was no specific legal framework and no IPDs specific institutional agency for the protection and assistance of IDPs in Nigeria. However, decisions regarding the fate of IDPs before the IDPs policy 2012 were made based of government *ad hoc* decisions and the institutional responses left in the hands of existing national regulatory agencies. The legal responses to internal displacement of persons in Nigeria were undertaken through some Acts of National Assembly and the Agencies created under the Acts. More relevant among the Acts are the National Emergency Management Agency (NEMA) Act 1999.⁷⁷ and the National Commission for Refugees, Migrants, and Internally Displaced Persons (NCFRMI) Act 1989.⁷⁸

Nigeria After the 2012 Nigerian National Policy of IDPs till Date

In 2012, Nigeria's National Policy on IDPs 2012 which was drawn extensively from the UN Guiding Principles on Internal Displacement 1998 and the AU Kampala Convention on IPDs, 2009 was

⁷³ IDPs Policy 2011, chapter 3, paragraph 38(d).

⁷⁴ (2016) eKLR.

⁷⁵ (2016) eKLR.

⁷⁶ (2017) eKLR.

⁷⁷ (Decree No. 12 of 1999 now Cap. N. 34 Laws of the Federation of Nigeria 2004.

⁷⁸ Decree No. 52 of 1989, Cap.244 LFN 1990 now Cap. N. 21 Laws of the Federation of Nigeria 2004.

adopted.⁷⁹ The Nigeria's National Policy on IDPs 2012 till date is the only IDPs-specific instrument for the protection and preservation of the rights of IDPs in Nigeria. The Policy provides a framework for national responsibility towards prevention and protection of 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 in ensuring the achievement of durable solution to displacement.⁸⁰

The Nigerian National Policy on IDPs is made up six chapters containing provisions addressing the specific issue relating to internal displacements in Nigeria. The first chapter discusses issues of displacements within the Nigerian context. The chapter majorly highlights the peculiar causes of displacements in Nigeria⁸¹ and the impact of internal displacement on IDPs and their host communities.⁸² The chapter defines who IDP is together with other key terms relating to IDPs issues.⁸³ Chapter two of the Policy provides for the Policy thrust in the areas of the Policy Framework and Scope, vision and mission, goal and objectives and the applicable Principles.⁸⁴ Chapter three makes elaborate provisions on the general and specific rights of IDPs in Nigeria.⁸⁵ The Policy provides for IDPs' right to protection from displacement,⁸⁶ right to protection and assistance during and after displacement⁸⁷ and Rights of IDPs to Voluntary Return, Local Integration and Relocation.⁸⁸ The Policy specifically makes provisions for the rights of different categories of IDPs in Nigeria that includes internally displaced children, internally displaced women, rights of Internally Displaced Persons with Disabilities, rights of Internally Displaced Persons Living with HIV (PLHIV) and rights Internally Displaced Elderly Persons.⁸⁹

On institutional framework for the implementation of the Policy, the Policy in its Chapter four places some degrees of responsibilities and obligations on Nigerian government, humanitarian agencies, host communities and armed groups to IDPs.⁹⁰ All actors and stakeholders involved in the IDPs protection issues have the obligation to comply with the relevant laws and policies.⁹¹ The Policy acknowledges the responsibilities of the host communities to IDPs⁹² as well the protection rights of the host communities.⁹³ The Policy in its chapter 5 also makes provision for the establishment of the

⁷⁹ MT Ladan, 'Overview of International and Regional Frameworks on International Displacement: - A case study of Nigeria' being 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.

⁸⁰ Nigerian National Policy on IDPs 2012, Chapter 2.1.

⁸¹ Nigerian National Policy on IDPs 2012, Chapter 1.1.2.

⁸² *Ibid.*

⁸³ *Ibid*, chapter 1.2.

⁸⁴ *Ibid*, chapters 2.1-2.4.

⁸⁵ *Ibid*, chapter 3.1.1.

⁸⁶ Nigerian National Policy on IDPs 2012, chapter 3.1.2.

⁸⁷ *Ibid*, chapter 3.1.3.

⁸⁸ *Ibid*, chapter 3.1.9.

⁸⁹ *Ibid*, chapter 3.1.4 - 3.1.8.

⁹⁰ *Ibid*, chapter 4.1.

⁹¹ *Ibid*, chapter 4.2.1.

⁹² Chapter 4.3.2 (a) & (g) of the Policy provides the responsibility of the host community to IDPs to include provision of adequate security and safety for IDPs residing in their communities and allowing the IDPs the freedom to express their cultural, religious and political beliefs without inhibition, molestation and discrimination.

⁹³ Chapter 4.3.1 of the Policy provided the protection needs of the host communities to include: rights to socio-economic rights, right to be protected from human rights violations, security of life and properties, safe environment among others.

‘IDP Focal Coordinating Institution’ to be created in the Presidency.⁹⁴ For the effective institutional satisfaction of the right needs of IDPs in Nigeria, the Policy envisaged a sector-approach response.⁹⁵ Under this arrangement, each sector will have a lead agency, and all sector leads will need to coordinate their efforts under the lead of the designated IDP Focal Coordinating Institution to ensure the system’s overall delivery within its sector.⁹⁶ The Policy breaks down the needs of IDPs into sectors and established and recommended for coordination of humanitarian assistance and protection of internally displaced persons, and as may be modified and added by the IDP Focal Coordinating Institution under the Food Aid and Agriculture Sector, Camp Coordination, Management & Administration Sector, Human Rights and Protection Sector iv. Health and Nutrition Sector, Education Sector, Water, Sanitation and Hygiene (WASH) Sector, Logistics & Communications Sector, Emergency Shelter and Non-Food Items Sector and Rehabilitation, Return, Relocation and Reintegration Sector.⁹⁷ The Policy also provides for the establishment of a special monitoring and evaluation unit under the IDP Focal Coordination Institution for the monitoring and evaluation of the extent of the implementation of the Policy.⁹⁸

Finally, various Nigerian governments have also been adopting the IDPs response postures of shutting down IDPs camps and forcing the IDPs return-back to their homesteads through the tagged ‘Repatriation, Return and Resettlement Programmes.’ The most recent of such programmes was set up in February 2022 by the President Muhammadu Buhari regime through the setting up and inauguration of the Committee on Repatriation, Return and Resettlement of IDPs in the North East of Nigeria.⁹⁹

On the side of the judicial measures for IDPs protection in Nigeria, the case of *Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP) v Federal Republic of Nigeria & Another*¹⁰⁰ becomes of moment. The case was brought on behalf of IDPs and against the Federal Republic of Nigeria and the Attorney General of the Federation in 2015 on the claim that the defendants through their inactions violated the various human rights of IDPs that include the right to life, right to health, right to adequate housing, right to personal integrity, to privacy, to fair trial, right to freedom of movement and residence, to judicial guarantees among others. Though the court in that case acknowledged that under article 1 to 5 of the African Charter, the State is under obligation to ensure the full protection of the rights of its citizens; the case was dismissed in 2016 on the reason that the Plaintiff failed to produce necessary records and evidence to prove its case against the Nigerian Government.

5. Summary of Comparative Analysis and Findings

The three countries under analysis have at one stage and another undertaken some national measures towards fulfilling their national responsibility to providing specific legal measures for upholding the rights of IDPs in their countries. Generally, Colombia and Kenya could be said to have developed a more comprehensive national legal framework for the reason that the two countries have enacted

⁹⁴ Nigerian National Policy on IDPs 2012, chapter 5.5.1.

⁹⁵ *Ibid*, 5.3.2.

⁹⁶ *Ibid*, 5.3.2 (b).

⁹⁷ *Ibid*, chapter 5.3.2 (g).

⁹⁸ *Ibid*, chapter 6.2

⁹⁹ Daily Trust Editorial, ‘As FG Moves to Resettle IDPs’ *Daily Trust News Online*, February 10, 2022 <<https://dailytrust.com/as-fg-moves-to-resettle-idps/>> accessed on 8 June 2025.

¹⁰⁰ Suit No: ECW/CCJ/APP/31/15

IDPs-specific laws that address all phases of displacement. Nigeria on the other hand does not have any legal binding IDPs-specific national law that addresses all phases of displacements.

Colombia's IDPs-specific legal framework is found to be more comprehensive and advanced among the countries under review. Firstly, the Colombia Law 387 on IDPs pre-dates the UN Guiding Principles on Internal Displacement. The Law contains provision addressing all phases of displacements ranging from provisions on prevention of displacement, provisions on protection and assistance during displacement to conditions for return. The law also designated both institutional and ministerial agencies responsible for implementation of the Law. However, the implementation obstacles to the Law 387 led to the Colombia's Constitutional Court landmark decision in T-025 of 2004 and the development of the Colombia's National IDP Policy 2005. The court's decision in T-025 of 2004 and the Colombia's National IDP Policy 2005 now serve as a complementary legal measure for the effective implementation of the Colombia's Law 387. The advancements in the Colombia's IDPs-specific Legal framework did not end with the Landmark decisions in T-025 of 2004, the decision in the case further influenced some other subsequent court decisions affirming and preserving the rights of IDPs in Colombia.¹⁰¹ The implementation of the Constitutional Court's decision T-821 of 2007 also led to the development and passing of the Colombia's Victims' Reparation Law 2011 which creates reparations programmes for displaced persons in Colombia. Finally, it is pertinent to note that the Colombia's Constitution contains a constitutional mechanism for effective protection of human rights named *the accion de tutela* under which petition procedure the citizens whose fundamental constitutional rights are being threatened or violated may file informal claims without an attorney, before any judge in the country with territorial jurisdiction. Majority of the IPDs' related court cases in Colombia were filed through the *tutela* procedure.

Kenya aside being a party to the UN Guiding Principles and the Great Lake Pact and its Protocols on the protection and assistance of IDPs, the Kenya's Constitution and the Human Rights Commission Act 2002 generally guarantee and preserve the human rights of all persons in Kenya including the IDPs. The Kenya's National Human Rights Commission receives complaints of human rights violations including from IDPs through petition to the Commission or the relevant government departments. After the 2007/2008 post-election violence in Kenya, the Kenyan government in her effort to put in place measures to assist the IDPS established the Ministry of State for Special Programmes (MoSSP) in 2008 to provide assistance and protection to IDPs through some initiated programmes. Unfortunately, these programmes undertaken under through the MoSSP were criticized as being inadequate and unsatisfactory. Moreover, in compliance with the Kenya's obligation under the Great Lake Protocols, the Kenyan Government has developed two IDPs-specific national legal frameworks namely: Kenya's National Policy on IDPs 2011 and the Prevention, Protection and Assistance of Internally Displaced Persons and the Affected Communities Act 2012. The overall purpose of the two IDPs-specific framework is to prevent arbitrary displacement and offer protection and assistance to IDPs in Kenya. The Kenya's IDPs-Specific frameworks fulfilled the important roles of providing the legal and institutional frameworks and the action plans for the protection and assistance of IDPs in Kenya. The Kenya's judiciary have also contributed in the enforcement of the rights of IDPs in Kenya through some court decisions enforcing the rights of persons displaced during the of the 2007 and 2008 post-election violence in Kenya.

¹⁰¹ IACHR, *Mapiripán Massacre v Colombia*, Series C No. 134(2005), *Ituango Massacre v Colombia*, Judgment of July 1, 2006 (Preliminary Objections, Merits, Reparations and Costs), Inter-American Court of Human Rights, paragraph 207, Inter-American Court of Human Rights Judgement T-821/07.

Nigeria before the Nigeria's National Policy on IDPs 2012 and till date, legal responses to internal displacement of persons in Nigeria are undertaken through some national and international frameworks, agencies created under the frameworks and some other government agencies and ministries. The national and international frameworks which are applied for the protection and assistance of IDPs in Nigeria include the Nigeria's Constitution, the NEMA Act, the National Human Rights Commission Act, the National Commission for Refugees, Migrants and Internally Displaced Persons, the UN Guiding Principles on IDPs 1998 and the AU Kampala Convention 2009. Regrettably, it must be noted that while the above mentioned national frameworks are not IDPs-specific legal frameworks; the effect of Section 12 (1) of the Nigeria's Constitution¹⁰² makes the above international and regional IDPs-specific instruments non-legal binding in Nigeria.

In Nigeria, the only IDPs-specific instrument is the Nigeria's National Policy on IDPs which was adopted in 2012. The said Nigeria's National Policy on IDPs also does not have the force of law because it is a mere policy. In the same vein, the whole of chapter II of the Nigerian constitution which specifically provides for the political, economic, social, cultural and developmental rights of every citizen (IDPs inclusive) is non-justiciable by virtue of section 6(6)(c) of the same constitution and this implies that citizens cannot go to court to enforce these rights when denied. Moreover, the present-day Nigerian government's response postures and programmes of resettling IDPs through shutting down of IDPs' camps and forcing IDPs to return to their homestead have been widely condemned as inflicting more sufferings on the IDPs.

6. Conclusion and Recommendations

From the comparative study carried out, it is found that both Colombia and Kenya have developed legal binding IDPs-specific legislations for the Protection and assistance of IDPs in both countries, while Nigeria has not. The Colombia IDPs-Specific legal regimes could be said to be more comprehensive having been greatly expanded through Constitutional Court's decisions, the Inter-American Court of Human Rights and the other follow-up court decisions and awards expanding the frontiers of Colombia's IDPs Laws and their implementations. Because it is the responsibility of States to provide protection to all vulnerable sections of their population, there is need for development of a national IDPs-specific legislation in Nigeria to aid the Nigerian state discharge its obligations and responsibilities to IDPs in Nigeria. Nigeria could borrow a leaf from Colombia and Kenya in development and expansion of its national legal frameworks for the protection and assistance of IDPs in Nigeria.

¹⁰² Section 12(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that no treaty between the Federation of Nigeria and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.