

**AN APPRAISAL OF THE LEGAL AND INSTITUTIONAL  
FRAMEWORKS FOR THE AWARD OF REPARATIONS  
TO VICTIMS OF CONFLICT-RELATED  
SEXUAL VIOLENCE: FOCUS ON NIGERIA**

**BY**

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**Abstract**

*Nigeria has been in a state of internal armed conflict since 2013. Since the outbreak of the Boko-Haram led armed conflict, the number of reported cases of sexual violence against women and girls has been on the rise. The abduction of these categories of vulnerable non-participant victims of the conflict has also become common-place. The crime of sexual violence is committed not only in host communities but in camps of internally displaced persons (IDPs) and detention centers, where the victims are meant to be protected by law enforcement authorities. Although the armed conflict is not over, there is a gradual abatement thereof and some of the victims that had been displaced are gradually returning back to their homes while others remain in IDP camps. As part of post-conflict transitional justice mechanisms, it is significant that the victims of the dreadful acts of sexual violence are identified and their injuries redressed in a system of reparations. Nigeria is a party to many international treaties that protect the rights of persons against sexual violence and in some cases, provide for the right to reparations. Nigeria, therefore, has the legal obligation to implement the rights stipulated in these treaties. There are other domestic legal frameworks and policies that support the right of reparations to victims of armed conflict and projecting these is poised at creating awareness for the implementation of these rights.*

**Key Words: Sexual Violence, Conflict, Women, Reparations, Nigeria**

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**Introduction**

In November 2013 the International Criminal Court made an official declaration that the Nigerian State was in a situation of a Civil War.<sup>3</sup> This state of affairs was the result of the escalation of a series of skirmishes that began in 2009 between Nigerian law enforcement agencies and a group of insurgents that identified themselves as *Jama'atul ahlul Sunnah lid'daawati wal Jihad*, but which later became popularly known as Boko Haram.<sup>4</sup> The situation eventually graduated to an armed conflict involving members of the Nigerian Armed Forces, and it has been raging for years. Although it has abated in intensity, it is still ongoing; having taken on various dimensions in recent times, with the appearance of the splintered cell of ISWAP, the Islamic State of West Africa Province, fighting both Boko Haram and the Nigerian State.<sup>5</sup>

Since the outbreak of the conflict, the number of reported cases of sexual violence has been on the rise, and the conflict has dramatically changed the lives of thousands of women and girls.<sup>6</sup> There is no doubt that sexual violence is a crime committed both at peacetime and during armed conflict, but armed conflict heightens vulnerability and, therefore, increases the number of cases. The United Nations reported that in 2020

<sup>3</sup>AllAfricaGlobalMedia 'ICC Declares Conflict in N'eastern Nigeria a Civil War' <https://go.gale.com/ps/i.do?id=GALE%7CA350298124&sid=sitemap&v=2.1&it=r&p=EAIM&sw=w&userGroupName=anon%7E938e34c5&aty=open-web-entry> accessed 30/12/2023

<sup>4</sup>BBC News 17 June 2011 'Who are Nigeria's Boko Haram Islamist Group?' <https://www.bbc.com/news/world-africa-13809501> accessed 26/02/2024

<sup>5</sup>Geneva Academy 'RULAC – Non-International Armed Conflict in Nigeria; 2<sup>nd</sup> March 2023' <<https://www.rulac.org/browse/conflicts/non-international-armed-conflict-in-nigeria>>\_ accessed 30/12/2023.

<sup>6</sup>International Crisis Group 'Nigeria: Women and the Boko Haram Insurgency' <https://www.crisisgroup.org/africa/west-africa/nigeria/nigeria-women-and-boko-haram-insurgency> accessed 24/03/2024

Nigeria recorded 11,200 rape cases, including children raped to death.<sup>7</sup> Sexual Violence is a crime which takes many different forms perpetrated by *different kinds of actors*. *The forms of sexual violence in the northeastern Nigeria's conflict include rape, sexual exploitation, abductions, forced marriages, and forced abortions.*<sup>8</sup> The abduction of persons, largely women and girls, has become common-place in the conflict. By 2015 at least 2,000 people mostly women and children were abducted during the conflict<sup>9</sup> and a large number of female students abducted from Chibok, Bama, and Konduga of Borno State and Dapchi in Yobe state.<sup>10</sup> Women have been subjected to repeated forced marriages to different men. Women who refuse these marriages are either subjected to prolonged detention, torture or even death.<sup>11</sup> Other women and girls

<sup>7</sup>The Punch Newspaper, 23<sup>rd</sup> November, 2021 '11,200 Nigerian Women, Children raped in 2020 - UN' <https://punchng.com/11200-nigerian-women-children-raped-in-2020-un/> accessed 24/03/2024 'Also reported by: Amnesty International: 'Nigeria: 2020-un/ accessed 24/03/2024 'Failure to Tackle Rape Crisis Emboldens Perpetrators and Silences Survivors' (17 November 2021) <<https://www.amnesty.org/en/latest/news/2021/11/Nigeria-failure-to-tackle-rape-crisis-emboldens-perpetrators-and-silences-survivors/>> accessed 03/08/2022

<sup>8</sup>In February 2023, the Nigerian Human Rights Commission established a Panel to investigate allegations of systemic and coerced abortions by the national Armed Forces, affecting thousands of women and girls, many of whom had been kept captive and subjected to conflict related sexual violence. Report of the United Nations Secretary UN, 'Conflict-Related Sexual Violence. Report of the United Nations Secretary General, 2023' <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2023/07/SG-REPORT-2023SPREAD-1.pdf> accessed 24/03/2024

<sup>9</sup>Amnesty International, 'Boko Haram:2000 women and girls abducted-many forced to join attacks-new report' (10 April 2015) < <https://www.amnesty.org.uk/press-releases/boko-haram-2000-women-and-girls-abducted-many-forced-join-attacks-new-report> > accessed 11 August 2022

<sup>10</sup>BBC News, 'Dapchi Abductions: Schoolgirls finally home', < <https://www.bbc.com/.../world-africa-> > see also BBC News, 'Chibok Abductions: What we Know'- < <https://www.bbc.com/world-africa-> >

<sup>11</sup>Amnesty International, 'We Dried Our Tears- Addressing the Toll on Children of Northeast Nigeria Conflict' (2020) <

are subjected to slavery, where they are repeatedly raped by men or sold off. Some of these forms of sexual violence have been used by insurgents as a terror tactic to prevent girls from going to school.<sup>12</sup> For instance, a large number of the school girls abducted by the insurgent group were married off to the insurgents. Some of these girls have returned with horrifying tales of sexual violence while others have returned with children born out of it.<sup>13</sup> In 2024, an estimated 200 women were abducted in IDP camps in Gamboru-Ngala town in North-east Nigeria.<sup>14</sup>

The crime of sexual violence, while typically committed in the heat of the conflict or upon capture, is also sadly committed in IDP camps where victims of the insurgency seek refuge<sup>15</sup> in host communities as well as in detention centres. Displaced persons easily become victims of sexual violence because the armed conflict has aggravated their vulnerability by placing them in unfamiliar territories and at the mercy of unfamiliar persons. Over 1.8 million people have been displaced because of the

<sup>12</sup> <https://www.amnesty.org/en/documents/afr44/2322/2020/en/> > accessed 30<sup>th</sup> July 2022

<sup>13</sup> BBC News 'Boko Haram to Sell Nigeria Girls abducted from Chibok', (5 May 2014) < <https://www.bbc.com/news/world-africa-27283383> > accessed 10 August 2022

<sup>14</sup> AP "Kidnapped Nigerian Girls Freed, Return to Chibok with Babies", <https://apnews.com/article/boko-haram-chibok-nigeria-extremism-iswap-borno-kidnap-1dd99c17360b54afd8a9fa5ef14fab6f> accessed 24/03.2024

<sup>15</sup> BBC Kano News, 6<sup>th</sup> March 2024, 'Nigeria's Boko Haram Crisis: Dozens of women feared abducted in Gamboru Ngala' <https://www.bbc.com/news/world-africa-68490001> accessed 27/03/2024

<sup>16</sup> HumanRightsWatch, 'Nigeria: Officials Abusing Displaced Women, Girls' <<https://www.hrw.org/news/2016/10/31/nigeria-officials-abusing-displaced-women-girls> > accessed 06/08/2023 see also BBC News 'Boko Haram Crisis: Amnesty Accuses Nigerian Troops of Rape' <<https://www.bbc.com/.../world-africa>> accessed 06/08/2023

conflict of which 54% are female.<sup>16</sup> The conditions of displacement either in camps, informal settlements or host communities often exposes women and girls to sexual violence such as rape and sexual exploitation (*survival sex*).<sup>17</sup> Sometimes perpetrators are able to commit these crimes because displaced camps are situated in remote areas and especially when displaced women or girls go out in small numbers to fetch water where there is hardly anyone to witness it.<sup>18</sup> Women and girls are also sexually exploited in camps where they are forced to become wives or girlfriends of *soldiers, Civilian Joint Task Force (CJTF) and camp managers*.<sup>19</sup> Refusal to comply often meant that they would be denied food or other assistance and even face threat to their life or a family member's life.<sup>20</sup>

Although the armed conflict is not over yet, there is a general gradual abatement thereof and some of the victims that had been displaced are gradually returning back to their homes while others remain in IDP camps still. As part of post-conflict transitional justice mechanism, it is significant that the victims of the dreadful acts of sexual violence are identified and their injuries redressed in a system of reparations. Accordingly, this paper critically examines the rights of victims of sexual

<sup>16</sup> UN Women, 'Rapid Gender Analysis: North East Region Nigeria' (2020) <<https://africa.unwomen.org/en/digital-library/publications/2020/09/rapid-gender-analysis-north-east-nigeria> > accessed 6 August 2022

<sup>17</sup> Graphic details to be found in: HumAngle, reported by Abdulkareem Haruna, Dec 12, 2021, 'Sexual Violence Against Borno IDPs could be worse in resettled communities' <https://humanglemedia.com/sexual-violence-against-borno-idps-could-be-worse-in-resettled-communities/> accessed 27/03/2024

<sup>18</sup> Amnesty International, "They Betrayed Us": Women who Survived Boko Haram, Raped, Starved and Detained in Nigeria' (2018) p52 < <https://www.amnesty.org/en/documents/afr44/8415/2018/en/> > accessed 7 August 2022

<sup>19</sup> Situational Assessment of Internally Displaced Persons in North-East Nigeria, (NOIPolls Survey Report, September 2016) <<http://www.noi-polls.com/root/index.php?pid=403&parentid=14&ptid=1>> accessed October 2018

<sup>20</sup> Ibid

violence to receive reparations under international and domestic law, as well as the obligations of States under international law to make these reparations. It proceeds on the assumption that these rights exist and goes forth to examine the scope of the framework as well as the extant institutional mechanisms to implement this process. The paper is policy-oriented and directed to the Nigerian government, NGOs, Civil Society and all those who identify as Stakeholders.

**Clarification of Key Concepts**

**i. Non-International Armed Conflict**

Non-international armed conflicts are armed conflicts in which one or more non-state armed groups are involved. Depending on the situation, hostilities may occur between governmental armed forces and non-state armed groups or between such groups only.<sup>21</sup> Situations of internal disturbance and tension, such as riots, sporadic acts of violence and other acts of a similar nature, are not considered to be armed conflicts.<sup>22</sup> To be regarded as such, the conflict in question must reach a certain threshold of intensity activated by parties to the conflict that are highly organized in command structure and combat capabilities.

**ii. Conflict-Related Sexual Violence**

The term “conflict-related sexual violence” refers to rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any

<sup>21</sup> ICRC, ‘Non -international Armed Conflict’ How does Law protect in War? IHL Databases [https://casebook.icrc.org/a\\_to\\_z/glossary/non-international-armed-conflict](https://casebook.icrc.org/a_to_z/glossary/non-international-armed-conflict) accessed 09/02/2024

<sup>22</sup> Doctors Without Borders, ‘The Practical Guide to Humanitarian Law’ <https://guide-humanitarian-law.org/content/article/3/non-international-armed-conflict-niac/> accessed 09/02/2024. Also see Article 1, Protocol 1 (1977) Additional to the Geneva Conventions of August 1949.

form of sexual violence of comparable gravity perpetrated against women, men, girls or boys that is directly or indirectly linked to a conflict.”<sup>23</sup>

**Profile of Survivors**

Sexual violence is a crime committed on both males and females. However, while cases where men and boys are victims may exist as a result of the northeast armed conflict, only acts committed on women and girls have been largely and publicly reported. In 2019, UNHCR reported that in 1666 cases of sexual violence among IDPs across the BAY states, 98% were women while only 2% were men.<sup>24</sup> Boys were made victims of sexual violence in detention centres when they were detained with older cell mates. Children below the age of 18 have continued to face all forms of sexual violence in the BAY states. In 2019, reports have shown that 34% of reported cases of sexual violence were girls under the age of 18.<sup>25</sup> Boys below the age of 18 have also fallen victim to sexual violence in camps and in detention centres.

**Profile of Perpetrator**

Sexual violence in the northeastern conflict has been perpetrated by actors from both sides of the conflict. This includes non-state armed actors, armed state actors as well as non-armed state actors. Some of the non-state armed actors of the different factions of the Boko Haram group have been

<sup>23</sup> UN, “Conflict-Related Sexual Violence: Report of the United Nations Secretary General, 2023” <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2023/07/SG-REPORT-2023SPREAD-1.pdf> accessed 21/03/2024

<sup>24</sup> United Nations High Commission on Refugees ‘2019 Annual Report on Sexual and Gender Based Violence- North-East Nigeria’ (March 2020) <https://file:///C:/Users/HP/Downloads/SGBV%202019%20Annual%20Report.pdf> accessed 30<sup>th</sup> July 2022

<sup>25</sup> Ibid

described as persons who use drugs and are aggressive towards their victims and so-called wives.<sup>26</sup> Both factions of the Boko Haram group known as the ISWAP and JAS have engaged in sexual violence towards women and girls. The ISWAP faction are believed to be the perpetrators of the 2017 abduction of the over two hundred school girls in Dapchi, Yobe state.<sup>27</sup> The JAS faction were also responsible for the 2014 abduction of nearly 300 Chibok school girls.<sup>28</sup>

State actors have continuously faced allegations of sexual violence, which includes forced prostitution/sexual exploitation or survival sex perpetrated by camp managers. In early 2022 an aid worker, working for and international humanitarian organisation INTERSOS was accused of raping a teenage girl who subsequently killed herself.<sup>29</sup> Women who fled from Boko Haram captivity are being persecuted by soldiers and CJTF sometimes as punishment for being so called wives of Boko Haram<sup>30</sup>. They are repeatedly being

<sup>26</sup> Hauwa Shafii Nuhu, 'The Drug and Sex Lives of Boko Haram Terrorists' *Humangle* (17 May 2022) <<https://humanglemedia.com/the-drug-and-sex-lives-of-boko-haram-terrorists/>> accessed 1 August 2022

<sup>27</sup> BBC News, 'Islamic State and the Kidnap of Nigerian Schoolgirls from Dapchi' (29 March 2018) <<https://www.bbc.com/news/world-africa-43570488>> accessed 16 June 2020

<sup>28</sup> CNN 'As Many as 200 Girls Abducted by Boko Haram: Nigerian Officials' (15 April 2014) <<https://www.cnn.com/2014/04/15/world/africa/nigeria-girls-abducted/index.html>> accessed June 2021

<sup>29</sup> Daily Trust 'IDP commits suicide after being raped by NGO official' (19 January 2022) <<https://dailytrust.com/breaking-idp-commits-suicide-after-being-raped-by-ngo-official>> accessed 31<sup>st</sup> July 2022

<sup>30</sup> Nigeria:officials Abusing Displaced Women, Girls, see <https://www.hrw.org/news/2016/10/31/nigeria-officials-abusing-displaced-women-girls>, visited 21/10/2018. see also Boko Haram Crisis: Amnesty Accuses Nigerian

raped, beaten and forced into false marriages and relationships.<sup>31</sup> A report in 2016 by NOIPolls, showed that over 66% of the persons said to be responsible for sexual violence in camps were camp officials.<sup>32</sup>

### iii. Reparation

The term reparation is difficult to define as it may take many forms and is dependent on its usage.<sup>33</sup> It has been literally defined as the redress of an injury or amends for a wrong inflicted.<sup>34</sup> It is also commonly misconceived to mean only monetary compensation whereas in fact it may include monetary compensation, but it encompasses more than just monetary compensation.<sup>35</sup>

Reparation refers to the process and result of remedying the damage or harm caused by an unlawful act. The purpose of reparation is generally understood to reestablish the situation that existed before the harm occurred. It can also serve as a measure to end ongoing breaches and to deter future ones, as a vehicle for reconciliation or to restore relations between the violator and injured parties, as well as a basis to repair or rehabilitate physical and psychological integrity and dignity.<sup>36</sup> Victims

Troops of Rape-BBC News, <https://www.bbc.com/.../world-africa> accessed 21/10/2018

<sup>31</sup> Ibid

<sup>32</sup> (n.19)

<sup>33</sup> Daly, K., & Scifoni, G., 'Reparation and Restoration' in Michael Tonry (ed.) *Oxford Handbook of Crime and Criminal Justice* (New York Oxford University Press 2010) p 1

<sup>34</sup> Black's Law Dictionary, Free Online Legal Dictionary, 2<sup>nd</sup> Edition <<https://thelawdictionary.org/reparation/>> accessed 20/10/2018

<sup>35</sup> Evans C., *The Right to Reparation in International Law for Victims of Armed Conflict* (Cambridge University Press 2012) p 13 "Reparations" Bibliographies, <https://www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0003.xml> accessed 21/03/2024

of human rights and humanitarian law abuses have a right to reparation and reparation measures include restitution,<sup>37</sup> compensation,<sup>38</sup> rehabilitation<sup>39</sup> and satisfaction.<sup>40</sup>

Under international law, reparations are made by States for their internationally wrongful acts, to other States.<sup>41</sup> The concept of reparations for victims of violations of human rights or of international humanitarian law is relatively new in international law. It is part of the right to a remedy as recognized under international law for victims of serious violations of international humanitarian law and human rights law.<sup>42</sup>

### International Legal Instruments for the Right to Reparation and the Institutional Frameworks for Implementation.

Nigeria is a party to many international treaties that protect the rights of persons against sexual violence and in some cases, provide for the right to reparations. Nigeria, therefore, has the legal obligation to implement the rights stipulated in these treaties.<sup>43</sup>

<sup>37</sup> Which should restore the victim to their original situation before the violation occurred, e.g. restoration of liberty, reinstatement of employment, return of property, return to one's place of residence.

<sup>38</sup> Which should be provided for any economically assessable damage, loss of earnings, loss of property, loss of economic opportunities, moral damages.

<sup>39</sup> Which should include medical and psychological care, legal and social services.

<sup>40</sup> Which should include the cessation of continuing violations, truth-seeking, search for the disappeared person or their remains, recovery, reburial of remains, public apologies, judicial and administrative sanctions, memorials, and commemorations.

<sup>41</sup> As stipulated in the Draft Articles on State Responsibility for Internationally Wrongful Acts 2001, which is a reflection of Customary International Law.

<sup>42</sup> (GCI, art. 51; GCII, art. 52; GCIII, art. 131; GCIV, art. 148; API, art. 91; Customary IHL (CIHL) Rules 149 and 150).

<sup>43</sup> 'These treaties protect the human rights of persons against sexual violence as such acts infringe upon a number of human rights, which include the right to life; to liberty and security of the person; to privacy; to not be subjected to torture or other cruel, inhuman or degrading treatment or punishment; to equality; to equal protection under

Under International Human Rights Law (IHRL), Nigeria has endorsed the Universal Declaration of Human Rights (UDHR)<sup>44</sup> and is a State party to the International Covenant on Civil and Political Rights (ICCPR),<sup>45</sup> International Covenant of Economic, Social and Cultural Rights (ICESCR),<sup>46</sup> the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),<sup>47</sup> Optional Protocol on the Convention Against Torture (CAT-OP),<sup>48</sup> the Convention on the Rights of the Child (CRC),<sup>49</sup> Optional Protocol on the Convention of the Rights of the Child in Armed Conflict (CRC-OP-AC),<sup>50</sup> Optional Protocol on the Convention of the Rights of the Child on the sale of Children, Child Prostitution and Child Pornography (CRC-OP-SC),<sup>51</sup> Convention on the Elimination of all forms of Discrimination against Women (CEDAW).<sup>52</sup>

IHRL applies both during peacetime and during armed conflict, therefore, survivors of CRSV may seek for reparations through some of the UN treaty bodies through individual complaints.<sup>53</sup> Through the procedure of

the law; and to be free from all forms of discrimination.' United Nations, 'Handbook for United Nations Field Missions on Preventing and Responding to Conflict Related Sexual Violence' (2020) p20

<sup>44</sup> GA res 217A (III) UNGAOR 3<sup>rd</sup> Sess, supp No.13, UNDOC A/810(i948)71.

<sup>45</sup> GA res 2200A (XXI) 16 December 1966, entered into force on 23<sup>rd</sup> March 1976

<sup>46</sup> Ratified by Nigeria 29 July 1993

<sup>47</sup> GA res 39/46 annex 39 UNGAOR Supp (No 51) at 197, UNDOC A/39/51 (1984)

<sup>48</sup> 1465. Ratified by Nigeria 28 June 2001

<sup>49</sup> Ratified by Nigeria 27 July 2009

<sup>50</sup> GA res 44/25, Annex 44 UNGAOR Supp. (No.49) at 167 UNDOC A/44/49 (1989); 1577. Ratified by Nigeria 19 April 1991

<sup>51</sup> Ratified by Nigeria 25 September 2012

<sup>52</sup> Ratified by Nigeria 27 September 2010

<sup>53</sup> GAOR, 68<sup>th</sup> Ses, Supp. No49, 15<sup>th</sup> June 2014 A/RES/68/138 Ratified by Nigeria 13 June 1985

United Nations FactSheet 'Individual Complaints Procedures under the United Nations Human Rights Treaty Bodies', < 1313354\_HR\_Fact\_Sheet\_Rev.2\_ >

individual complaints, survivors 'may bring a complaint against a State party alleging a violation of treaty rights to the body of experts monitoring the treaty. Also, Nigeria has accepted the inquiry procedure for CAT and CEDAW-OP which means that survivors may submit information to the monitoring bodies on how their rights under the treaties are being violated.<sup>54</sup> This way an inquiry or investigation can commence.

Nigeria is also bound by International Humanitarian Law (IHL), which is applicable during armed conflict. Article 3 common to the four Geneva Conventions of August 1949, Additional Protocol II relating to the protection of victims of non-international armed conflicts, as well as Customary International Humanitarian Law applicable to non-international armed conflicts prohibit rape and all forms of sexual violence during armed conflict.<sup>55</sup> Under IHL most forms of sexual violence, including sexual slavery, are considered war crimes.<sup>56</sup> International Law provides that a State is responsible for violations of international humanitarian law committed by its armed forces, by persons or entities it empowered to exercise elements of governmental authority; violations committed by persons or groups acting in fact, on its instructions, or under its direction or control; and violations committed by private persons or groups which it acknowledges and adopts as its own.<sup>57</sup> Under IHL states can be held responsible for these violations and are required to make full reparation for the loss or injury caused<sup>58</sup>

accessed 9 August 2022. Nigeria accepted the individual complaint procedure for the Optional Protocol for CEDAW on 22nd November 2004

<sup>54</sup> United Nations Human Rights Treaty Bodies, UN Treaty Database, <[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=127&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=127&Lang=EN)> accessed 9 August 2022

<sup>55</sup> Rule 93 Customary International Humanitarian Law (CIHL) and Article 4 Additional Protocol II to the Geneva Conventions

<sup>56</sup> Rule 94 CIHL

<sup>57</sup> Rule 149 CIHL

<sup>58</sup> Rule 150 CIHL

International Criminal Law forbids sexual violence and describes it as crimes against humanity and may be punishable as war crimes. The Rome Statute of the International Criminal Court confers on the ICC powers to prosecute and punish cases of 'rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity' which it prescribes as crimes against humanity.<sup>59</sup> It also includes enslavement, torture and other inhumane acts of similar nature under crimes against humanity which other forms of sexual violence may fall within its purview.<sup>60</sup>

The ICC has the power to order for reparations upon a conviction to be paid either by the convict or from the Trust Fund, or both.<sup>61</sup> Nigeria has ratified the Rome Statute, thus making Nigerian citizens or crimes committed in Nigeria subject to the jurisdiction of the ICC.<sup>62</sup>

### Regional Legal Instruments

Nigeria is a party to the African Charter on Human and People's Rights,<sup>63</sup> and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). The Maputo Protocol particularly calls on member States to protect women against all forms of sexual violence during armed conflict.<sup>64</sup> Victims can thus bring complaints to the African Commission on Human and People's Rights alleging violations of the Charter and other human rights instruments. Nigeria has also ratified the Protocol to the Charter which establishes the African Court on Human and Peoples Right which complements the

<sup>59</sup> Article 7 (1) (g) Rome Statute

<sup>60</sup> Article 7 (1) (c), (f) & (K) Rome Statute

<sup>61</sup> Article 75 Rome Statute

<sup>62</sup> Nigeria ratified the Rome Statute on 27 September 2001

<sup>63</sup> Ratified by Nigeria in 1983

<sup>64</sup> Maputo Protocol, Article 11

commission's work.<sup>65</sup> The commission upon receiving complaints may after preliminary examinations decide to refer the case to the court.

Nigeria has also ratified the African Union Convention for the Protection and Assistance of Internally Displaced Persons (the Kampala Convention) which provides that '*States Parties shall establish an effective legal framework to provide just and fair compensation and other forms of reparations, where appropriate, to internally displaced persons for damage incurred as a result of displacement, in accordance with international standards*'<sup>66</sup>

*'States Parties shall protect the rights of internally displaced persons regardless of the cause of displacement by refraining from, and preventing the following acts, amongst others: Sexual and gender-based violence in all its forms, notably rape, enforced prostitution, sexual exploitation and harmful practices*'<sup>67</sup>

### United Nations Resolutions

United Nations Security Council Resolutions as 'soft law' support the framework for the protection of persons against conflict related sexual violence. UN resolution 1325<sup>68</sup> laid the foundation for the participation and inclusion of women in peace and security issues.<sup>69</sup> Several

resolutions on the women, peace and security agenda (WPS)<sup>70</sup> which specifically addressed CRSV and reparations followed resolution 1325.

**Resolution 1820**<sup>71</sup> condemns the use of sexual violence as a tool of war and declares that rape and other forms of sexual violence can constitute war crimes, crimes against humanity or constitutive act with respect to genocide.<sup>72</sup> **Resolution 1888**<sup>73</sup> strengthens efforts to end sexual violence in conflict by establishing a Special Representative of the Secretary-General and team of experts on rule of law and sexual violence in conflict, deploying expertise and improving coordination among stakeholders involved in addressing conflict related sexual violence.<sup>74</sup> The progress so far achieved by the office includes amongst other things greater visibility, political will, more strategic and structured engagement with the security and justice sectors.<sup>75</sup> The office publishes reports annually. Nigeria was included in its 2017 report.<sup>76</sup> **Resolution 1960**<sup>77</sup> establishes a monitoring and reporting mechanism on sexual violence in conflict. **Resolution 2106**

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that specific relief and recovery needs of women and girls are met. The Federal Republic of Nigeria National Action Plan for the Implementation of UNSCR 1325 and Related Resolutions in Nigeria 2017 – 2020

<sup>70</sup> **Resolution 1889** stresses the need to strengthen implementation and establishes indicators for the monitoring of resolution 1325 (Adopted by the Security Council at its 6196<sup>th</sup> meeting on 5 October 2009, S/RES/1889(2009)

<sup>71</sup> Adopted by the Security Council at its 5916<sup>th</sup> meeting on 19 June 2008, S/RES/1820/2008

<sup>72</sup> Item 4, /RES/1820/2008

<sup>73</sup> Adopted by the Security Council at its 6195<sup>th</sup> meeting on 30<sup>th</sup> September 2009, S/RES/1888(2009)

<sup>74</sup> United Nations Office of the Special Representative of the Secretary General on Sexual Violence in Conflict see [www.un.org](http://www.un.org) accessed 30<sup>th</sup> November, 2018

<sup>75</sup> *ibid*

<sup>76</sup> *ibid*

<sup>77</sup> Adopted by the Security Council at its 6453<sup>rd</sup> meeting on 16<sup>th</sup> December 2010, S/RES/1960 (2010)

<sup>65</sup> Adopted on 9 June 1988 and came into force on 25 January 2004

<sup>66</sup> Article 12, Kampala Convention

<sup>67</sup> Article 9, Kampala Convention

<sup>68</sup> Adopted by the Security Council at its 4213<sup>th</sup> meeting on 31 October 2000, S/RES/1325(2000). The resolution consists of four pillars 1) The role of women in conflict prevention. 2) Their participation in peace-building 3) the protection of their rights during and after conflict 4) their specific needs during repatriation, resettlement and for rehabilitation, reintegration and post conflict reconstruction. See <https://dpa.un.org/en/women-peace-and-security> accessed 1st December, 2018

<sup>69</sup> In August 2013, the Nigerian government launched a National Action Plan (NAP) on the implementation of resolution 1325. One of the objectives of the NAP is to ensure

<sup>78</sup> focuses on accountability for perpetrators of sexual violence in conflict. **Resolution 2122**<sup>79</sup> recognizes the differential impact of all violations in conflict on women and girls and calls for consistent application of women peace and security across the Security Council's work. Recalls in this regard applicable provisions of international law on the right to reparations for violations of individual rights.<sup>80</sup> **Resolution 2242**<sup>81</sup> recommends concrete steps to combat sexual exploitation and abuse in UN peacekeeping operations.<sup>82</sup> **Resolution 2349**<sup>83</sup> which is very specific to Nigeria's northeast conflict also addresses conflict related sexual violence. The resolution stresses the need and encourages governments to rehabilitate and re-integrate women and children associated with the insurgents.

Another important instrument is the United Nations Basic Principles and Guidance (UNBPG) which provides generally for reparation to victims of violations of international humanitarian law and human rights law. Sexual violence falls within this purview by virtue of its definition and prohibition under various IHL, IHRL and ICL provisions as a gross violation of these rights.

<sup>78</sup> Adopted by the Security Council at its 6984<sup>th</sup> meeting on 24<sup>th</sup> June 2013 S/RES/2106 (2013)

<sup>79</sup> Adopted by the Security Council at its 7044<sup>th</sup> meeting on 18 October 2013, S/RES/2122(2013)

<sup>80</sup> See Paras13 of Res2122 which recalls applicable provisions of international law on the right to reparations for violations of individual rights.

<sup>81</sup> Adopted by the Security Council at its 7533<sup>rd</sup> meeting on 13 October 2015, S/RES/2242(2015)

<sup>82</sup> See also Paras 14 of Res 2242 which urges member states to strengthen access to justice of women by providing reparations for victims of sexual violence. See also Paras 30 of Res 2349 which encourages governments and stresses the need to rehabilitate and re-integrate women and children associated with the insurgents

<sup>83</sup> Adopted by the Security Council at its 7911<sup>th</sup> meeting, on 31 March 2017 S/RES/2349 (2017)

## National Legal Instruments

Nigerian domestic laws generally criminalize different forms of sexual violence and impose punishments which range from 14 years to life imprisonment.<sup>84</sup> The **Penal Code**<sup>85</sup> applicable to the Northern parts of Nigeria is often used to prosecute rape cases.<sup>86</sup> The code also provides generally that anyone found guilty of a crime under the code can also be made to pay compensation to any person injured in addition to the punishment imposed on the convict.<sup>87</sup>

Similar provisions are contained in the **Armed Forces Act**<sup>88</sup> but only applicable to armed forces.<sup>89</sup> Soldiers of the Nigerian Army who are accused of sexual violence may be convicted by a Court-Martial under the Act. The Act, however, makes no mention of reparation or compensation to be paid by an offender to victims of sexual violence. It however, stipulates that an offender can have his pay deducted to pay compensation for civil penalties.<sup>90</sup>

Another relevant law is **Violence against Persons (Prohibition) Act 2015 (VAPPA)**. The VAPPA is a recent law which prohibits different forms of sexual violence. The VAPPA incorporates a broader definition of sexual violence which now includes both males and females as likely victims of sexual violence.<sup>91</sup> Additionally, the Act increases the

<sup>84</sup> PC s 283

<sup>85</sup> Penal Code (Northern States) Federal Provisions Act (No. 25 of 1960)

<sup>86</sup> PC s282

<sup>87</sup> PC s78

<sup>88</sup> Armed Forces Act Cap A20 LFN 2004

<sup>89</sup> Armed Forces Act, s77 and s78

<sup>90</sup> S. 206 and 207 Armed Forces Act

<sup>91</sup> VAPPA s1. This section makes reference to any person being a victim of rape as long as he/she is being coerced and the perpetrator intentionally penetrates the vagina, anus or mouth of the victim. This in essence can be meted out on both males and females unlike the Penal code which specifically refers to females as victims

punishment of perpetrators of rape to life imprisonment and also explicitly provides that survivors may be compensated.<sup>92</sup> The VAPPA has been domesticated in Borno, Adamawa and Yobe States.<sup>93</sup>

Procedurally, in order for survivors to access reparations or compensation pursuant to the existing laws, the accused persons must be convicted before the survivor can file a civil suit. However, with the enactment of **Administration of Criminal Justice Act 2015**, survivors may be compensated by the defendants irrespective of any other fine or punishment imposed. The court may also order the defendant to pay money for 'expenses incurred on medical treatment of a victim'.<sup>94</sup> Although the Law is yet to be domesticated in Borno state, there are strong moves by lawmakers in 2022 to do so.

Nigeria has national agencies or institutions which address sexual violence issues. The National Human Rights Commission (NHRC) monitors human rights violations and entertains human rights complaints to pursue justice for those whose rights have been infringed. In 2020 alone it recorded over 12,000 complaints of sexual and gender-based violence in the BAY states.<sup>95</sup>

### **Opportunities/Avenues for Survivors to Access Reparations**

Although there is not in existence a clearly articulated reparations plan by the Nigerian government, there exists different initiatives for victims of reparations, among which is the Victims Support Fund (VSF). In 2014, the Nigerian government established the VSF, a public-private

<sup>92</sup> VAPPA s3

<sup>93</sup> Yobe State domesticated the VAPPA on 22<sup>nd</sup> December, 2020, Adamawa state in September 2021 while Borno in January 2022

<sup>94</sup> Administration of Criminal Justice Act 2015, s319

<sup>95</sup> 2020 Annual Report, National Human Rights Commission p47&48

partnership aimed at supporting the recovery of victims of terrorism.<sup>96</sup> Another hugely beneficial initiative is the establishment of the Ministry of Reconstruction, Rehabilitation and Resettlement by Borno State government to facilitate the resettlement of displaced communities from the Boko Haram conflict.<sup>97</sup> There are also efforts made by non-governmental organizations, like the establishment of the Sexual Assault Referral Centres in Borno, by the British Council<sup>98</sup>

### **Analysis**

From the foregoing appraisal it has been established that there is an extant legal framework for the award of reparations to victims of conflict-related sexual violence and this framework cuts across international, regional and domestic frontiers. What is unsettled, therefore, is the presence of a clear, mandatory and forceful institutional work plan to drive the objectives of the law. Most of the time, the law is set into motion by individuals that seek redress or amends from wrongful conduct. In a situation when the individual victims are wronged by actions that involve the culpability of their own government, it may be a complex situation; for instance, where the government has to punish members of its own armed forces who are

<sup>96</sup> UNODC 'As part of the wider efforts to mark the International Day of Remembrance of and Tribute to the Victims of Terrorism, UNODC sat down with Professor Tanko from the Victims Support Fund' <https://www.unodc.org/conig/en/stories/as-part-of-the-wider-efforts-to-mark-the-international-day-of-remembrance-of-and-tribute-to-the-victims-of-terrorism--unodc-sat-down-with-professor-tanko-from-the-victims-support-fund.html>

accessed 30/03/2024

<sup>97</sup> The Guardian News Nigeria reported by Njadvara Musa on 19 September 2015 'Borno Creates Ministry to Rebuild, Rehabilitate Communities Destroyed by Insurgents' <https://guardian.ng/news/borno-creates-ministry-to-rebuild-rehabilitate-communities-destroyed-by-insurgents/> accessed 12/12/2018

<sup>98</sup> Borno Partners British Council to Set up Sexual Abuse Response C <http://thecagleonline.com.ng/borno-partners-british-council-to-set-up-sxual-abuse-response-centre/> accessed 12/12/2018

still fighting on its behalf, for violations of the law of armed conflict. Furthermore, the government itself, for not adequately protecting its people from these acts of sexual violence, may be culpable for violations of human rights law. Against this background, it is obvious that the existence of a robust legal framework is not enough. This framework must be supported by more. Presently, there are non-governmental organizations that are deeply invested in protecting the rights of the victims of CRSV. Also, the government, particularly of Borno State, the main theatre of conflict, has gone to lengths to restore normalcy to the lives of these victims. The Borno State Government on 25 February 2024 began the closure of all informal camps for internally displaced persons (IDPs) in Maiduguri and its environs with a plan to close all the camps by 29 May 2024.<sup>99</sup> Following the closure of the camps, the Government relocated the 1,152 people in 179 households living at the Kwar Maila camp to the newly constructed 500 housing estate in Dalori town in Konduga local government area. According to Governor Zulum, the estate is equipped with a hospital, school and potable/irrigation water facilities to ensure service delivery for the returnees. The Government also distributed food items, mats, blankets and clothes to the returnees to help them rebuild their lives.<sup>100</sup>

While all the above indicate a gradual move towards justice, it is pertinent to note that stakeholders should not rest on their oars; they should ensure that the whole package of reparations is accessed to address the most heinous of crimes. Accordingly, the paper makes the following recommendations:

1. It is highly recommended that relevant stakeholders, including non-governmental organizations, human-rights lawyers and the

<sup>99</sup> OCHA 'Nigeria: Situation Report (18<sup>th</sup> March 2024) Borno State Government begins Closure of Informal IDP Camps.' <https://reports.unocha.org/en/country/nigeria/> accessed 30/03/2024

<sup>100</sup> Ibid

Academia should partner and produce a single document on the strategic work plan on the award of reparations to victims of CRSV in non-international armed conflict. This working document should be an extraction of the law, identifying specific areas of restitution, rehabilitation, compensation and satisfaction. The specific actions required to be taken by government, with timelines, should be clearly articulated. An example of such specific requirements which falls under the umbrella of 'satisfaction' is a clause that stipulates that where officers, military or civilian are tasked with coordinating the affairs of IDP camps, more female officers should be engaged to oversee the welfare and condition of female IDPs. Secondly, in line with the Geneva Conventions and their Additional Protocols, humanitarian organizations like the ICRC should be given periodic access to the IDP camps to assess the well being of the IDPs and report any infractions to the government.

2. Public-Private Partnerships in securing the rights to reparations of victims of CRSV should be incorporated as part of policy document, as the private sector continuously supports the efforts of government in myriads of ways. The private sector may support government in the provision of financial compensation to these victims on well-articulated terms.
3. Access to help and justice to the civilian population: One of the ways to prevent violations of human rights in conflict situations is for the civilians to be empowered with knowledge about their rights, where or who they may go to when these rights are violated and how to get justice against violators. Members of the civilian population, both literate and illiterate are generally uneducated about their rights in armed conflict situations. There should be coordinated effort to educate everyone about their rights under international law of armed conflict. There should be a massive project to translate the conventions and protocols into local

languages. Civilians have obligations to obey the restrictions contained in these laws and they have a right to know all these. Under international law they have a right to compensation and redress and they need to be empowered with adequate knowledge of this.