

CHAPTER 15

THE LEGAL PROTECTION OF INTERNALLY DISPLACED PERSONS IN NIGERIA: CHALLENGES, IMPERATIVES AND COMPARATIVE LESSONS

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1 Introduction

While much of the global attention has been focused on the issue of refugee protection, internal displacement is a pertinent challenge in many parts of the world.¹ Across Africa, the issue of internal displacement has emerged as a pertinent challenge, the gravity and severity of which has been recognised through the formation of hard law on the subject.² Increasingly, states have become mindful of the fact that the realisation of a united and developed Africa cannot be isolated from the protection of displaced populations.³ While this realisation has shaped the impetus for strategic guidance at the regional level, there is yet the challenge of

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1 *United Nations Guiding Principles on Internal Displacement* (1998); R Cohen & FM Deng *Masses in flight: The global crisis of internal displacement* (1998); J Hampton *Internally displaced people: A global survey* (2002); R Cohen 'Internal refugees need attention on World Refugee Day' *Brookings* 20 June 2005; P Barnerjee 'Resisting erasure: Women IDPs in South Asia' in P Barnajee, SBR Chaudhury & SK Das *Internal displacement in South Asia: The relevance of the UN's Guiding Principles* (2005); C Phuong *The international protection of internally displaced persons* (2004); TG Weiss & DA Korn *Internal displacement: Conceptualisation and its consequences* (2006); AM Abebe *The emerging law of forced displacement in Africa: Development and implementation of the Kampala Convention on internal displacement* (2017); A Bilak 'Getting to the heart of the global displacement crisis' *Internal Displacement Monitoring Centre* 16 May 2018; DJ Cantor *Returns of internally displaced persons during armed conflict: international law and its application in Columbia* (2018); J Macaya 'IDPs: Invisible citizens or blinded authorities' *The New Context* 29 August 2018; W Kálin 'Innovative global governance for internally displaced persons' *World Refugee Council Research Paper 10*, April 2019.

2 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, adopted at the Special Summit of the African Union Heads of States and Government in Kampala, Uganda 19-23 October 2009 (Kampala Convention).

3 African Union Executive Council Decision on Humanitarian Situation in Africa EX.CL/Dec.968 (XXXI) adopted at the 31st ordinary session of the Executive Council, Addis Ababa, Ethiopia 27 June-1 July 2017; African Union Assembly Decision on the 2019 Theme of the Year 'The Year of Refugees, Returnees and Internally Displaced Persons: Towards durable solutions to forced displacement in Africa' Assembly/AU/Dec.707 (XXXI), adopted at the 31st ordinary session of the Assembly of the Union, Nouakchott, Mauritania 1-2 July 2018.

protection at the national level that resonates both in the normative gaps and the problem of institutional capacity for the furtherance of protection of internally-displaced persons (IDPs) in many African countries. In Nigeria this is also a challenge.

While not being a recent phenomenon (given the waves of riots and ethnic tensions which have been notable challenges in Nigeria) the issue of internal displacement continues to be a daunting problem.⁴ However, in more recent years it has most been notably pronounced through the Boko Haram insurgency that started in 2009.⁵ In the early periods of the insurgency, what became clear was that the normative *lacuna* in the protection of IDPs was creating a pertinent challenge that needed to be addressed. This insurgency in the north-eastern region, which has been characterised as an armed conflict, has led to the displacement of more than 2 million people over the last two decades.⁶ While the armed conflict situation in the north-east has notably spotlighted the issue, the problem of internal displacement in Nigeria has been exacerbated by other issues such as: natural disasters, generalised violence and development projects.

However, in spite of its prevalence, the normative landscape of protection for this population has remained blur. This chapter argues that, drawing on the issues that resonate from internal displacement, it is relevant to develop adequate norms in response to the issues that resonate from the challenge of internal displacement. This chapter examines these issues, considering the specific drivers of internal displacement in Nigeria, the vulnerability of specific groups and the normative protection for IDPs in Nigeria. The chapter further examines the imperatives that a legal protection regime for the protection of IDPs in Nigeria should incorporate drawing on comparative lessons from Kenya, Niger and South Sudan.⁷ The chapter draws on comparative lessons from these countries given the formation of laws on IDPs in these states that also seek to draw on the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).

4 See O Ibeanu 'Exiles in their own home: Internal population displacement in Nigeria' (1998) 3 *African Journal of Political Science* 80-97; Global IDP Project 'Internal displacement in Nigeria: A hidden crisis' 1 February 2005; Internal Displacement Monitoring Centre and Norwegian Refugee Council 'Nigeria: Institutional mechanisms fail to address recurrent violence and displacement: a profile of the internal displacement situation' 29 October 2007; BA Oyeniyi 'Beyond the blame game: Theorising the Nigeria-Biafra war' in T Falola & O Ezezwem (eds) *Writing Nigeria-Biafra war* (2016) 111.

5 EE Anugwom *The Boko Haram insurgency in Nigeria: Perspectives from within* (2019).

6 See R Adeola 'Boko Haram-induced displacement: A critique of Nigeria's implementation of the African Union Internally Displaced Persons Convention' (2017) 50 *Comparative and International Law Journal of Southern Africa* 41.

7 Kenya: The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act 56 of 2012 (Kenya IDP Law); Niger: Law No 2018-74 of 10 December 2018 relating to the Protection and Assistance of Internally Displaced Persons (Niger IDP Law); South Sudan: Protection and Assistance of Internally Displaced Persons Act, 2019 (South Sudan IDP Law) (draft).

2 Challenges

The issue of internal displacement is a pertinent challenge in Nigeria. It has notably emerged as one of the issues in need of durable solutions in building an inclusive society, addressing some of the core societal tensions and avoiding future conflicts. There are five main drivers of internal displacement: armed conflict; ethnic tensions; disasters including climate change; development projects; organised crime; and armed banditry. These drivers of internal displacement are considered in turn.

The issue of armed conflict has notably emerged with the Boko Haram which has led to the displacement of more than 2 million people since inception in 2009.⁸ While structurally rooted in socio-cultural and religious differences, the Boko Haram insurgency has morphed over the last decade with allegiances of the sect to the Islamic State and contestations for a caliphate that threatens the democratic composition of Nigeria.⁹ While the sect's objectives threaten the political stability of Nigeria as a nation state, it has also created a spill-over effect on the stability of countries in the Lake Chad area. The conflict has also become the cause of the most protracted form of internal displacement in Nigeria. Aside from the Boko Haram insurgency, there is also the problem of ethnic tensions that, while not having attained the threshold of armed conflict, has notably resulted in significant population displacement. Prominent among these ethnic tensions are the clashes between herdsmen and farmers in parts of central Nigeria. Over the last five years, these clashes have resulted in the displacement of hundreds of thousands across northern states including Benue and Plateau.¹⁰ However, these clashes have also been linked to the impacts of climate change causing scarcity of resources and straining the availability of these resources between herdsmen and agrarian societies. Besides these ethnic clashes and impacts of climate change in fueling the conflicts, there is also the issue of disasters mostly due to torrential rainfalls. These disasters have also resulted in the displacement of significant populations in various parts of the country including Adamawa, Anambra, Bayelsa, Rivers and Taraba. Due to these torrential rains, more than 141 000 people were displaced in 12 states between August and September 2018.¹¹ Moreover, there is the issue of development projects. A vigorous drive towards economic development has led to the construction of several large-scale dams and invariably occasioned the displacement of

8 AN Mbiyozo 'How Boko Haram specifically targets displaced people' Institute for Security Studies, November 2017 2; 'Brother against brother: Boko Haram is becoming even more extreme' *The Economist* 24 November 2018.

9 J Zenn 'Boko Haram's conquest for the caliphate: How Al Qaeda helped Islamic state acquire territory' (2018) *Studies in Conflict and Terrorism* 1; J Ogbogu 'Analysing the threat of Boko Haram and the ISIS alliance in Nigeria' (2015) 7 *Counter Terrorist Trends and Analyses* 16-21.

10 See A Adamu & A Ben 'Nigeria: Benue state under the shadow of "herdsmen terrorism"' *World Watch Research*, November 2017; International Crisis Group 'Stopping Nigeria's spiralling farmer-herder violence' *Africa Report* 262, 26 July 2018.

11 Assessment Capacities Project ACAPS Briefing Note: Nigeria – floods (16 September 2018).

thousands of people. In the Niger Delta region oil spills have driven the displacement narrative within the context of natural resource extraction.¹² However, in more recent times, urban renewal projects have become the prominent face of development-induced displacement in Nigeria. Between 2003 and 2007, more than 800 000 individuals were displaced for the Abuja Master Plan without adequate compensation.¹³ In Lagos, approximately 34 700 people were displaced from Otodo-Gbame community without proper resettlement in 2017.¹⁴ The issue of organised crime and armed banditry has also become a recent phenomenon on the displacement landscape resulting in population displacement in parts of the north-west and north-central.¹⁵

As a consequence of internal displacement, these populations experience a plethora of challenges due to the dispossession and deprivation created by the internal displacement situation. Understanding the vulnerability that these people experience is integral to the rationale for specific protection. There are four kinds of vulnerabilities that displacement occasions.

There are general forms of vulnerabilities that touch on homelessness, the absence of basic amenities, health and food supplies. There are also gender-specific forms of vulnerabilities that may be occasioned by situations of internal displacement and this includes gender-based violence against women or issues of early, child and forced marriage for young girls. There are also issues of sexual and reproductive health that are occasioned by the absence of adequate protection in situations of internal displacement. Moreover, IDPs may also experience group-based vulnerabilities. These vulnerabilities are those that often emerge in the context of specific groups such as indigenous peoples. In situations of internal displacement, indigenous peoples experience challenges that border on the perpetuation of their cultural identities. In the Nigerian context, for instance, the situation of the Ogoni peoples reflects this, notably in view of the challenges to the cultural perpetuation of their lifestyle as fishing communities due to the impact of development projects.¹⁶ Moreover, there are also specific vulnerabilities that emerge within the context of various root causes such as armed conflict and

12 See CI Obi 'Oil extraction, dispossession, resistance, and conflict in Nigeria's oil-rich Niger Delta' (2010) 30 *Canadian Journal of Development Studies* 219-236; M Weston 'The big squeeze: Nigeria on the brink' in D Steven et al (eds) *The new politics of strategic resources: Energy and food security challenges in the 21st century* (2015) 89-96.

13 Social and Economic Rights Action Centre *Pushing out the poor: Forced evictions under the Abuja Master Plan* (2006); Centre on Housing Rights and Evictions *Nigeria: More than 800 000 residents evicted from Abuja from 2003-2007* (2008); Centre on Housing Rights and Evictions and Social and Economic Rights Action Centre *The myth of the Abuja Master Plan – Nigeria: Forced evictions as urban planning in Abuja* (2008).

14 LW Gottbrath 'Thousands displaced as police raze Lagos' Otodo Gbame' *Al Jazeera* 10 April 2017.

15 'Nigeria: Thousands living in fear as Zamfara armed bandits ramp up attacks' *Amnesty International* 31 July 2018.

16 S Juliana et al 'Ogoni protest "agents of death" in Nigeria' *Cultural Survival Quarterly Magazine* (Briefly Noted, June 1993); *Social and Economic Rights Action Centre (SERAC) & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001).

development projects. In the context of development projects, for instance, this may relate to landlessness and marginalisation, where those displaced for development projects are treated as development collaterals.

The inadequacy of normative protection for these persons accentuate the challenges they experience. At present, there is no specific law on IDP protection in Nigeria. While there have been attempts to develop law and policy responses,¹⁷ these have fallen through in the last decade mostly due to the absence of political will. However, it is notable to establish that the Kampala Convention has been ratified.¹⁸ This norm, while being context-specific to Africa, can adequately respond to the issue of internal displacement in Nigeria. However, before this is considered, it is relevant to examine forms of legal protection for IDPs in Nigeria. The most imperative source of protection for IDPs is the 1999 Nigerian Constitution which incorporates general human rights standards that are applicable to all persons.¹⁹ While this is imperative, the Constitution does not specifically provide protection for IDPs as a specific category where it reflects the issue of non-discrimination. It also does not specifically reflect on non-discrimination under the fundamental rights section that is justiciable but in the context of directive principles of state policy which cannot form the basis of an actionable claim. The import of these are that IDPs may not be able to make a claim to specific protection as a category of persons within the context of non-discrimination that may be interpreted broadly by judicial systems to grant them notable protection.

Moreover, it is pertinent to emphasise that there are norms that speak to the protection of children and persons with disabilities such as the Child Rights Act and the Disability Act.²⁰ The Child Rights Act recognises internally-displaced children as a category 'in need' for the protection of the government.²¹ Governments within states of the federation are required to 'safeguard and promote' their welfare.²² However, the generality of this provision does not provide guidance on the specificities in the context of internal displacement. While the Child Rights Act, at the very least, recognises internally-displaced children as requiring protection, the Disability Act does not incorporate similar provisions for persons with disabilities. Also, there are also no specific laws that protect women.

17 See *Federal Republic of Nigeria National Policy on Internally Displaced Persons in Nigeria* (2012); MT Ladan 'Strategies for adopting the National Policy on IDPs and domesticating in Nigeria the African Union Convention for the Protection and Assistance of IDPs in Africa' Paper presented at the National Summit on IDPs in Nigeria, Abuja, Nigeria 19-20 August 2015; 'Nigeria: New national policy on IDPs' *Daily Trust* 4 January 2019.

18 Nigeria ratified the Kampala Convention in 2012. See African Union 'List of countries which have signed, ratified/acceded to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)' (2019).

19 The Constitution of the Federal Republic of Nigeria 1999.

20 Discrimination against Persons with Disabilities (Prohibition) Act 2018; Child Rights Act 2003.

21 Child Rights Act (n 20) art 171(10)(a)(iii).

22 Child Rights Act (n 20) art 171(1)(a).

On the institutional front, the absence of a specific law on the protection of IDPs makes it unclear as to whose specific mandate it is to protect these persons. What this potentially creates and, indeed so, within the institutional landscape on IDP protection in Nigeria, are rifts between institutions and a broad confusion on whose role it is to ensure effective protection. With no institution having a clear mandate on IDP protection, adequate oversight on the protection of IDPs has also been a challenge. For instance, in the law creating the National Emergency Management Authority (NEMA), the agency is saddled with the responsibility of coordinating effective response towards disaster management.²³ Although it has been significantly involved in the protection of IDPs in the north-east, its legal mandate does not specifically provide for this, neither does the legal mandate of the National Commission for Refugees, Migrants and IDPs (NCFR) under its enabling Act specifically cover the protection of IDPs,²⁴ although by virtue of a presidential memo it was granted permission to provide durable solutions to these persons. However, the main *lacuna* in these instruments is the fact that they contain pockets of rights that may be claimed by IDPs but then are also subject to limitations. For instance, in the context of development projects, the right to property may be interpreted against specific categories such as indigenous peoples who may not have documents to prove title to land under the national legislation. However, in 2012 a draft national policy on IDPs was developed with the objective of strengthening ‘institutional mechanisms and framework’ for the purpose of realising ‘the rights, dignity and wellbeing of vulnerable populations through the prevention of the root causes, mitigation of the impact and achievement of durable solutions to internal displacement in Nigeria’.²⁵ While the draft policy accentuates the need to prevent arbitrary displacement, addresses situations of displacement due to various root causes, sets out the role of the government, humanitarian agencies, host communities and armed groups, it is yet to be adopted.²⁶ Moreover, it accentuates the need for a ‘legal framework for upholding the rights of internally-displaced persons including domestication and implementation of the Kampala Convention’.²⁷ The next part this chapter accentuates pertinent areas which a national framework on IDPs should

23 See National Emergency Management Authority (Establishment, Etc) Act 1999, art 6.

24 Art 4 of the National Commission for Refugees (Establishment, Etc) Act provides: ‘(1) The functions of the Commission shall be to (a) lay down general guidelines and overall policy on general issues relating to refugees and persons seeking asylum in Nigeria; (b) advise the Federal Government on policy matters in relation to refugees in Nigeria; (c) consider such matters as the Secretary to the Federal Government may, from time to time, refer to it and make recommendations thereon to the Secretary to the Federal Government. (2) The quorum of the Commission shall be three. (3) The Commission may appoint such committees as it may deem necessary to deal with specific aspects of refugee problems in Nigeria. (4) When there is a large scale influx of persons claiming to fall within the meaning of refugees under this Act, the Commission shall meet on an emergency basis and advise the Federal Government on the appropriate measures to be taken, including the provision of adequate facilities and services, necessary for the care of the particular group of persons affected by the influx.’ See National Commission for Refugees (Establishment, Etc) Act 2004 art 4.

25 Federal Republic of Nigeria (n 17) para 2.3.

26 Nigeria: New national policy on IDPs’ (n 17) para 4.1.

27 Nigeria: New national policy on IDPs’ (n 17) para 4.1(5).

incorporate in the protection and assistance of IDPs in Nigeria, drawing on the provisions of the Kampala Convention and the normative response of Kenya, Niger and South Sudan.

3 Imperatives and comparative lessons

In developing a normative framework for the protection of IDPs, there are key normative imperatives that should be reflected. Notably, there has to be general provisions on protection and assistance and the instrument must also define the functions of various institutions including those that exist in order to strengthen the institutional response mechanism. Moreover, it is important that the preliminary provisions of the framework should accentuate the purpose of the instrument: protection and assistance of IDPs within the specific territory. The laws of both Kenya and South Sudan stress this point. The South Sudan IDP law provides that the purpose of the law is 'to establish a legal framework for preventing arbitrary displacement, provide protection and assistance as well as achieving durable solutions for internally-displaced persons and displacement affected communities in South Sudan'.²⁸ The long title of the Kenya IDP law reflects the fact that it is developed 'to make further provision for the prevention, protection and provision of assistance to internally-displaced persons and affected communities'.²⁹

Also, it is imperative that the framework for the protection of IDPs should emphasise other normative sources from which to draw protection for IDPs as with the case of laws of Kenya, Niger and South Sudan. Niger IDP Law accentuates the 1998 UN Guiding Principles on Internal Displacement, the Kampala Convention and Niger's 2010 Constitution.³⁰ Such normative sources should further include international and regional human rights instruments. The relevance of these normative sources is to ensure that a reference point exists for the purpose of interpretation.

The primary responsibility of the state must be emphasised in the national framework for protection of IDPs. The South Sudan IDP Law offers pertinent guidance on how to reflect this imperative in providing that '[p]rimary responsibility for protecting and assisting internally-displaced persons as well as for achieving durable solutions shall lie on the whole of government at national, state, and local levels'.³¹ Moreover, it is important to underscore the role of National Human Rights Commissions given their specific mandate on human rights protection within national contexts. Niger IDP Law notably reflects this recognising the role of the National Human Rights Commission in examining human rights violation in the context of the law.³² Niger IDP Law further criminalises arbitrary

28 South Sudan IDP Law (n 7).

29 Kenya IDP Law (n 7).

30 Niger IDP Law (n 7).

31 South Sudan IDP Law (n 7) art 7(1).

32 Niger IDP Law (n 7) art 15.

displacement.³³ Arguably, to ensure deterrence. This also resonates in the IDP Laws of Kenya and South Sudan.³⁴

In addition, it is important that the IDP framework should recognise root causes of internal displacement and protect various groups that may be impacted by internal displacement. In the definition section, the IDP Laws of the three states recognise root causes of internal displacement including armed conflict, natural or human-made disasters and development projects.³⁵ Notably, South Sudan IDP Law recognises climate change which is significant given the emerging impacts of climate change and its nexus with internal displacement.³⁶ Moreover, the laws of both countries also incorporate protection for specific groups such as women, children and persons with disabilities.

Also, the IDP law should set up an operational body to provide humanitarian assistance and development support. This is notably reflected in South Sudan IDP Law through the establishment of a Relief and Rehabilitation Commission for the provisions of 'humanitarian assistance and development support aimed at building self-reliance, resilience, and durable solutions for internally-displaced persons and displacement affected communities.'³⁷ While there are currently institutions such as NEMA and the NCFR that deal with disaster management and issues migrants and refugees more broadly, having a specific institution of this nature enables a targeted holistic approach to the institutional protection of IDPs.

Moreover, it is imperative that an IDP law should make provision for awareness raising. Niger IDP Law provides that the state is to develop awareness raising programs on the causes and consequences of internal displacement.³⁸ Kenya IDP Law also provide for awareness raising by government, as part of education syllabus, county governments as with cities and urban areas.³⁹ Given the importance of enhancing compliance with the provision of the law, provision should be made for monitoring and evaluation. South Sudan IDP Law establishes a Monitoring and Evaluation Committee to 'monitor and evaluate the implementation' of law.⁴⁰ The Committee is mandated to 'meet as often as required and at least once every month and issue annual reports on the implementation' of the law.⁴¹

33 Niger IDP Law (n 7) art 31.

34 Kenya IDP Law (n 7) art 23; South Sudan IDP Law (n 7) art 39.

35 Kenya IDP Law (n 7); Niger IDP Law (n 7); South Sudan IDP Law (n 7).

36 South Sudan IDP Law (n 7) art 12.

37 South Sudan IDP Law (n 7) art 34.

38 Niger IDP Law (n 7) art 5.

39 Kenya IDP Law (n 7) art 18.

40 South Sudan IDP Law (n 7) art 45.

41 South Sudan IDP Law (n 7) art 46.

Durable solutions must also be emphasised in an IDP law, and this should involve: voluntary return, reintegration and resettlement.⁴² Moreover, it should be done with the full participation of IDPs. Niger IDP Law notably provides that IDPs should participate in research, planning and implementation of proposed durable solutions.⁴³ Kenya IDP Law also reinforces the need for the state to safeguard IDP rights ‘to make informed and voluntary decisions on whether to return, locally integrate or resettle elsewhere in the country.’⁴⁴ In the Kampala Convention, there is an emphasis on durable solutions as being the responsibility of the state.⁴⁵ It is imperative that this is reflected in the IDP law, however, this should also be regarded as a whole of society approach and this provision in the law should not be framed to exclude regional and international cooperation.⁴⁶ Under the South Sudan IDP Law, a ‘whole of government and a whole of society approach’ is advanced which includes implementation of agreements that can enhance peace and security, participation of IDPs and development support.⁴⁷

Notably also, the normative framework must stress the need for a multi-sectoral coordinative effort geared towards protection and assistance of this category.⁴⁸ The essence of having a multi-sectoral coordinative effort is to ensure that various organs of government are involved in the process. It is also to create effective dialogue between national and international actors in the furtherance of protection for these persons. As the needs of IDPs are diverse and cut across various sectors, a multi-sectoral coordinative effort aids the realisation of effective protection and assistance.

4 Conclusion

The issue of internal displacement is a pressing challenge in Nigeria. Given the prevalence of the issue, it is increasingly relevant to provide adequate response to the challenge. One of the areas of relevance is in the context of legal solutions, which is yet to be solidified in the Nigerian context. Over the last two decades, there have been increasing recognition for the need to protect IDPs through a law, in line with the Kampala Convention which Nigeria has both signed and ratified. However, this is yet to be realised. Drawing on legal protection in Kenya, Niger and South Sudan, this chapter argues that there are key imperatives which Nigeria must consider in the developing a normative framework for the protection and assistance of IDPs.

42 Kenya IDP Law (n 7) art 9; Niger IDP Law (n 7) art 23; South Sudan IDP Law (n 7) art 22.

43 Niger IDP Law (n 7) art 23(3).

44 Kenya IDP Law (n 7) art 9(1).

45 Kampala Convention (n 2) art 11.

46 See Kampala Convention (n 2) art 11(3).

47 South Sudan IDP Law (n 7) arts 23-24.

48 See Kenya IDP Law (n 7) art 12; Niger IDP Law (n 7) art 26(1); South Sudan IDP Law (n 7) art 9(1).