

A POSITIVE APPROACH FOR THE PROTECTION OF THE INTERNALLY DISPLACED PERSONS' RIGHT TO PARTICIPATE IN ELECTIONS IN NIGERIA CONSTITUTIONAL DEMOCRACY

Abstract

The right to vote and be voted for is one of the many rights of any citizen of Nigeria as specifically provided for in the Nigeria constitution. Generally displacement can be caused by natural or human-made factors like armed conflict, internally displaced person therefore, due to their forced displacement, are inherently vulnerable to deprivation, and other risks, such as lack of access to basic services, family separation, sexual and gender based violence, trafficking. The object of the article is to emphasise that the internal displaced persons apart from the challenges mentioned above are equally faced with deprivation of their constitutional right to vote and be voted for. It concluded that the internally displaced people are entitled to right of suffrage like every other citizen as guaranteed by the constitution. And finally recommended that laws that seek to guarantee that Internal Displaced Persons, as citizens or habitual residents of their country, enjoy equality and without discrimination the same rights and freedoms under international and national law as do other persons in their country be implemented

Keywords: Positive Approach, Protection of Internally Displaced Persons', Election, Constitutional and Democracy.

1. Introduction

International humanitarian law forms a major part of public international law and it comprises set of rules which seek for humanitarian reasons,¹ in times of armed conflict to protect people who are not taking part in hostilities while also restricting the methods and means of warfare employed.² Its scope is therefore limited to situations of armed conflict.³ The rules of international humanitarian law have to be applied equally by all sides in every event armed conflict, regardless of whether their cause is justified.⁴ The objective of international humanitarian law is to limit the suffering caused by warfare and to alleviate its effects. Its rules are the result of a delicate balance between the exigencies of warfare, military necessity on one hand and the laws of humanity on the other. Humanitarian law rules are of a sensitive nature which must be respected in all circumstances, for the sake of the survival of human values and quite often, for the sheer necessity of protecting life.⁵ In order to spare the civilian population, armed forces shall at all times distinguish between the civilian population and civilian objects on the one hand, and military objectives on the other hand. Neither the civilian population as such nor civilian objects shall be the target of military attacks⁶

An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within

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¹ United Nations International Legal Protection Of Human Right In Armed Conflict United Nation, Human Right Office Of The High Commissioner New York And Geneva 2011.

²<http://www.oas.org/dil/introductory_course_on_international_humanitarian_2007_ihl_doctrine.pdf>accessed on the 22nd of September 2021.

³Ibid.

⁴Ibid.

⁵G Hans-Peter, 'International Humanitarian Law and the Protection of War Victims' <http://www.oas.org/dil/esp/XXXVI_curso_International_humanitarian_law_protection_war_victims_Nils_Melzer.pdf>accessed on the 6th of November 2021.

⁶Ibid.

a state.”⁷ It could also mean all cases of declared war or of any other armed conflict which may arise between two or more States, even if the state of war is not recognized by one of them.”⁸It means a political conflict in which armed combat involves the armed forces of at least one state (or one or more armed factions seeking to gain control of all or part of the state⁹ Armed conflict and other natural disaster have resulted into the displacement of many in Nigeria. This displacement has greatly affected the constitutional right of the internal displaced persons. Many Nigerians are currently displaced in their various communities uprooted by conflict, violence and disasters. Internally displaced persons (IDPs) often live in overcrowded, unsanitary locations where jobs and services are few. These dire circumstances have now worsened due to the health risks and socio-economic impacts of the pandemic.

The IDPs are faced with the challenge of voting for the candidates of their choice since their displacement from their homes may have taken some of them out of their constituency and as a result. Although they have the right to be elected into position of authority, it is difficult for IDPs to contest in election in Nigeria **IDPs**, being inside their country, remain entitled to all the rights and guarantees as citizens and other habitual residents of their country. As such, national authorities have the primary responsibility to prevent forced displacement and to protect IDPs.

2. Election

In every democratic certain, one of the essential attributes of democracy is the change of governance from one administration to another. Though election of persons who will run the governance or government of the society. This is the hallmark of election. According to Ighodalo¹⁰ elections are referred to as the: “means of selecting representatives of the people in different public positions within the polity”. He also went further to state that elections:

are critical aspects of democratic governance of modern political societies. They are considered as apparatus for political choice, mobilization and accountability. In the liberal democratic paradigm that has become the most popular form of democracy in today’s globalization era, elections are expected to cushion transition from one civilian regime to another and ease in legitimizing sitting government¹¹.

In the eruditions of Odusote¹², “electoral process is a pillar of democracy because it gives effect to the right to govern by consent”.

Herros conceptualizes “election” in the following words “it is a way of selecting “good types”¹³ of politicians who would pursue the common good instead of their functional interest”. Also according to Wosjtosks¹⁴, “election” is defined as “a procedure typical for democratic systems, but also systems which do not respect the principle of democracy often employ them”. In Latin, expression election which is referred to “eligere” means “pick out”. So in line with these expressions, ‘election’ implies the

⁷Prosecutor v DuskoTadic, No. IT-94-1-AR 72, International Criminal Tribunal for the Former Yugoslavia Appeals Chamber in International Organization for Migration (IOM). 2011.

⁸<[http://www/rfmsot.apps01.york.ca/glossary/terms/armed conflict](http://www/rfmsot.apps01.york.ca/glossary/terms/armed%20conflict)> accessed on the 8th of July 2023.

⁹*Uppsala Conflict Data Program.(n.d.).Armed conflict definition.Retrieved. from <[http:// www.pcr.uu.se /research /ucdp/definitions/](http://www.pcr.uu.se/research/ucdp/definitions/)> accessed May 30, 2013*

¹⁰Aighodalo, ‘Election Crisis, Liberal Democracy and National Security in Nigeria’s Fourth Republic’ in British Journal of Arts and Social Science (BJASS) vol. 10, No 11, available at <http://www.bjournal.co.uk> pp163-174 cited in Y Isma’lla and 2. Othman, “Challenges of Electoral Processes in Nigeria’s, Quest for Democratic Governance in Research and social on Humanities Science ISSN (Paper) 2224-5766 ISSN (online) 2225-0484(online) (5), (22) 2015 4.

¹¹Ibid,

¹²A Odusote, “Nigerian Democracy and Electoral Process Since Amalgamation: Lessons from a turbulent past, in IOSR Journal of Humanities at www.iosrjournals.org.cited in Y.isma’la and 2 othman, Ibid.

¹³Herros (2006), cited in Y.Isma’ila and Z. Otham Ibid.

¹⁴W Wojtask, “Functions of Election in Democratic System” [www document](http://www.researchgate.net) (2013), available at pdf functions of election [https:// www. Researchgate.net](https://www.researchgate.net). p.23

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process of picking out one's preferred candidates¹⁵. It is equally regarded as "decision-making process by which the electorate chooses an individual to hold public office"¹⁶.

Onyepuemu¹⁷ in his wisdom is of the views that;

Elections are the critical aspect of the democratic framework for governing modern political societies. They serve as instrument of political choice, mobilization and accountability. In the context of liberal democracy, that has become the most popular form of democracy in the modern world elections are to facilitate the smooth transition from one civilian administration to the other as we are about to experience in 2015, and it also helps in legitimizing sitting governments. In a democratic system, where elections are devoid of crisis, long term disputes or political violence, are amicably resolved.

In a similar vein, 'election' is also seen as: "an institutional arrangement for arriving at political legislative and administrative decision. It is a method by which the individual acquires the power to participate in decision by means of a competitive struggle for the peoples votes"¹⁸. In line with these postulations on elections, one can see that election is an apparatus or tool used in society to ensure a proper transit from one particular dispensation to another.

3. Democracy

"Democracy" as a concept has been viewed from perspectives by different scholars. It is a general believe that democracy as a practice originated from Arthens in the 5th century B. C.¹⁹. *The Websters New (Encyclopedic Dictionary* ²⁰posits that democracy is 'a government in which supreme power is invested in the people and exercised by them directly or indirectly through representation.' "Democracy" as a term emanated from the word *demokratia* which implies "the rule of the people, which was extracted from *demos* meaning people and *kratos*, meaning also power or rule"²¹ Larry Diamond also adumbrated that the term democracy means:

A system of government with four key elements:

- i. A system for choosing and replacing the government
- ii. through free and fair election, in politics and civil life.
- iii. Protection of human rights of all citizens and
- iv. A rule of law in which the laws and procedures apply equally to all citizens²²

In another views on democracy as a concept, Abdulrashed²³ sees it thus: 'Is built on the existence of institutions whereby different opinions and interests are harmonized. Such interests include, the polices, the judiciary, political parties electoral commission etc. the modern democracy is expressed in a

¹⁵Kofa study, "what is election, "(www.document), (n.d), available at <https://www.kofa study.com course 1jss3civi-educaiton 3rd-term/lesson/election-and-election-bodies-in-nigeria-week-//topic/definition-of-election>.

¹⁶Ibid.

¹⁷OC Onyepuemu, 'The Quest for Democratic Sustenance in Nigeria; the Role of Police Force' in IOST Journal of Humanities and Social Science vol. 20, issues1, ver. Iv Jan, 20215) p.134 the Role of Police Force in IOST Journal of Humanities and Social Science vol. 20, issues1, ver. Iv (journal of democratic sustenance in Nigerian: Role of the Police (www. Document), available at www.iosrjournals.org. p. 134, accessed on 3/1/2023

¹⁸JA Schumper, *Capitalism, Socialism, and Democracy*, (London: rout ledge, 1942). Cited in O.C. Onyepuem op. cit. p137.

¹⁹GAI. Nwogu, 'Democracy: Its meaning and Dissenting opinions of political class in Nigeria: A Philosophical Approach', in Journal 2222-288 x (online) (6)(4) 2015 1.

²⁰The Webster's New Encyclopedia Dictionary (New York: Black dog and leventhal publishers IN, 1993) (liked in G.A. I. Nwogu, Ibid.

²¹G Lindell and R. Scott, "A Greek – English Lexicon", 1999, <perseus. www.perseus.ufts.edu/.../text?perseus>.cited in G.A.I.Nwogu, *Ibid*

²²L Diamond, "What is Democracy?,[2004] <<http://www.standard.edu-diamond/1r99/what is democracy 012004.htm>>.cited in G.A.I. Nwogu, *Ibid*

²³AMAbdulrashed, "Political Parties in Nigeria Emerging Democracy: Some Critical Reflection" Crawford Journal of Business and Social Science, vol. iii, No. 1 (2013), cited in O.C.Onyepuemu. *Ibid*

representative model in which decision making is restricted to the elected.’ Abraham Lincoln²⁴ in his *Magnus Opus* postulates that democracy is seen as “the government of the people for the people”. In his views, Lincoln means that government should be a form of exercise that should be made open for everybody in the society to take part on it. In democracy, there is a belief that every member of the society should be made an engine room of participation in its practice.

According to Jean²⁵, democracy is beckoned on six major requirements which are the following:

1. People accept the principle of rule of law.
2. The political rights of minorities must be protected
3. Citizens must agree to a system of rule of law.
4. The free exchange of opinion and ideals must not be restricted.
5. All citizens must be equal before the law.
6. Government exists to serve the people Because it derives its powers from the people.

In another view, democracy as a concept is: A broad model of government that is epitomized by good governance, the rule of law, security and protection of individual rights, vibrant civil society and shared economic property.²⁶ In line with all these analysis on the concept of democracy, it is our view that a democratic government is a form of governance where everybody, the rich and the power are stakeholders in the formation of the principles of governance or administration in a society or a nation.

4. Constitution

A constitution is the supreme law of a nation²⁷. Nigeria as a nation operates with a constitutional democracy. A constitutional democracy is a form of government that has a paramount and overriding power derived from the Constitution itself and also places limitation on the modalities of its applications²⁸. According to Section 1(1) of the Nigerian Constitution “This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.” Also, Section 1 (2) of the same Constitution provides that: “The Federal Republic of Nigeria shall not be governed, nor shall persons or group of persons take control of Nigeria of any part thereof, except in accordance with the provisions of this Constitution²⁹”. Furthermore, section 1 (3) of the same went ahead to provide that: “if any other law is inconsistent with the provisions of this Constitution, the Constitution shall prevail, and that other law shall to the extent of the inconsistency be void”³⁰.

In *Dapiantong v. Dariye*³¹. It was the views of Onnoghen J.S.C as the on the concept of Constitution That: it is settled law that the Constitution of any country is what is usually called the organic laws from which the institutions of state derive their creation, legitimacy and very being. The Constitution is also the unifying force in the Nation apportioning rights and imposing obligations on the people who are subject to its operation. It is very important component of document. In *Attorney General of Abia State and 35 ors v Attorney General of the Federation*³², Niki Tobi J.S.C as, he then was opined also that:

²⁴See the views of Abraham Lincoln on Democracy which is cited in O.C. Onyepueme, op. cit. p. 135.

²⁵ H Jean, “United State Government” Microsoft @ Encarta premium 2009, which was written in 2008 and was cited in OC. Onyepueme, op. cit. p. 135.

²⁶FA Ikenga and O. Chima, “Fundamentals of good Governance: the penance for development performance in Nigeria” www.222-02. P.7, see equally F. A. Ikenga and O. Chima Journal of Public Administration, Finance and Law, 2021, p.7

²⁷ A Good Example of this is the Constitution of the Federal Republic of Nigeria 1999 (as amended)

²⁸Attorney General of Abia State and 35 ors. v. Attorney General of the Federation (2004) 16 NWLR (PT1050) 265.

²⁹This is the hallmark of the Nigerian Constitutional Democracy as was instituted on 29/15/1999

³⁰ This also is the stronghold of the supremacy of the Nigerian Constitution.

³¹ (2007) 8 NWLR (pt 1036) 332 at pp411-412

³²Supra.

The Constitution is the *fonsetongo*, not only of the jurisprudence but also of the legal system of the Nation. It is the beginning and the end of the legal system. In Greek language, it is the *Alpha and Omega*.

It is the barometer with which all status are measured. In line with this kindly position of the Constitution, all the three arms of government are slaves of the Constitution, not in the sense of undergoing servitude or bondage, but in the sense of total obeisance and loyalty to it. This is in recognition of the supremacy of the Constitution over and above statute be it an Act of National Assembly or a law of the House of Assembly of a state.

Nwabueze conceptualized Constitution as: 'A formal organic document having the force of a supreme, overriding law, by which a society organizes a government for itself; defines and limits its powers, and prescribes the relations of the various organs interse, and with the citizens'³³.

It is a well known fact that the Constitution of a nation is the body of laws that governs a nation. It is also factual that the different organs, and institutions in a nation must follow the provisions of the Constitution because it make provision for an effective operations of institutions and organs in the society.

5. Internal Displacement

People become internally displaced when they are forced to leave their homes due to conflict, violence, human rights violations, natural hazards, the impacts of climate change or other crises within the borders of their country³⁴This can include situations where people move voluntarily to seek safety or to access essential service ³⁵Displacement is defined as a process in which people are compelled to flee or to leave their homes or places of habitual residence in order to avoid the effects of armed conflict, and find themselves in another part of the country or abroad.³⁶ There are many reasons why people around the globe seek to rebuild their lives in a different country. Some people leave home to get a job or an education. Others are forced to flee persecution or human rights violations such as torture. Millions flee from armed conflicts or other crises or violence.³⁷

6. Internal Displaced Persons

While the UN Guiding Principles on Internal Displacement are not legally binding, their authority has been recognized globally, particularly as they draw from international humanitarian and human rights law. The Africa Union in particular has codified the UN Guiding Principles on Internal Displacement with the 2009 Convention for the Protection and Assistance of Internally Displaced Persons in Africa ³⁸ Internally displaced persons (IDPs), according to the United Nations Guiding Principles on Internal Displacement, 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 generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border."³⁹

There are two important elements in the IDP definition: the movement is involuntary and takes place within national borders. IDPs are thus distinct from individuals who can remain safely in their place of residence but have opted to depart on their own free will, without coercion. IDPs are also distinct from refugees because they have not crossed an internationally recognized territorial border, and thus do not require a special legal status as a result of being outside their country and without its

³³BO Nwabueze, *Constitutional Democracy in Africa*, (Ibadan: vol. 1 Spectrum Book Ltd, 2003) p.3

³⁴<[Http://civil-protection-humanitarian-aid.ec.europa.eu](http://civil-protection-humanitarian-aid.ec.europa.eu)> accessed on the 2nd of August 2023

³⁵OCHA Internal displacement <[http://www.ocha.international. displcement.org](http://www.ocha.international.displcement.org)> accessed 3 September 2023

³⁶<<http://www.refword.org.pdfid>> accessed on the 1st of august 2023

³⁷Amnesty.org. <<http://www.amnesty.org-what-we-do-refuges-asylum>>accessed on the 1st of august 2023.

³⁸UNHCR <<http://www.unhcr.org/ptotection/legal-framework/idp-defination>> accessed 3 September 2023

³⁹Ibid.

protection, IDPs are entitled to all the rights and guarantees as citizens and other habitual residents of their country. IDPs therefore are persons or groups of persons who has 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.⁴⁰

The key elements of this definition are:

- a. The involuntary character of the movement.
- b. The fact that such movement takes place within national borders. IDPs include both citizens as well as other habitual residents of the country in which they are displaced

Internally displaced people include, but are not limited to:

- a. 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
- b. Residents of poor neighbourhoods rendered unsafe and uninhabitable, at least temporarily, by the impacts of weather-related, geophysical or technological hazards
- c. Indigenous communities forced from their ancestral lands to make way for the construction of dams and other infrastructure projects
- d. Families pushed to leave their homes by constant harassment by local criminal gangs
- e. Rural communities whose livelihoods are decimated by drought, leaving them unable to feed their families and forced to seek external help elsewhere
- f. 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.⁴¹

On the other hand, a displaced person is one who has had to leave their country or region of origin, or has been evacuated, particularly in response to an appeal by international organisations, and is unable to return in safe and durable conditions because of the situation prevailing in that country, in particular they are:

- a. A person who has fled areas of armed conflict or endemic violence;
- b. A person at serious risk of, or who has been the victim of, systematic or generalised violations of their human rights.⁴²

Displaced persons therefore are generally 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.⁴³

7. Challenges Facing Internal Displaced Persons' Participation in Election in Nigeria

- a. Contesting in an election in Nigeria is capital intensive and requires support from sponsors, which may not be an opportunity that can be accessible to an IDP.
- b. Tight security is required for a candidate in election and someone in an IDPcamp may not have the means to meet such need.
- c. Also, it is difficult for an IDP to belong to the political party since he/she must be a member of a political party in his/her constituency.

⁴⁰ European commission internally displaced persons <<http://www/homeaffairs.es.european.eu/network>> accessed 3 September 2023.

⁴¹ Internal displacement monitoring centre IDMC displacement <<http://www/internaldisplacement.org>> accessed 3 September 2023.

⁴² European Commission <<http://www/Europa/network/European-migration/emn-asylum-and-migration-displace-person>> accessed on the 1st of august 2023.

⁴³ United Nations Education, Scientific and Cultural Organisation UNESCO. <<http://www.unesco.org/article/migrant.refugess>> accessed 2nd August 2023.

- d. They are yet to establish polling units within the camps, so eligible voters have to locate the closest registration centres and polling centres to the camps.

8. Recommendations

Having essayed enough on these work we are going to put down some necessary recommendations that is followed will go a long way in ensuring an effective and efficient participation of the internally displaced persons in Nigeria elections and democracy. These are as follows:

- a. Security – There is a need for the provision of adequate security for the internally displaced persons during and even after elections.
- b. Polling units: The Government Should create different polling units in different IDP camps. This will help in reducing their fear of attacks by the hood lumps while attempting to exercise their franchise. The electoral Act, 2023 should be amended to incorporate this recommendation
- c. Campaigns: Also different political parties vying for elections should equally visit the IDP camps for campaigns. They should equally read their manifestoes in these camps to help them in choosing the right candidates of their choices in elections.
- d. Voting card collection centres: This should be made accessible to the IDPs. The easiest way to achieve this is to create polling units in the IDP camps as I have stated before.
- e. The Electoral Act and the Internally displaced persons. It is again our humble view that the Electoral Act should be amended to make provision for the IDPs to be allowed to join political parties of their choices, so as to be in position to contest for elections.
- f. There is also a need to install close circuit television (C.C.TVs) Cameras, Satellites and other audio visual cameras that will equally be of help to the government, in other to monitor the conduct of elections in the internally displaced persons camps in the whole federation.

9. Conclusion

The principle of universal and equal suffrage entails that all citizens, displaced or not, are able to fully and freely exercise their right to vote. Ensuring the enfranchisement of internally displaced persons is not only required by international standards, it is important to giving the displaced, who so often are marginalized, a voice in the decisions that affect their lives, and thereby enhancing the legitimacy of the electoral process overall.