

RIGHT TO VOTE AND BE VOTED OF INTERNALLY DISPLACED PERSONS IN NIGERIA- A LEGAL REALITY OR MYTH?

Obiaraeri, Chinyere A.*

Abstract

The right to vote and be voted for is one of the many rights denied an IDP in Nigeria contrary to guarantees in international, regional and national laws. As displacement can be caused involuntarily by natural or human-made factors, this portends that every other person is vulnerable and potentially liable to be internally displaced, hence the need to safeguard the right to political participation of any eligible IDP. Using the doctrinal research method, relevant international, regional and national laws analysed, and this paper establishes that any denial of the right to political participation is a breach of a fundamental right. Accordingly, recommendations on how to safeguard the right of an IDP to vote and be voted were made including introduction of electronic voting which will obviate the need for the physical presence of the voter from the polling unit in any election cycle until when the IDP is fully rehabilitated and reintegrated.

Keywords- Right to vote, Right to be voted, Internal displacement, Internally displaced person, Political participation.

Introduction

This paper focuses specifically on the right to vote and be voted for of internally displaced persons¹ and how to make this right, out of the many specific needs of an IDP, functional and realisable. IDPs have become a category of concern based on indicators of need and vulnerability because everyone is a potential victim of internal displacement. During periods of internal displacement, many eligible voters who are internally displaced are deprived of the right to vote and be voted for. To address this major challenge, the paper will adopt the doctrinal research method to firstly examine the meaning of internally displaced person which is often mistaken to mean refugee, the general protection of the right to vote and be voted for including eligibility to vote under Nigerian laws and the negative impact of internal displacement on the constitutionally guaranteed right of the IDP to vote and be voted for. In the end, far reaching recommendations will be made to ensure that the right of political participation and especially the right to vote and be voted of IDPs is realised and does not remain illusory during displacement as is presently the case.

Meaning of “internally displaced person”

According to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa,² “internal displacement” means the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state borders. Therefore, an IDP is someone who is forced to flee his or her home but who remains within his or her country’s borders. An IDP is someone who has been forced to flee their home but never cross an international border. These individuals seek safety anywhere they can find it- in nearby towns, schools, settlements, internal camps, even forests and fields. Unlike refugees, IDPs are not protected by international law or eligible to receive many types of aid because they are

* **Ph.D; Senior Counsel, OBIARAERI, OBIARAERI, OBIARAERI & CO., 5 Ekwema Crescent, Owerri, Imo State, Nigeria.**

¹ Hereinafter abbreviated and referred to as “IDPs”.

² African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa otherwise called Kampala Convention. Adopted by the Special Summit of the African Union Kampala, Uganda 23rd October 2009. Entered into Force 6th December 2012. The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa is hereinafter referred to as “African Union Convention on IDPs in Africa”.

legally under the protection of their own government.³ Put differently, according to the Guiding Principles on Internal Displacement, 1998, internally displaced persons are

persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.⁴

IDPs are often referred to as refugees, although they do not fall within the legal definitions of a refugee as a person who has fled their own country because they are at risk of serious human rights violations there.⁵ On the other hand, *Article I(k)* of the African Union Convention on IDPs in Africa defines IDPs as

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

The key elements of these descriptive definitions are: (a) the involuntary character of the movement, and (b) the fact that such movement takes place within national borders.

It must be accentuated that IDPs include both citizens as well as other habitual residents of the country in which they are displaced, which may include, for example, stateless persons. According to the Internal Displacement Monitoring Centre,⁶ internally displaced people include, but are not limited to:

- (i) Families caught between warring parties and having to flee their homes under relentless bombardments or the threat of armed attacks, whose own governments may be responsible for displacing them;
- (ii) Residents of poor neighbourhoods rendered unsafe and uninhabitable, at least temporarily, by the impacts of weather-related, geophysical or technological hazards
- (iii) Indigenous communities forced from their ancestral lands to make way for the construction of dams and other infrastructure projects;
- (iv) Families pushed to leave their homes by constant harassment by local criminal gangs including secessionists and separatist groups;
- (v) Rural communities whose livelihoods are decimated by drought leaving them unable to feed their families and forced to seek external help elsewhere;
- (vi) Communities from coastal, mountainous or arid areas whose land and livelihoods are irrevocably lost because of gradual environmental degradation linked to the impacts of climate change.

IDPs are citizens “in flight and fright” but they are entitled to enjoy pretty much the same rights and freedoms under international and national laws as do other people in their country. Therefore,

³ UNHCR, “Who is an Internally Displaced Person?” <https://www.unrefugees.org/refugee-facts/what-is-a-refugee/#:~:text=An%20internally%20displaced%20person%2C%20or,camps%2C%20even%20forests%20and%20fields>. Accessed 15/6/23.

⁴ ICRC, “Guiding Principles on Internal Displacement, 1998”, <https://www.icrc.org/en/doc/resources/documents/article/other/57jpgl.htm>. Accessed 16/6/23.

⁵ Amnesty International, “REFUGEES, ASYLUM-SEEKERS AND MIGRANTS”, <https://www.amnesty.ie/definitions-exactly-refugee-asylum-seeker-migrant/>. Accessed 16/6/23.

⁶ Internal Displacement Monitoring Centre, “Internal Displacement”, <https://www.internal-displacement.org/internal-displacement>. Accessed 26/10/23.

they are supposed to be insulated from some of the typical needs and protection risks that arise in internal displacement which include family separation, loss of documentation, freedom of movement in and out of camps, loss of property, and further exposure to the risk of secondary or onward displacement.

Right to vote and be voted for as an offshoot of right to political participation

According to the Office of the High Commissioner for Human Rights,⁷

Political and public participation rights play a crucial role in the promotion of democratic governance, the rule of law, social inclusion and economic development, as well as in the advancement of all human rights. The right to participate in political and public life is important in empowering individuals and groups, and is essential to eliminate marginalization and discrimination. Participation rights are inseparably linked to other human rights such as the rights to peaceful assembly and association, freedom of opinion and expression and the rights to education and to information.⁸

The right to political participation is guaranteed at international, regional and national levels. The right to political participation is far from being an orphan in the family of human rights. It is guaranteed in all comprehensive human rights instrument.⁹ This is a legal right meaning that it is a right cognisable in law. It means a right recognised by law and capable of being enforced by the plaintiff. It is a right of a party recognised and protected by a rule of law, the violation of which would be a legal wrong done to the interest of the plaintiff, even though no action is taken.¹⁰ It is expressly provided in *section 40* of the Constitution of the Federal Republic of Nigeria, 1999 as amended that

Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests: Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.

In related terms, the right to vote and be voted for is guaranteed in Nigeria subject to the qualifying and disqualifying criteria for the various elective offices at the federal or State executives and legislatures under the Constitution. At the Local Government level, under *section 7(4)* of the Constitution of the Federal Republic of Nigeria, 1999 as amended it is provided that

The Government of a State shall ensure that every person who is entitled to vote or be voted for at an election to House of Assembly shall have the right to vote or be voted for at an election to a Local Government Council.

The right to be registered to vote in an election into the legislative house is guaranteed in *section 77(2)* to the effect that

⁷ Hereinafter abbreviated and referred to as "OHCHR".

⁸ OHCHR, "OHCHR and equal participation in political and public affairs", <https://www.ohchr.org/en/equal-participation>. Accessed 10/6/23.

⁹ For instance, see *article 13* of the African Charter on Human and Peoples Rights, 1981, *article 21* of the Universal Declaration of Human Rights, 1948; *article 25* of the International Covenant on Civil and Political Rights, 1966. See also B Olutola, "Right to political participation under the 1999 Constitution: A fundamental or inconsequential omission?", https://www.researchgate.net/publication/358501476_RIGHT_TO_POLITICAL_PARTICIPATION_UNDER_THE_1999_CONSTITUTION_A_FUNDAMENTAL_OR_INCONSEQUENTIA_L_OMISSION. Accessed 10/6/23.

¹⁰ A-G of Lagos State v A-G of Federation (2004) LPELR-10(SC) (Pp. 97-98 paras. G) per Tobi, JSC.

The right of every citizen of Nigeria, who has attained the age of eighteen years residing in Nigeria at the time of the registration of voters for purposes of election to a legislative house, shall be entitled to be registered as a voter for that election.

Generally, the right to be registered is guaranteed in *section 12* of the Electoral Act, 2022 as follows:

- (1) A person shall be qualified to be registered as a voter if such a person-
 - (a) is a citizen of Nigeria ;
 - (b) has attained the age of 18 years ;
 - (c) is ordinarily resident, works in, originates from the Local Government, Area Council or Ward covered by the registration centre;
 - (d) presents himself to the registration officers of the Commission for registration as a voter; and
 - (e) is not subject to any legal incapacity to vote under any law, rule or regulations in force in Nigeria.¹¹

From the foregoing, by a combined reading of the relevant constitutional provisions and particularly *section 40* of the Constitution of the Federal Republic of Nigeria, 1999 as amended and *section 12* of the Electoral Act, 2022, it is axiomatic that a Nigerian citizen who meets the eligibility criteria is guaranteed the right to vote and be voted for. Right to vote and be voted is a constitutional and legal right. In *A-G of Lagos State v A-G of Federation*,¹² the Supreme Court per Tobi, JSC, held that a legal right is a right cognisable in law. It means a right recognised by law and capable of being enforced by the plaintiff. It is a right of a party recognised and protected by a rule of law, the violation of which would be a legal wrong done to the interest of the plaintiff, even though no action is taken. The determination of the existence of a legal right is not whether the action will succeed at the trial but whether the action donates such a right by reference to the enabling law in respect of the commencement of the action.

Furthermore, *Principle 22(1)* of the Guiding Principles of Internal Displacement, 1998 provides that internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

- (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
- (b) The right to seek freely opportunities for employment and to participate in economic activities;
- (c) The right to associate freely and participate equally in community affairs;
- (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
- (e) The right to communicate in a language they understand.

Under *article IX(2)(l)* of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, a key obligation of States parties relating to protection and assistance during internal displacement is

¹¹ *Section 12(2)* of the Electoral Act, 2022 provides that a person shall not register in more than one registration centre or register more than once in the same registration centre while under *subsection (3)*, a person who contravenes *subsection (2)* commits an offence and is liable on conviction to a fine not more than N100,000 or imprisonment for a term not more than one year or both.

¹² (2004) LPELR-10(SC) (Pp. 97-98 paras. G).

Take necessary measures to ensure that internally displaced persons who are citizens in their country of nationality can enjoy their civic and political rights, particularly public participation, the right to vote and to be elected to public office.

Whether the legal right to vote and be voted is available to an internally displaced person or whether it is a cosmetic right, a mirage or illusory will be interrogated in the ensuing paragraphs of this paper.

Internal displacement as an obstacle to right to vote and be voted

Many obstacles to equal political and public participation exist. These barriers may include direct and indirect discrimination on grounds such as race, colour, descent, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth, disability, nationality or other status. Even when there is no formal discrimination in connection with political or public participation, inequalities in access to other human rights may impede the effective exercise of political participation rights.¹³ However, this paper is centered specifically on how internal displacement including constructive internal displacement constitutes an obstacle to right to political participation in Nigeria and how this could be mitigated. For the records, many Nigerians have been internally displaced and consequently denied of the right to vote and be voted for. United Nations High Commissioner for Refugees¹⁴ Reports indicate that in Nigeria, Boko Haram and other non-state armed groups as well as clashes between herders and farmers have pushed some 3.0 million Nigerians (as of November 2021) out of their homes, especially in parts of North-East Nigeria and the country's Middle Belt, but increasingly also in North-West Nigeria.¹⁵ According to the Displacement Report from Round 43 of Displacement Tracking Matrix which is an assessments carried out by the International Organisation for Migration, a total of 2,375,661 IDPs were identified in 483,367 households.¹⁶ This number is as unsettling as it is growing daily by increased cases of internal displacement with obvious implication for the right to political participation of eligible IDPS.

The European Union Election Observation Final Report was emphatic that data on registration and voting by internally displaced persons was not published and that without a detailed operational framework for inclusion, regional commitments and constitutional guarantees of citizens' equality cannot be achieved.¹⁷ Among registered voters, internally displaced women often lacked PVCs, disproportionately impacting their right to vote according to civil society. European Union observers further noted evidence of weak strategic engagement on IDP related actions from INEC to state level, varied degrees of preparedness and planning, and inconsistent procedures for polling units, voter awareness, and IDP voting from various states, including Benue, Niger and Borno. A lack of planning was evidenced in reports of non-distribution of PVCs to large numbers of IDPs, notably in Benue state. The 2023 cash crisis and lack of access to transportation also impacted participation, while Election Day incidents of violence and intimidation hampered voting at IDP polling units in Edo, Benin City.¹⁸

There is no gainsaying that every eligible Nigerian including IDPs is constitutionally entitled to be registered, vote and be voted for. It has been stated earlier that *section 12* of the Electoral Act,

¹³ OHCHR, "OHCHR and equal participation in political and public affairs", <https://www.ohchr.org/en/equal-participation>. Accessed 10/6/23.

¹⁴ Hereinafter abbreviated and referred to as "UNHCR".

¹⁵ UNHCR Nigeria, "Internally Displaced People", <https://www.unhcr.org/ng/idps>. Accessed 16/6/23.

¹⁶ International Organisation for Migration, "Nigeria — Displacement Report 43 (February 2023)", <https://dtm.iom.int/reports/nigeria-displacement-report-43-february-2023>. Accessed 18/6/23.

¹⁷ European Union Election Observation Mission NIGERIA 2023 Final Report, page 9.

¹⁸ European Union Election Observation Mission NIGERIA 2023 Final Report page 40.

2022 provides the criteria for registration of voters for all eligible Nigerians without exception. The said *section 12* of the Electoral Act, 2022 does not however make any specific provision for registering IDPs although *section 10* of the Electoral Act, 2022 mulls the idea of continuous registration under which an IDP who meets up the registration criteria set out therein may be registered. There is also provision for transfer of registered voters under *section 13* of the Electoral Act, 2022 to the effect that

- (1) A person who before the election is resident in a constituency other than the one in which he or she was registered may apply to the Resident Electoral Commissioner of the State where he or she is currently resident for his or her name to be entered on the Transferred Voters List for the constituency.
- (2) An application under subsection (1) shall be accompanied by a copy of the applicant's voters' card and shall be made not later than 90 days before the date of an election in the constituency where the applicant is resident.
- (3) The Resident Electoral Commissioner to whom an application is made under this section shall cause the applicant's name to be entered in the Transferred Voters' List if he or she is satisfied that the applicant is resident in a polling area in the constituency and is registered in another constituency.
- (4) Whenever an electoral officer on the direction of the Resident Electoral Commissioner enters the name of any person on the Transferred Voters' List for his or her constituency, he or she shall-
 - (a) assign that person to a polling station or a polling area in his or her constituency and indicate in the list the polling area or polling station to which that person is assigned;
 - (b) issue the person with a new voters' card and retrieve his or her previous voter's card; and
 - (c) send a copy of the entry to the electoral officer of the constituency where the person whose name has been so entered was originally registered and upon receipt of this entry, that electoral officer shall delete the name from the voters' list.

As forward looking as the forgoing provisions of *section 13* of the Electoral Act, 2022 is, it does not however assuage or address the fact of denial of voting opportunity to the IDP. What the above provision offers is an opportunity for a registered voter to voluntarily transfer his or her voting unit to a brand new voting area and this shall be made not later than 90 days before the date of an election in the constituency where the applicant is resident. Internal displacement has no timetable or calendar as it can happen any time in which case internal displacement can happen after the 90 days transfer window allowed under the law. Besides, an IDP is entitled to vote in the area of his residence as of right and by choice and not to be forced by the fact of internal displacement to transfer to a new voting area or be denied the right to vote completely. There is therefore a compelling need to provide durable legal solutions to the right of the IDP to vote and be voted for.

Recommendations

To guarantee the right to vote and be voted for of IDPS, it is recommended among other things that-

- (a) the nascent Electoral Act, 2022 should be amended to guarantee specific provisions for (i) the protection of the registration of IDPs and (ii) giving practical effect to the voting rights of IDPs. Registration of IDPs as voters should form an exception to the provisions of *section 13* of the Electoral Act, 2022 placing a timeline of 90 days before application for transfer of voters to a new voting area.

- (b) Electronic Voting procedures already contemplated under the Electoral Act, 2022 should be fully activated to give impetus to virtual votes. IDPs will be able to vote if all voters are enabled to vote from anywhere without the necessity for physical presence in the polling units.
- (c) Unjustified breach of the voting right or right to be voted of IDPs should raise justiciable grounds for invalidating an election on grounds of unlawful exclusion of eligible voters. The only obligation of INEC towards a vulnerable person is that found in *section 54(2)* of the Electoral Act, 2022 to the effect that
The Commission shall take reasonable steps to ensure that persons with disabilities, special needs and vulnerable persons are assisted at the polling place by the provision of suitable means of communication, such as Braille, large embossed print, electronic devices.

Although *section 152* of the Electoral Act, 2022 interprets “vulnerable persons” to mean a woman, child or person living under extreme poverty, person with disability, the sick and the elderly, refugee, internally displaced person, migrant, person in detention or ethnic and religious minority groups, the provision in *section 54* above does not address the denial of voting right of IDPs.

- (d) The right of IDPs to vote and be voted for deserves to be expressly recognised without more. By necessary analogy, the right of prisoners to be registered voters was recognised in the case of *Emenuwe & Ors v INEC & Anor*.¹⁹ In that case, it was held among other things as follows:

There is no doubt that where there is a right in law, there must also be remedy provided by the law, *Ubi Jus Ubi Remedium*. ..., the right to register and vote are rights vested on the Appellants and those they represent by the Constitution. It cannot be subjected to any limitation by way of statutory limitation of the Electoral Act. *Section 12 (1) (e)* of the Electoral Act talks about a legal incapacity to vote under any law or regulation in force in Nigeria. Unless the Respondents can show that apart from being in prison custody, the Appellants suffer any legal incapacity for example being of unsound mind etc, the Respondents are obliged by law to make every effort to actualize the constitutional rights of the Appellants to vote. Thus the duty to ensure access to registration centres therefore is both statutory and constitutional as it creates a legitimate expectation that no substantial part of potential voters shall be denied access to the centres for registration. It seems to me that there is a misunderstanding of the position of the learned trial judge by the learned counsel. The opinion of his Lordship was clear to the effect that the discretion must rest on the executive bodies involved as Respondents in this litigation to actualize and give effect to the rights of the prisoners. His Lordship stated clearly on page 125 of the record thus: Again the right to vote is a choice, not a duty which can be exercised at the instance of the citizen, at his own volition. Therefore, there is no presumption of the exercise of such a right until it is asserted. In the case of a citizen who is not in prison, his right is asserted only when he presents himself at the registration center to register and/or a polling unit to vote. On the other hand, a prison inmate asserts his right to register or to vote and when he signifies to the prison authority of his desire either to register or to vote and where the prisoner asserts the right to register or to vote, the prison authority has the duty to ensure that the prisoner exercises his right to register or to vote accordingly.

¹⁹ O (2018) LPELR-46104(CA) (Pp. 37-40 paras. D), per Ogunwumiju, J.C.A, (as he then was).

Thus what the prison authority can do is either to take the prisoner out to register or to vote as the case may be or liaise with the electoral body to make special arrangement for the registration of such a prison inmate. Once the prison office notifies the electoral body of the prisoner's assertion of his right to vote, it becomes a statutory duty on the Electoral body to take necessary steps to ensure the prisoner has been registered or has voted. Failure to take such necessary steps would amount to illegal violation of the prisoner's voting right." ... I cannot see any impediment to the grant of prayers 8 which is an order of mandatory injunction directing the 1st Respondent to update and include in the National Register of voters, names of Nigerian citizens in the custody of the 2nd Respondent.²⁰

- (e) The suggestion by the EU Observer Mission is apposite and bears repeating to the effect that the right to vote of internally displaced voters should be enhanced by issuing a clear timely operational framework evidenced by detailed information on key voter data, specified temporary special measures, polling unit locations, security arrangements, targeted voter education planning and the early publication of post-election evaluations is not only timely but apposite.²¹

Conclusion

Internal displacement constitutes a clear obstacle to the inalienable and fundamental right to vote and be voted for of IDPs which said right is sacrosanct and inviolable by reason of international, regional commitments and constitutional guarantees. Whether under the Nigerian Constitution or various international instruments and the Guiding Principles on Internal Displacement, government has an obligation to guarantee an IDP the right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right. It is believed that making specific provisions in the Electoral Act, 2022 for the voting rights of IDPs and the introduction of electronic voting will bring an end the denial of the right to participation of IDPs in Nigeria.

²⁰ In *Thomas & Ors v Olufosoye* (1986) LPELR-3237(SC) (Pp. 40-41 paras. F), Oputa, JSC, (as he then was) held that "it is only a legal wrong or *injuria* that can ground an action at law."

²¹ European Union Election Observation Mission, NIGERIA 2023 Final Report, 43.