

Policy Brief

Policy and legal framework on internal displacement in Zimbabwe: an overview

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Summary

Zimbabwe is prone to rapid and slow onset disasters of both natural and man-made origins that have repeatedly caused several devastating effects and triggered population displacement. Over the last decade, natural disasters caused by cyclones and El-Nino, as well as socioeconomic and political factors have all contributed to migratory movements in the country. Contrary to the picture portrayed by the government of Zimbabwe, internal displacement is more prevalent in the country than is at first discernible. This brief offers an overview of the current policy and legislative framework on internal displacement in Zimbabwe. It identifies the lack of any formal legal recognition of internal displacement and weak property rights as the major drivers of internal displacement. While there is no national legal framework specifically recognising and providing for the protection and assistance of IDPs, the 2013 Constitution articulates a Bill of Rights that protects the basic rights of IDPs. However, this exposes IDPs to blanket solutions which does not consider IDPs as a vulnerable group requiring specific policies and programmes to support them. As such, the broad recommendation is the domestication of the 2009

African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa and the 1998 United Nations Guidelines on Internal Displacement.

1 Introduction

The Internal Displacement Monitoring Centre (IDMC) estimated that at the end of 2019, there were some 52 thousand internally displaced people (IDPs) in Zimbabwe (Internal Displacement Monitoring Centre 2014). There are a number of causes of displacement in Zimbabwe, including disasters, such as floods, droughts and storms, as well as development initiatives. The conditions of IDPs in Zimbabwe vary widely, depending on the cause and duration of their displacement. Their needs range from emergency humanitarian assistance to interventions aimed at securing durable solutions. Poor security of tenure is both a cause of displacement and an obstacle to durable solutions. Where displacements have taken place, providing adequate housing has posed challenging and has had implications for safety and health. Further issues may be caused by a lack of access to civil registration and documentation and obstacles to accessing basic services (such as education and health) and livelihoods. Although the amount and quality of information on internal displacement has improved in recent years, most of it is presented at the national level and considers IDPs to be a coherent group with similar needs and characteristics. This is, however, not the case. Internally displaced women, men, and children all experience displacement differently: they each have specific demands and resources they can rely on. These specificities must be better understood and taken into account to design more efficient policies and programmes to support them all.

2 Law and policy frameworks on internal displacement in Zimbabwe

Although the existing legal framework does not provide for any formal recognition of internal displacement, Zimbabwe became one of the first countries in Africa to demonstrate commitment to a legally enforceable IDP framework by signing the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) adopted in October 2009. The country ratified the Kampala Convention in July 2013. The Zimbabwean Constitution which came into effect in May 2013 has significantly expanded human rights protections. However, Zimbabwe has not yet passed implementing legislation for the Kampala Convention, as required of state parties. Thus, the provisions of the Kampala Convention do not form

part of domestic law. Neither has Zimbabwe officially designated an authority responsible for IDP issues, as required by article III (2) (b) of the Kampala Convention. The Zimbabwean Constitution and other legal reforms have, however, significantly improved the protection environment for IDPs. Citizenship provisions remove significant barriers to finding durable solutions for many Zimbabwean IDPs of foreign ancestry. Greater incorporation of international law and ratified treaties create opportunities for the judiciary to expand the protections afforded to IDPs while the legislature would tackle the formidable task of aligning the laws of Zimbabwe with the Kampala Convention.

Zimbabwe subscribes to the common law tradition of dualism which requires domestication of ratified international law treaties through an Act of Parliament to have application in the domestic legal system. Section 327 of the Constitution sets out two constitutional requirements for an international treaty which has been concluded or executed by the President to be binding in Zimbabwe. Firstly, it must obtain Parliamentary approval and secondly it must be incorporated into domestic law through an Act of Parliament. Although undomesticated international treaties do not form part of Zimbabwean law, section 327(6) of the Constitution requires the judiciary to adopt an interpretation of the law that is consistent with any international treaty, convention or agreement that is binding on Zimbabwe. Thus, while the Kampala Convention does not form part of the law of Zimbabwe, the judiciary has a constitutional obligation to adopt legal interpretation which is consistent with the Kampala Convention.

3 Conclusion and Recommendations

Despite the government's consistent failure to acknowledge both the reality of displacement, and that its policies have caused internal displacement, it has recognised the phenomenon through ratification and signing of international instruments. The existing Zimbabwean legal framework does not provide for any formal recognition of internal displacement. However, the government of Zimbabwe has demonstrated commitment to a legally enforceable IDP framework by signing and ratifying the Kampala Convention. But the treaty is yet to be domesticated. This brief recommends the following for Zimbabwe:

- Domesticate the Kampala Convention and translate its provisions into national legislation in a way that establishes a national framework addressing internal displacement in a comprehensive manner.

- Identify and legally appoint a national institution responsible for the coordination of all efforts aimed at protecting and searching for durable solutions for IDPs, including liaising with national and international humanitarian and development actors and civil society organisations in the delivery of protection and assistance to IDPs. The legal definition of the mandate of the national institution responsible for IDPs should be accompanied by the provision of a specific yearly budget allocation for such institution to discharge its assigned tasks and the requirement to appeal to external funding in the event of unavailability of sufficient resources to address internal displacement concerns.
- In relation to the guarantees related to housing, land and property rights: (i) to reaffirm in the relevant legislation that IDPs have the right to have restored to them any housing, land and property assets of which they were deprived or, if that is impossible, to be compensated for any housing, land and property loss in accordance with the Kampala Convention, the U.N. Guiding Principles and the Pinheiro Principles and, to this end, to have effective access to courts or alternative institutional dispute settlement mechanisms; (ii) to reform laws that create insecurity of tenure, especially the Housing Standards Control Act, the Regional Town and Country Planning Act and other laws that permit arbitrary displacement, including by creating a legal obligation to search for alternatives before engaging in demolitions or evictions.
- Enact a specific legislation for: (i) the regular collection of those IDP data – disaggregated by age and sex – that are deemed necessary to inform targeted humanitarian or development programmes; and (ii) the maintenance and protection of relevant IDP data in a confidential and secure manner in order to ensure the privacy of IDPs. The two tasks could be achieved either through separate legislation or, respectively, (i) through amendment of the Census and Statistics Act and (ii) through the inclusion of displacement-related data in the list of categories of information disclosure which are presumed to be unreasonable, in line with Sections 61 and 52 of the Constitution.

- To ensure that there are adequate resources to address the three phases of displacement. This could be achieved by: (i) taking into account the resources needed (including budgetary funds, human resources and humanitarian goods) when laws and policies relating to IDPs are drafted; (ii) coordinating the enactment of legislation and policies with Government budgetary cycles; and (iii) ensuring that authorities with responsibility in relation to IDPs have adequate funds.

References

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About the Author

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