

## **Policy Brief**

# **Challenges for the implementation of the right to education of forcibly displaced children in North-East, Nigeria**

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### **Summary**

Conflict induced internal displacement has caused over 2 million to be homeless across Nigeria with over 80% of the displaced population being women and children – with children accounting for the larger part of this population. While there appears to be a strong institutional framework to protect internally displaced persons (IDPs) in Nigeria, the legal framework on which the institutions could thrive is relatively weak. The lack of a uniform approach in ensuring access to education among the displaced and non-displaced calls for a proactive measure on the part of the Nigerian government in providing compulsory and free basic education to all children of school age without any form of discrimination on the societal status of the children.

## 1 Introduction

Nigeria is a federation with 36 states and the Federal Capital Territory (Abuja). Legislative responsibility is divided between the federal and state governments based on the exclusive, concurrent and residual lists of legislative duties provided in the Constitution. The rights and welfare of children is on the residual list of the Constitution. As such, it is within the discretion of states of the federation to take legislative measures in the protection of the rights of children in the states. While the federal government has taken steps to protect the rights of children in the Federal Capital Territory, eleven states of the federation are yet to take proactive measures in enacting a state-based law to protect the rights of children in their states. This brief analyses the challenges and impediments to achieving the right to education of displaced children in Nigeria.

## 2 Legal frameworks

Although Nigeria has ratified and domesticated the 1981 African Charter on Human and Peoples' Rights (African Charter Domestication Act, 2004) which seeks to protect the rights of every individual in Africa, this is not sufficient on its own to protect the rights of IDPs, especially the vulnerable population of women and children. The constant displacement of individuals and families across Africa got the attention of the African Union as a result of which African leaders drafted and adopted the 2009 Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).

Nigeria signed the Kampala Convention in 2009 and ratified it in 2012. While the Kampala Convention has not been domesticated in Nigeria, a national policy on IDPs has been developed to guide the humanitarian interventions and activities for IDPs. Thus, the humanitarian assistance and protection of the rights of IDPs in Nigeria is impeded by legal technicalities which makes it difficult to make the government accountable for the inadequate protection of the rights of IDPs in the country.

On the specific protection of the rights of children in Nigeria, the government domesticated the UN Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), earlier ratified by enacting the Child's Rights Act (CRA) in 2003. In addition to the bill of rights in chapter IV of the Constitution, the CRA guarantees a plethora of rights for the Nigerian child, among

which is the right to education. Unfortunately, the right to education falls under the fundamental objectives and directive principles of state policy (Constitution of the Federal Republic of Nigeria 1999, Chapter II) which accommodates the rights that are generally perceived to be unenforceable, though recent judicial trend across Africa has shown otherwise.<sup>1</sup> In Nigeria the trend appears to be changing with the Supreme Court's decision in *Centre for Oil Pollution Watch v NNPC* (2019) where the right to environment is made justiciable in spite of the fact that it is also a Chapter Two right like education.

With the enactment of the CRA, there is a further duty on each state of the Nigerian federation to domesticate the CRA in the individual states. This is due to the residual category of child's rights and welfare under the Constitution. It is however disheartening that only twenty-five States have domesticated the CRA with eleven States yet to enact the CRA in their various States.<sup>2</sup> Surprisingly, the States of the North-East region of the country, with the highest number of IDPs, are yet to domesticate the CRA. Consequently, there is no specific legislative framework that focuses on the protection of the children in the North-East in line with the CRC and ACRWC. All efforts and pressure from Civil Society Organizations on these States to domesticate the CRA have proved abortive over the years due to cultural and religious norms (Adebowale 2019).

Apart from the destruction of schools and teaching facilities in the North-East coupled with abduction of school age girls from schools which has deterred parents from sending their female wards to school, the fact that several undestroyed schools have been converted to camps have greatly hindered the opportunity for school age children in the North-East to be educated (Alobo and Obaji 2016, 26-33).

Having established that women and children form the bulk of displaced population in Nigeria, this population remain the most vulnerable to human rights abuses and violence. The needs of children are highly neglected and in the wake of Covid-19, many displaced children have had to stay within the camps without any form of access to formal education.

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<sup>1</sup> *Gable Masangano and Others v Attorney-General and Another* (Unreported) Constitutional Case 15 of 2007 (HC, PR); *Soobramoney v Minister of Health (Kwazulu-Natal)* 1998 1 SA 765 (CC); *Khosa v Minister of Social Development* 2004 (6) BCLR 569 (CC); *State v The Registrar, Malawi College of Health Sciences, Ex Parte Emmanuel Gondwe* (Unreported) Miscellaneous Civil Cause 16 of 2008 (Lilongwe District Registry) per Kachale J.

<sup>2</sup> The States are Adamawa, Bauchi, Borno, Gombe, Jigawa, Kano, Katsina, Kebbi, Sokoto, Zamfara and Yobe.

### **3 Structural and institutional frameworks**

In emergency situations, the National Emergency Management Agency (NEMA) has the responsibility to manage such emergency disasters. NEMA was established in 1999 and has structures and departments in place to tackle disasters. To ensure the effectiveness of NEMA, part III of the NEMA Act establishes State emergency management committees for each State of the Federation with the responsibilities of informing NEMA of any disaster occurring in the State, responding to disasters in the State, and managing disasters in the State.

While NEMA has the responsibility of responding to and managing emergency disasters, the Universal Basic Education Commission (UBEC) is responsible for implementing the Universal Basic Education (UBE) programme in the country which is aimed at providing compulsory and free basic education for Nigerian children between the ages of 6-15 years. To complement the effectiveness and nationwide coverage of the initiative, each State of the federation has a State Universal Basic Education Board (SUBEB) saddled with the same responsibility. The creation of the UBEC and SUBEB has been said to lead to a complex institutional structure which creates a confusion in terms of roles and jurisdiction, especially at the state levels (Oladele 2018, 145-155).

In the past, disbursement of funding and the centralisation of the UBE program has been a major impediment to the effectiveness of the initiative. However, with the recent step towards financial autonomy of local governments in Nigeria, hopes are high on better funding of basic education in the country.

### **4 Relationship between donor agencies, civil societies and governments**

The Federal Ministry of Humanitarian Affairs, Disaster Management and Social Development was established in 2019 with a mandate to develop humanitarian policies and to provide effective coordination of national and international humanitarian intervention in the country. There are evident challenges with accountability in the furtherance of IDP protection and humanitarian assistance, particularly in the context of state management of resources and sustained interventions by the government. Evidently, in addressing this challenge, there is need for enhanced interaction with civil

society and also leveraging on support from international agencies (Ekpa and Dahlan, 2016).

## **5 Conclusion and Recommendations**

The legal framework for the right to education in Nigeria has been examined and while the right to education is largely perceived as a non-justiciable right, judicial practices across many parts of Africa has shown that the right to education is strongly linked to a child's right to life, freedom of expression, right to be free from discrimination and several other fundamental human rights. Thus, the right to education cannot be completely detached from other fundamental human rights. There is need to leverage on the current judicial attitude towards realising socio-economic rights including the right to education. The efforts of the government in providing compulsory and free basic education has been analysed but it is clear that if this initiative is to be measured as successful, the programme must be implemented based on non-discrimination. Recommendations have been made on ensuring equal access to education of displaced children in Nigeria. This brief recommends the following for Nigeria:

- The Federal government should domesticate the Kampala Convention in order to give a legislative backing to the protection of the rights of IDPs in the country. There may be need for Public Interest Litigations on the right to education with a view to getting the judiciary on board to make the right to education justiciable.
- Though it may not be feasible to immediately amend the Constitution to reflect the right to education as a fundamental right within the Bill of rights in chapter IV, the judiciary should interpret the right to education in the light of fundamental rights such as the right to dignity, freedom from discrimination and the right to life.
- There is a need on the part of the federal government to decentralize the UBE program to give autonomy to SUBEB with a mandate to implement the program without discrimination. Special attention should be paid to vulnerable and minority population in fulfilling the mandate of the Board. The roles and responsibilities of UBEC and SUBEB should be clearly identified in order to make the institutions accountable for funds management.

- Strengthen the government’s legal responsibility to protect and promote the right to education of internally displaced children through effective policy implementation and accountability framework. Also, there is the need to strengthen the capacity of local CSOs to make the government accountable to provide compulsory and free education to all displaced children of school age. Thus, all impediments to realizing this right becomes a burden which the government must address. Public Interest Litigation is also recommended.

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