

Towards the Evolution of Right to Reparation for Loss of Housing and Property of Internally Displaced Persons (IDPs) in Nigeria

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Abstract

During internal conflicts, displaced victims are confronted with wide range of physical and psychological trauma to their persons coupled with loss of their homes and other life time investments. Relocating these victims to safe place (IDPs camps) alone will be far from given them much touted hope for returning to normal lives. At the international level, there is a growing recognition of the significance of extending reparation (which comprises of restitution, relocation, reintegration and compensation) to internally Displaced Persons (IDPs) as means of assuaging the impact of wrongful acts committed against them in accordance with the time honoured legal aphorism – *ubi jus ibi remedium* which means where there is a wrong there must be a remedy. In Nigeria, owing to multiple factors compensating victims for loss of homes and other tangible properties in particular is yet to arouse the needed attention that it deserves as government primary attention has continually been overwhelmed by the need to provide immediate succour. This article as a conceptual discourse attempt to x-ray the various context that reparation can be gauged for internally displaced persons arising from recurring internal crisis in Nigeria. The paper concludes that beyond the traditional reparation sufficiently entrenched in applicable international, regional and domestic regimes, namely provision of temporal shelters and other humanitarian needs, an intervention that can hardly approximate to reparation capable of enthroning durable solution for internally displaced persons (IDPs), there is an imperative need for a new twist that recognizes the importance of reparation for movable and immovable properties lost in the heat of internal crisis. This article is significant as it contributes conceptually to the untiring search for durable solutions by government, policy makers and relevant stakeholders as a way of engendering enduring protection and assistance for internally displaced persons (IDPs) in Nigeria.

Keywords: Internally Displaced Persons, Conflict, Reparations, Durable solution, Nigeria

1. Introduction

Within the web of contesting vulnerability today, internally displaced person's plight is more worrying and precarious. Uprooted from their homes or habitual place of residence due to internal violence, human rights violations, generalized violence, development projects and natural disasters but continued to live in another part of the country in striking pains that renders return almost impossible. Unlike refugee they have not crossed to another country for their status to attract the necessary protection existing at international law.¹

Reparation is the means by which harm or injury arising from wrongful act is remedied so as to place the victim in the position he would have been had the harm or injury not been done. It is a recompense or reimbursement. In situations of internal displacement especially owing to internal armed conflict, there is bound to be colossal injury or loss to either the victim's persons, homes or other immovable property such as land. It becomes obvious and natural that such victims

¹ Under the United Nations Convention Relating to the Status of Refugee 1951 (hereinafter simply called Refugee Convention) refugees are specifically protected as well as under the institutional mandates of the United Nations High Commissioner for Refugees (UNHCR).

would seek remedy from or against the perpetrators of the raging harm.² Reparation could take the form of restitution, resettlement, rehabilitation, compensation and satisfaction.

The right to remedy is firmly seated and settled in history as exemplified in the legal aphorism- '*Ubi Jus Ibi Remedium*' which means where there is a wrong there ought to be a remedy. But the question is does such right exist only for the internally displaced persons or the entire universe? While it is true that international law be it human rights, humanitarian and criminal laws revere the right to remedy for the entire citizens (including internally displaced persons) who would unfortunately become victims of violations of their respective standards, the UN Guiding Principles on Internal Displacement³ and the new African Union IDPs treaty⁴ tend to have strengthened the basis of an ideal remedial regime for internally displaced persons only in a very hasty manner.

In Nigeria, the right to reparation exist against unlawful acts that tends to deprive citizens of their right to own movable and immovable property and in certain instance there are laws that guarantee payment of adequate compensation in an event of state led deprivations in relation to immovable properties. Just like the position under existing international law, they are not specifically directed to favour internally displaced persons alone but the entire citizen who are victims in particular.

This article seeks to take a bird eye scrutiny of the foregoing positions with a view to espousing on the need for reparation for loss of homes and other properties as a means of making durable solution meaningful to internally displaced persons in particular especially in the face of intermittent violence in Nigeria which has occasioned colossal losses and damage to properties of victims.

2. Research Methodology

This study is conceptual and doctrinal in nature. It involves an analysis of international and regional conventions, Nigerian legislation, scholarly article/journals and internet resource. This methodology is adopted because of dearth of accurate and reliable statistics on internally displaced persons (IDPs) in Nigeria coupled with the fact that this work looks at the problems necessitating the study from analytical/comparative perspectives of the applicable legal rules and principles.

3. Right to Reparation in International Law

International law which for this purpose is limited to the trigonometry of international human rights law (IHR), international humanitarian law (IHL) and international criminal law (ICL) proposes reparations generally for victims of injury or harm following breach of its rules and principles from two perspectives even though with different boundaries of culpability in respect of state actors and non-state actors. It provides for three type of reparation such as restitution, satisfaction and compensation. Whereas restitution seeks to return the victim to the period (*ante*) before the harm or injury, satisfaction is aimed at a non-pecuniary remedy such as apology and acknowledgement, while compensation revolves round financial award only where by fundamental change of circumstances restitution becomes impossible to achieve.⁵

Firstly that state bears responsibility to ensuring that all the consequences of illegal usurpations or breach of rights engendered by its principles is appropriately wiped out. This connotes that reparation is a natural consequence of wrongful act perpetrated by the state as borne out of the principle of international law which provides that "any breach of an engagement involves an obligation to make reparation".⁶ Under this regime wrongful acts which can constitute injury or harm are in exhaustive.

In the second instance right to reparation lays for injury or harm notwithstanding the legality of such acts as liability is imputed to have arisen strictly or absolutely. But nature of injuries or harm covered by this regime is restricted to activities that are hazardous or potentially risky.⁷

² Veronika Bilkova, "Towards a General Right of Reparation for Internally Displaced Persons" *Canadian Yearbook of International Law, CYIL*, 2 (2011), 95-112 available at http://www.files.cyil.eu/200000046-91e9492e32/CIMP_2011_08-Bilkova.pdf. [accessed on 7 January 2015]

³ *United Nations Guiding Principles on Internal Displacement 1998* available at www.drc.dk/fileadmin/uploads/pdf/IA_PDF/facts/C6.%20Guiding%20. [accessed on 16 February 2015]

⁴ *African Union Convention for the Protection and Assistance of internally Displaced Persons in Africa, (2009)* entered into force on 6 December 2012 (hereinafter referred to as *Kampala Convention*) available at <http://www.unhcr.org.50f9551f9.pdf>. [accessed on 16 February 2015]

⁵ Article 35 and 37 of the *Articles on Responsibility of States for International Wrongful Acts UN Doc. A/56/10*;

⁶ See Article 31 of the *Articles on Responsibility of States*; Bilkova, 98

⁷ Such as space activities and other modern high-tech exploration.

This trend in international law represents a somewhat gradual process of the strong recognition that internally displaced persons deserves reparation for the injury to their persons and their properties due to conflicts.

International Human Rights (IHR) regards all human beings as repository of some inalienable rights which are naturally attributes of their being. Therefore state as primary bearer of responsibility towards their citizens within the defined territory is under a duty to protect internally displaced persons as part of the civil population and also provide machinery that recognizes the existence of the right to seek remedy against unwarranted violations of their rights enshrined in applicable human rights instruments especially those that have assumed *erga omnes* status.⁸ IHR being treaty law based binds on State Party alone⁹ nevertheless individual victims can complain where violations has arisen from situation of internal displacement.

The law regulating the use of force in international law simply called international humanitarian law (IHL) recognizes the right of reparation for victims of armed conflicts. This supports only internally displaced persons (IDPs) as a result of armed conflict in particular.¹⁰ Armed conflicts could either international or internal but certainly the extent of the application of the rules regarding right to reparation for victims depends on which of the divide they belong. Unlike IHR, this rules applies to both state actors and non -state actors. Reparation for individual victims under IHL is still doubtful as its rules and principles are mainly targeted at inter states relations.¹¹

From the perspectives of international criminal law (ICL), it frowns at atrocious international crimes such as “war crimes”, “crimes against humanity”, and “genocide”¹² by imposing criminal responsibility from the point of individual perpetrators of these crimes which is a form of satisfaction as a specie of reparation. Similarly it criminalizes “forcible transfer of population” as well as other unlawful acts to which internally displaced persons (IDPs) may be exposed during situation of internal displacement.¹³ The ICC statute prescribes award of reparation against perpetrators of heinous crimes mentioned earlier through its decisions¹⁴ and from the Trust Fund¹⁵ created under it. These are clearly accessible to internally displaced persons (IDPs) who are victims of international crimes. However the extent of the application of the relevant rules differs with the forum from which reparation is sought.

A passionate look at this three branches of international law will reveal that the right to seek reparation, albeit not in general but limited form, exists but the extent of its application and type that can be sought depends on the facts and circumstances of each case and the forum that the right is ventilated. International law does not *expressi verbis* concede or pretend to authorize a general right of reparation for internally displaced persons per se.¹⁶

4. Reparation in the Guiding Principles and the African Union IDP Treaty

That the need for a general right of reparation for internally displaced persons (IDPs) is compelled by the necessity to enthrone durable solutions needs no further academic flogging.¹⁷ It has become the ultimate goal going by the gradual benevolence of existing international law regarding reparation to the effect that an individual focused regime ought to apply to internally displaced persons.¹⁸

This gradual revolution starts with the Guiding Principles on Internal Displacement drafted by Francis Mading Deng¹⁹ endorsed by the UN Commission on Human Rights²⁰ and finally adopted by the United Nations Generally

⁸ For example the UN Convention on the Rights of the Child, aspires to be one of such because of the wide ratification of over 193 countries as of today.

⁹ Article 2 (1) (a) and (g) of the Vienna Convention on the Law of Treaties 1969 available at http://www.legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf. [accessed on 17 February 2015]

¹⁰ Article 3 of Hague Convention IV of 1907 and Article 91 of Additional Protocol I (1977) to the Geneva Convention do not apply to non-international armed conflicts.

¹¹ Bilkova, 98-99.

¹² Articles 6, 7 and 8 of the Rome Statute of the International Criminal Court, A/CONF.183/9 of 17 July 1998 entered into force on 1 July 2002.

¹³ *Ibid.*, Articles. 7(1) (d) and 8 (2) (e) (viii).

¹⁴ *Id.*, Article 75.

¹⁵ *Id.*, Article 79.

¹⁶ Bilkova, 105.

¹⁷ Absence of general right to reparation have manifested in the complexities of practical problems faced by internally displaced persons (IDPs) in their search for safe return to their original or habitual place of residence.

¹⁸ Bilkova, 105.

¹⁹ Former Sudanese Diplomat and the then Representative of the Secretary General; See also UN Doc. E/CN.4/1998/53/Add.2, Report of the Representative of the Secretary General submitted pursuant to Commission Resolution 1997/39. Addendum: Guiding Principles on Internal Displacement, 11 February 1998 available at <http://www.refworld.org/docid/3d4f95e11.html> [accessed on 16 February 2015]

Assembly.²¹ Though not binding in themselves,²² the principles, thirty in number restates existing international law by analogy by synchronizing the scattered and limitless grey areas in favour of international protection and assistance of internally displaced persons (IDPs).

Section 5 of the Guiding Principles deals with issue of reparation where it provides for return, resettlement and reintegration. Competent authorities in ensuring safe and voluntary return or reintegration of internally displaced persons are under a duty to establish favourable conditions and provide means to enable them elect whether to return to their habitual place of residence or to resettle to any other part of the country.²³ With respect to other form of reparation, the principles recognize restitution and compensation by imposing responsibility on competent authorities to ensuring quick recovery of property and possessions of internally displaced persons (IDPs) left behind or dispossessed in the course of displacement.²⁴

A cursory look at the reparation regime established in the Guiding Principles reveals that there are no specific mention of the requisite bearer of the right, emphasis is placed on holders of responsibility (states) to provide the appropriate remedy. In similar vein, the class of reparation that can be sought by right holders is somehow restrictive. In other words, a general right of reparation for internally displaced persons (IDPs) though not firmly entrenched in the Guiding Principles, it has encouraged progressive advancement in matters pertaining to reparation following consistent debates on the best approach to solving problems associated with displacement bearing in mind the specific needs of internally displaced persons.²⁵

The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) is a binding treaty (hard law) and the first to originate from regional arrangement worldwide. It focuses primarily on internally displaced persons (IDPs) within the continent of Africa as guarantees stipulated therein are not in the nature of general entitlement of all citizens. This convention made impressive provisions for reparation by imposing responsibilities on States party to provide satisfactory conditions that will aid "voluntary return", "local integration and relocation".²⁶ It went beyond the traditional limits of existing reparation regimes by providing for effective remedy for internally displaced persons (IDPs) whose rights are affected by displacement by apportioning liability to State party where they refrain from putting in place needed measures aimed at preventing displacement.²⁷

As further guarantee, states are under a duty to provide the required legal machinery that will ensure just and fair reparation as appropriate in consonance with international standards.²⁸

5. Reparation under Nigerian Law

In Nigeria, the right to reparation is well entrenched in the ground norm²⁹ itself and in the law relating to administration and management of land.³⁰ The Constitution recognises the right of the citizens to own movable and immovable property³¹ and institutionalized the judicial process of settlement of disputes pertaining to the same.³² In the same vein

²⁰ UN CHR, UN Doc. E/CN.4/RES/1998/50, *Internally Displaced Persons*, 17 April 1998.

²¹ UN GA UN Doc. A/60/L.1, 2005 World Summit Outcomes, Para 132.

²² Walter Kalin, "Flight in Times of War" (2001), 646; Lauren Groth, "Engendering Protection: An Analysis of the 2009 Kampala Convention and Its Provisions for Internally Displaced Women", *International Journal of Refugee Law*, Vol. 23, No. 2 (2011), 227. Available at <http://www.ijrl.oxfordjournals.org>. [accessed on 7 December 2014]; Ekpa Shedrack, "From Voluntary Principles to Binding Precedent: African Union Convention for the Protection and Assistance of Internally Displaced Persons Comes into Force", *Journal of Law, Policy and Globalization*, Vol. 27 (2014), 20.

²³ Principle 28 of the Guiding Principles.

²⁴ *Ibid.*, Principle 29.

²⁵ For example Art. 5 and 9 of the International Law Association, London Declaration of International Law, Principles on Internally Displaced Persons adopted on 29 July 2000, the declaration ambitiously went beyond the mere compilation of legal rules for the very first time to provide for a truly IDPs centred reparation regime, available at <http://www.refworld.org/docid/42808e5b4.html> [accessed on 16 February 2015]; Similar awareness raised in the Guiding Principles also influenced incorporation of reparation regime for internally displaced persons (IDPs) under art. 1(8) and 8(2) of the Great Lakes IDP Protocol on the Property Rights of Returning Persons 2006 available at http://www.www.brookings.edu/fp/projects/idp/GreatLakes_IDPprotocol.pdf [accessed on 16 February 2014]

²⁶ Article 11 (a) of the Kampala Convention.

²⁷ *Ibid.*, Article 12 (1), (2) and (3).

²⁸ *Id.*, Para 2.

²⁹ Constitution of the Federal Republic of Nigeria 1999 available at <http://www.nigeria-law.org/CostitutionOfTheFederalRepublicOfNigeria.html> [accessed on 15 February 2015] (hereinafter simply called Nigerian Constitution).

³⁰ Land Use Act Cap L5 Laws of the Federation of Nigeria 2004(hereinafter simply called LUA).

³¹ Section 43, 44 (1) (a), (b).

under the Land Use Act individual's right to own land is also recognised and it is further protected through a recourse to judicial remedy by the courts established to act as a check on the excesses of the statutory grantor in an event of revocation.³³ In all these instances the adjudicatory functions of the court is unfettered and include the power to decree or order any appropriate remedy that will meet the justice off each case including but not limited to compensation, restitution, and award of damages.

In Nigeria, experience has shown that properties such as houses belonging to citizens as well those displaced by conflicts are subjected to brazen impunity of reckless wreckage due to internal armed conflict without corresponding compensation from either the state who bears primary responsibility for protection of internally displaced or perpetrators of the harm on grounds of individual responsibility.

Under the Abandoned Properties Act³⁴ instead of payment of reparation to victims of internal violence or situations which renders return to their homes or properties impossible, right of ownership is forfeited instead in the process as the state is empowered to declare such property abandoned and to order sale to third parties without any prescription of recompense to the original owners.³⁵ This approach is rather harsh to victims especially internally displaced persons more so that their sudden movement which is characteristically forceful and involuntary is viewed as an act of relinquishment of property necessitating forfeiture by the state.³⁶

It is submitted that properties lost or damaged as a result of internal violence deserves reparation not necessarily because of the nature of the flight which characterized situations of displacement but as citizens generally. A close scrutiny of the state of Nigerian law as evidenced from the foregoing will persuasively reveal that there is of course no general right of reparation for victims of internal displacement in well-defined context though this right can be imputed from the broad perspectives of citizen's entitlements to enjoyment of fundamental rights as guaranteed by the constitution.³⁷

The exercise of such powers by the state which negates right of reparation is in itself constitute blatant affront to the constitution as illustrated in plethora of judicial decisions, prominent among whom is the celebrated case of *Ojukwu v. Military Governor of Lagos State*³⁸ where the court brilliantly granted a mandatory order that the property of the plaintiff located at No. 2 Queens Drive, Ikoyi Lagos be returned back to him after many years of cessation of hostilities that greeted the Nigerian civil war.³⁹

Within jurisprudence of criminal laws in Nigeria, reparation in the nature of an imposition of term of imprisonment or payment of fines or both for criminal offences such as murder, causing grievous hurt, assault and arson or mischief by fire and sexual related offences which are usually committed during internal violence against displaced persons is only intended to satisfy the object of punishment designed by the state unless the court of competent criminal jurisdiction orders payment of compensation in favour of victims (internally displaced persons).⁴⁰

For internally displaced persons in Nigeria their precarious situation is further compounded by the lack of financial wherewithal to pursue rigorous legal process against the state or individual in order to press for reparation for loss of their homes and other properties wrecked by internal violence.

6. Reparation for Internally Displaced Persons (IDPs) and the Challenges

It is no longer in doubt that the right to reparation exist for internally displaced persons upon an assessment of the letters of the law but amidst this gala there are obvious issues that pose problems in the realization of this much touted right.

³² *Ibid.*, Section 46.

³³ Under sections 39 and 41 of the Land Use Act, jurisdiction is conferred on the High Court and the Area Court respectively to inquire into adequacy of compensation payable to right holders under section 29 upon revocation of right of occupancy by the Governor pursuant to section 28.

³⁴ Sections 1, 2, and 3 of the Abandoned Properties Act Cap A1 Laws of the Federation of Nigeria 2004.

³⁵ *Benedicta Daudu, Legal and Institutional Framework for the Protection of Internally Displaced Persons in Nigeria, PhD Thesis, Faculty of Law, University of Jos, Nigeria (2010), 73-74.*

³⁶ For the definition of internal displacement, see article 1(I) of Kampala Convention. Contrast this definition with relinquishment which means "an abandonment of a right or thing" see Bryan A. Garner (ed.), *Black's Law Dictionary*, 9th ed. (St Paul: West Publishing Co., 2009), 1405.

³⁷ See chapter IV of the Nigerian Constitution.

³⁸ CAL/195/85

³⁹ *Daudu*, 75-76.

⁴⁰ Under the Criminal Procedure Code Cap C23 Laws of the Federation of Nigeria 2004, a court of competent criminal jurisdiction can in addition to term of imprisonment or imposition of fine or both order that pecuniary compensation be paid to victim of crime.

These are the venue or forum where the newly recognised right can be properly ventilated and the precise holders of duty to provide reparation and for what type of wrongful acts, injury or harm that it covers which are undeniably jurisdictional issues.

There is no privileged judicial or quasi-judicial body that can grant access to internally displaced persons the right to reparation at international law.⁴¹ It all depends on which branch of international law and the rules that have been breached. Under human right regime, the appropriate forum can either national courts or specialised courts⁴² provided the court is seized of jurisdiction and the conditions of admissibility are met.

Individual claims for reparation under international Humanitarian law can be brought before domestic courts as well international bodies.⁴³ The clog posed by doctrine of jurisdictional immunities among others makes recourse to national courts a bit problematic. Reparation under international criminal law are instituted before national courts especially where the said international crime has also been criminalized in local legislation⁴⁴ or before regional courts⁴⁵ and the International Criminal Court (ICC).⁴⁶

Unlike the reparation regimes in international law that focuses on previous violations of existing norms which incidentally also applies to internally displaced persons (IDPs), the emerging trend is no longer based on the existence of previous unlawful acts but on harm or injury to their persons and properties by virtue of the unfortunate situation they have been plunged into.⁴⁷

Similarly, there is no unanimity in the traditional reparation regimes entrenched by three branches of international law considered earlier in this work as regards who is responsible to provide reparation to internally displaced persons (IDPs) in a verified case, but the near conclusion that can be deduced is that it could either states, non-state actors or individual perpetrator depending on which branch the harm or injury finds expression.

However under the gradually evolving IDP centred reparation regime in the Guiding Principles and the African Union IDP treaty there is much emphasis on the need for consensus as far as the duty of state as bearer of responsibility to protect and provide reparation for internally displaced persons (IDPs) who at all times remained within the territory of their own state is concerned.

7. Concluding Remarks

In Nigeria by reason of the fact that Kampala Convention is yet to be domesticated after its due ratification,⁴⁸ reparation for internally displaced persons in Nigeria is still incubating in the shred of the scattered provisions of applicable local legislation and international law which are in the nature of general entitlement of all citizens not meant to benefit only internally displaced persons (IDPs) in Nigeria.

That a right to reparation per se exists and that the same is exploitable for loss of home in particular and other properties of internally displaced persons (IDPs) is no longer doubtful as there is a strong indication that beyond the classic form of reparation provided in the three traditional branches of international law, a much more general right of reparation is gradually evolving⁴⁹ and currently gaining supports from state practices.⁵⁰

One may conclude from the foregoing that reparation regimes under Nigerian statutes are too broad and incomprehensible for a shattered persons in the standing of an internally displaced persons to fully appreciate and exploit coupled with high rate of illiteracy and poverty which militates against access to justice in Nigeria.

⁴¹ Bilkova, 110.

⁴² Such as African Court of Justice and Human Rights, European Court of Human Rights, Inter-American Court of Human Rights etc.

⁴³ UN Claim Commission.

⁴⁴ Nigeria Terrorism (Prevention) Act 2011 is one of such local legislation in Nigeria.

⁴⁵ As proposed by the African Union in the newly established African Court of Justice and Human Rights which is expected to try other international crimes beyond the parameters set in the Rome Statute of the ICC; See also Sophie Van Leeuwen, "Africa: Nine Things About the African Court of Justice and Human Rights" *The Hague Trial Kenya*, 5 February 2015 available at <http://www.allafrica.com/stories/201502060133.html> [accessed on 17 February 2015]

⁴⁶ Such powers has been ceded to the Court by the Rome Statute of the ICC.

⁴⁷ Bilkova, 111.

⁴⁸ Ratified on 17 April 2012 and deposited the instrument of ratification on the 22 May 2012; see List of countries which have signed, acceded and ratified the Kampala Convention available at http://www.au.int/en/.../Convention%20on%20IDPs%20-%20diaplaced..._O.pdf. [accessed on 17 February 2015]

⁴⁹ With the advent of the Guiding principles and Kampala Convention.

⁵⁰ Sri Lanka- National Framework for Relief, Rehabilitation and Reconciliation (2002); and Georgia-Property, Restitution and Compensation for the Victims of Conflicts in the Former South Ossetian Autonomous District in the Territory of Georgia (2006) are few examples of secondment of the new reparation regime at national levels.

Considering the gravity of destructions of private properties and the attendant depravity as gleaned from the recurring crisis in Nigeria, an assurance of perfect reparation packages for all victims may not be perfectly possible so soon but a gradual journey to utopia once the pre-requisite legal and institutional framework are put in place coupled with the necessary political will to match words with actions. This is more so that the loss of homes and properties makes internally displaced persons (IDPs) detest any plan to return to their original place and will always prefer to remain perpetually displaced in IDPs camps.

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