

## **PROTECTING THE RIGHTS OF THE ‘INVISIBLE’: A CASE FOR CHILDREN IN INTERNALLY DISPLACED PERSONS CAMPS IN NIGERIA**

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### **ABSTRACT**

*Displacement is a life-changing event. Apart from the attendant trauma, internally displaced persons (IDPs) are faced with issues of dignity, security and equality. This paper contributes to the growing debates about the impact of displacement into camps on children and how enforcement of their rights can temper the hardship they experience. It investigates the effects of the experience of displacement on children. This piece of research also queries the efficacy and potency of the various human rights legislation relating to children in national spheres. It goes further to assess the effectiveness of the various machineries in place towards providing for the IDP camps.*

*Key words: Internal Displacement, Children’s Rights, Camps.*

### **1. INTRODUCTION**

Situations arise in the life of every nation which threatens its peace and security. In such situations emergency powers are used and this remains a common feature of national life and is frequently accompanied by abuses of individual freedoms. ‘The right and duty of a government to use emergency and security laws in times of national crisis is undeniable’<sup>1</sup> but this should not be a justification for abuses of individual freedoms. It is for this reason that safeguards have been provided in international and local statutes for individual freedoms. In fact, it is precisely during times of emergency that the protection of individual freedoms becomes all important. Mangan argues that an emergency situation does not, by itself justify systematic human rights violation and that a government must consider the magnitude of the emergency and whether the deprivation of human rights can be avoided.<sup>2</sup>

The establishment of the United Nations, its Charter<sup>3</sup>, the Universal Declaration of Human Rights<sup>4</sup> and subsequent binding treaties were all geared towards the ‘Universal respect for and observance of human rights and fundamental freedoms for all’.<sup>5</sup> Similarly, the African Charter on Human and Peoples’ Rights<sup>6</sup> which Nigeria has ratified, clearly states in Article 1 that Civil and Political Rights as well as Economic rights are essential to the well-being of every society. It provides for the protection of individual freedoms and requires States to adopt

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<sup>1</sup> John Hatchard, *Individual Freedoms and State of Security in the African Context: the case of Zimbabwe*. (Harare: Baobab Books), 3.

<sup>2</sup> Magan B, ‘Protecting Human Rights in National Emergencies: Shortcomings in the European system’ (1998) *Vol. 10. Humans Rights Quarterly*, 372.

<sup>3</sup> United Nations Charter. [www.un.org/en/charter-united-nations/](http://www.un.org/en/charter-united-nations/) accessed 12 January 2017. Hereinafter referred to as the UN Charter.

<sup>4</sup> Universal Declaration of Human Rights. [www.un.org/en/universal-declaration-human-rights](http://www.un.org/en/universal-declaration-human-rights)

<sup>5</sup> UN Charter, Article 3.

<sup>6</sup> African Charter on Human and Peoples’ Rights <[www.achpr.org/instruments/achpr](http://www.achpr.org/instruments/achpr)> accessed 12 January 2017.

legislative and other means to give effect to them. Consequently, the States are obligated to protect individual freedoms.

However, despite copious provisions in our international and municipal instruments on human rights, there is still gross inability to realise these rights. The scourge of human rights abuses in the country is a threat that constitutes a breach across several rights including the right to life. There is a sharp contrast between what is provided for and what entails; between aspiration and implementation. It calls for very serious attention especially when it has to do with fundamental rights and protection because the value and beauty of legislation is implementation and enforceability. It is sad that ‘despite several legislation and decades after the Universal Declaration of Human Rights was adopted and proclaimed, human rights violation still occurs at an alarming rate in Nigeria’.<sup>7</sup> The United Nations Charter, the various international and regional instruments on human rights and Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)<sup>8</sup> all emphasise that every person is entitled to the protection of the Law, this obviously includes displaced persons.

This paper contributes to the burgeoning debates about the impact of displacement into camps on children and how enforcement of their rights can cushion and alleviate their plight. It examines the implications of the experience of displacement on children. This work also questions the efficacy and potency of the various human rights legislation relating to children in national spheres. It intends to critically evaluate the effectiveness of the various machineries in place towards catering for the IDPs, particularly children, in Nigeria; scrutinising the legal provisions made for children in IDP camps. These laws were not merely crafted to protect the IDPs from pursuit or danger, they are broader and contain rights which they are entitled to by the sheer fact of their humanity. They may be displaced but they qualify to enjoy the most basic rights.

Apart from contributing to an emerging body of literature that has begun to question the effectiveness of the human rights machinery in the delivery of rights to refugees and displaced persons, this paper is particularly concerned with how these egregious abuses of the rights of displaced children can be prevented or curbed by legal and non-legal means. There is an urgent need to develop effective and efficient constitutional and legal frameworks to ensure protection of these rights. This work is split into four segments with the first dwelling on the problem of internal displacement in Nigeria. The next part looks at the plight of children in IDP camps. In the section following, the legal rights of children as provided for under various national, regional and international instruments are examined.

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<sup>7</sup>Oriaifo Helynn, ‘Child Abuse in Nigeria; Legal and Institutional Framework for Child Protection’, *Port Harcourt Journal of Business Law*, Volume 2, Number 2, September 2016, 638.

<sup>8</sup> Constitution of the Federal Republic of Nigeria.  
[www.icnl.org/research/library/files/Nigeria/constitution2.pdf](http://www.icnl.org/research/library/files/Nigeria/constitution2.pdf)

Thereafter, possible legal and non-legal means that could be adopted to curb or prevent the abuse of the rights of displaced children is discussed.

## **2. THE CONUNDRUM OF INTERNAL DISPLACEMENT IN NIGERIA**

Internal displacement, simply put, is ‘the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognised state borders’<sup>9</sup>. The former Secretary-General of the United Nations, Kofi Annan, described internal displacement as ‘the great tragedy of our times’<sup>10</sup>. The internally displaced people are among the most vulnerable of the human family.<sup>11</sup> They are forced to flee their homes though they remain within the borders of their countries. These persons flee their homes due to conflict, disaster or development. Sometimes they are referred to as refugees, although they do not fall within the current legal definition of a refugee. The main difference between the internally displaced persons (IDPs) and refugees is that IDPs continue to live in their home state. IDPs have not crossed a border to find safety. Unlike refugees, they are on the run in their home country. While they may have fled for similar reasons, IDPs stay within their own country and remain under the protection of its government.

Finnstroom (2003), Morvardi (2008) and Feldman (2007) in their various works point out that the most important difference between refugees and IDPs is that refugees have crossed an international border and live in a host state, while IDPs remained on the territory of their home state. Refugees and IDPs may have fled for the same reasons and, as a result, they may share a sense of loss and ‘uprootedness’, and experience vulnerability and poverty due to the loss of assets, productive capacities and resources.<sup>12</sup>

The International Displacement Monitoring Centre (IDMC), a specialised unit within the Norwegian Refugee Council (NRC) in its first Report on Internal Displacement in Africa, published in December, 2016, stated that as of the end of 2015, nearly 12.4 million people were living in displacement across Africa as a result of conflict and violence out of which Nigeria accounted for 2,096,000 (two

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<sup>9</sup> African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). <[www.eods.eu/library/AU\\_KAMPALA%20CONVENTION\\_2009\\_EN.pdf](http://www.eods.eu/library/AU_KAMPALA%20CONVENTION_2009_EN.pdf)> accessed 12 January 2017

<sup>10</sup> Kofi Annan, Quoted in Andre-Michel Essoungou, *Africa’s Displaced People: Out of the Shadows* <[www.un.org/africarenewal/magazine/april.../africa's-displaced-people-out-shadows/](http://www.un.org/africarenewal/magazine/april.../africa's-displaced-people-out-shadows/)>

<sup>11</sup> Andre-Michel Essoungou, *Africa’s Displaced People: Out of the Shadows*.

<sup>12</sup> Finnstrom, S, ‘Living with Bad Surroundings: War and Existential Uncertainty in Acholiland, Northern Uganda’ (2003) Vol. 35. Uppsala: Acta Universitatis Upsaliensis.

Morvardi, B. ‘Rights and Development – Induced Displacement: Risk Management or Social Protection?’ In Grabska, K. and Mehta, L. (eds.) *Forced Displacement: Why Rights Matter*. Basingtoke: Palgrave MacMillian, pp. 50-70. Feldman, I. ‘Difficult Distinctions: Refugee Law, Humanitarian Practice, and Political Identification in Gaza’. *Cultural Anthology* 22: 129-169.

million, ninety-six thousand) persons.<sup>13</sup> In 2015 alone, out of the 2.4 million people in 14 African countries were displaced, Nigeria accounted for more than 30 per cent of the figure, violence forced more than 736,000 people from their homes. From the data presented in the report it is obvious that Nigeria is in the throes of an internal displacement crisis. Quite obviously, violence linked to the escalating insurgency of Boko Haram from 2013 as millions of people were forced from their homes and livelihood. As at August 2016, 2.1 million people estimated as displaced in the country, almost 90 per cent were recorded as having fled the Boko Haram insurgency.<sup>14</sup> The reality is that these numbers may seem significant but they are certainly an underestimate, because data is simply not available for all instances of displacement in the country.

In the camps, the present is perceived as temporary and life is lived only in preparation for life in the future; a better life beyond the camp. The inhabitants therefore keep imagining a meaningful and better future for themselves in spite of the misery and discomfort they experience presently. In most cases, the supposed temporariness becomes protracted and indefinite, leaving them in an incongruous situation where they cannot settle where they are because they are supposed to be temporary, and they cannot also move on as their stay is protracted. ‘The result is that they experience living in a time pocket where time grinds to a halt inside the camp while normal time continues outside the camp. Not only is the limbo that they live in, a time pocket in relation to lives that are lived outside the camps; it is also a limbo with no promise of an ending’.<sup>15</sup>

Recently, internal displacement has been driven to the forefront of humanitarian debates amid concerns that the issues of IDPs does not feature sufficiently high up on the global policy-setting agenda and risks being further marginalised in international affairs<sup>16</sup>. In most IDP camps all over the world there exist significant human rights concerns. There exist daunting challenges in spite of the efforts of the United Nations, Non-governmental agencies and National governments to alleviate the sufferings of the IDPs and rehabilitate them. Expressing worry over the bleak and claustrophobic atmosphere that characterise the camps, Harrel-Bond asserts that ‘Camps are artificial environments where everyone is restricted in their freedom of movement. They are overcrowded and epidemics such as

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<sup>13</sup> The Internal Displacement Monitoring Centre (IDMC) Global Internal Displacement Database <[www.internal-displacement.org/globalreport2016](http://www.internal-displacement.org/globalreport2016)> accessed 8February 2017.

<sup>14</sup> *ibid*

<sup>15</sup> Simon Turner, ‘What is a Refugee Camp? Explorations of the limits and effects of the Camp’. *Journal of Refugee Studies*. (Oxford University Press, 2015) Accessed on March 14, 2017, from <https://jrs.oxfordjournals.org>.

<sup>16</sup> Cecilia Jimenez-Damary is the new Special Rapporteur on the Human Rights of IDPs. She has worked in the field of human rights for nearly 30 years at the local, national and international levels with NGOs, national human rights institutions, UN agencies and governments. Since 2013, she has worked as National Manager of the Philippine Commission on Human Rights’ special project on Internally Displaced Persons. Prior to that, she worked for five years at IDMC as a Senior Legal Advisor and Training Officer, where, among other valuable contributions, she developed the IDMC training module on durable solutions to displacement.

measles, dysentery, meningitis and cholera have been found to be major killers. The bigger the camps, the more pronounced these effects'<sup>17</sup>. She states that 'The most essential feature of a camp is the authoritarian character of their administration; they are like "total institution", places where, as in prisons or mental hospitals, everything is highly organized where the inhabitants are depersonalized and where people become numbers without names'<sup>18</sup>. Fresia and Kanel opine that in Africa, in particular, the camp device has been of confinement of undesirable population, producing figures of victimhood incompatible with the one of the citizen'<sup>19</sup>.

Trapp states that some camp dwellers he interviewed in the course of his research 'often voiced the fear about the prospect of been labelled as 'wasted years' upon return. He said 'wasted years' was a derogatory term that had become widespread in its attachment to people who had lived at the camp for a long time and later returned.'<sup>20</sup>

Undoubtedly, displacement is a life-changing event. Apart from the attendant trauma, the IDPs are faced with issues of dignity, security and equality. Ideally, camps should be places of refuge but the reality is that they do not provide any meaningful protection. A case in point is the 'accidental' killing of over 100 IDPs in a camp in Rann, Borno state, Nigeria in January, 2017 when the Nigeria Air force was said to be carrying out mop-up operations against insurgents in the North-East. Olawale Rotimi submits that 'It is important to note that the thoroughly poor condition of IDPs in Nigeria reflects the impecunious condition millions of Nigerian live. There's a wide gap of commitment to the welfare, security and rehabilitation of IDPs from the Federal and state governments authorities'<sup>21</sup>.

In Nigeria, displaced persons' tales of woe abound. They are 'finding it difficult to regain pre-conflict way of living because of poor living conditions faced with the rigours of long journeys, psychological trauma, safety challenge, harassment, frequent sexual abuse, children molestation, forced labour, poor sanitation which expose members of the camps to infectious diseases, poor medical facilities . . . , poor feeding which exposes them to malnutrition, poor condition of infrastructure, such as power, . . . lack of healthcare, security, education, among other basic amenities.'<sup>22</sup>The defining characteristics of the IDP camps in Nigeria and most

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<sup>17</sup> Barbara Harrell-Bond, 'Are Camps good for Children?' Working Paper No. 29, August 2000,1

<sup>18</sup> *ibid*, 1

<sup>19</sup> Marion Fresia and Andreas Von Kanel, 'Beyond Space of Exception? Reflections on the Camp through the Prism of Refugee Schools', *Journal of Refugee Studies*, Volume 29, No. 2, December, 2015, p. 253.

<sup>20</sup> Micah M. Trapp, 'Remittances as Informal aid: Livelihoods and Migration in a Liberian Refugee Camp', Research Paper No 266, November, 2013. <[www.unhcr.org](http://www.unhcr.org)> accessed 8 January 2017.

<sup>21</sup> Olawale Rotimi, ' IDPs in Nigeria and a call for Urgent Intervention', December 28, 2015. [omokuwa.com/2015/.../olawale-rotimi-idps-in-nigeria-and-a-call-for-urgent-intervention](http://omokuwa.com/2015/.../olawale-rotimi-idps-in-nigeria-and-a-call-for-urgent-intervention)

<sup>22</sup> *ibid*

parts of the world is insufficient food, lack of medical care and lack of safety and other necessities of life.

The experience of displacement creates a sense of being second-class citizen in them. While they are equal citizens in legal terms, they may not enjoy the same rights and entitlements as their co-nationals. The qualitative experience of citizenship evolves during internal displacement, even when their legal status as citizens in their home country remains. Marjoke Oosterom posits that ‘Although IDPs have equal citizenship status *de jure*, one of the problems confronting IDPs is that the creation of an “IDP status” can lead to different social categories among citizens, with implications for the rights of IDPs, and the extent to which they enjoy full citizenship’.<sup>23</sup>

It is worrisome that in spite of the similarities between the internally displaced persons and refugees, more attention is given to the refugees while IDPs remain largely neglected. ‘Despite this inextricable link between internal displacement and refugee flows, policymakers tend to focus mainly – albeit inadequately – on refugee issues while the plight of internally displaced people (IDPs) remains largely neglected’.<sup>24</sup> Furthermore, Ledico Cajak warns about the inconsistencies in the response to the global displacement crisis that resonate, stating that ‘At Policy level, viewing internal displacement and trans-border displacement as separate issues is short-sighted. IDPs have lost their homes, livelihoods and sometimes their families and friends to the same violence or disaster experienced by those who flee abroad’.<sup>25</sup> He surmised that ‘it is often because of lack of assistance and basic services in their home countries that many risk their lives by embarking on perilous journeys across dangerous borders and rough seas’.<sup>26</sup> Decrying the situation and stating the grave implications, Cajak adds that ‘Turning a blind eye to internal displacement constitutes a failure to understand the causes of refugee flows and most likely results in and inevitable failure to adequately address refugees’.<sup>27</sup> most fundamental problems. We cannot limit whom we help based on lines on a map. “Leaving no one behind” was a universal pledge enshrined in the 2030 Agenda for sustainable Development and the Agenda for Humanity. But there can be no sustainable development if tens of millions of IDPs are left behind.’<sup>28</sup>

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<sup>23</sup>Marjoke A. Oosterom, ‘Internal Displacement, the Camp and the Construction of Citizenship: Perspectives from Northern Uganda’ <<http://jrs.oxfordjournals.org>>at Institute of Commonwealth Studies on June 7, 2016.

<sup>24</sup>Ledico Cajak ‘A New Year Resolution: Making 2017 a year for IDPs’. <https://ledicocajak.com/>  
Ledico Cajak is a researcher and writer focused on armed groups, demobilization and reintegration of former combatants, and mass displacement. He has worked for close to two decades in the Balkans and Central Africa.

<sup>25</sup>ibid

<sup>26</sup>ibid

<sup>27</sup>ibid

<sup>28</sup>ibid

These deficiencies and quandaries that characterise camp life adversely affect those placed in them. However, there are those who are more vulnerable and therefore have specific protection needs, like women, children, the aged and disabled. 'They are often referred to as vulnerable and the disadvantaged groups. Equally, they could be best described as the powerless at war. Any of the above descriptions suits them as they always fall victim and prey to all forms of violence.'<sup>29</sup>

It is regrettable that despite the sundry instruments enacted and adopted to guarantee the rights of children in Nigeria, there still exist extensive abuse of their rights. Conventions and treaties in Human Rights on the protection of children's rights abound yet there seem to be a meteoric rise in the spate of child abuse especially in camps.

The concern of this paper is to review the protection of the rights of children in IDP camps who by their age and circumstances are vulnerable and exposed to risks.

### **3. THE PLIGHT OF CHILDREN IN IDP CAMPS**

No doubt IDP camps provide a measure of security and shelter for people who were forced out of their homes by conflict, disaster or development. Haven lost their sources of livelihood, resources and savings to disaster, they suffer great hardship, the government takes responsibility in providing them with basic needs, during their stay in the camp and adopt implementing policies and techniques on how to manage them.<sup>30</sup> However, the prevalence of human rights abuses in these camps is of great international concern. The phenomenon of child abuse is a serious and insidious problem globally. In these camps there exist large scale violation of child rights. Though incidences of violence against displaced children is not new, it is emerging as a subject of rigorous study. Nuzhat Parveen Khan, in his evocative book on Child's rights, observes that 'Today there is a growing concern about the rights of children and recognition of the need to protect them from neglect and abuse as child abuse has become one of the major problems all over the world.'<sup>31</sup>

Children are entitled to protection as persons taking part in hostilities and special protection as persons who are particularly vulnerable, the complexities of war and displacement however increase their vulnerability.<sup>32</sup> These children who have been exposed to violence in their communities, either as immediate witnesses or

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<sup>29</sup>Kate Chinwe Okoli and Oluwabunmi Lar, 'The Plight of Children Refugees in an Armed Conflict Situation: A Call for Collaboration of Humanitarian Agencies', *Beyond Shenanigans: Jos Book of Readings on Critical Legal Issues*, University of Jos, 2015, 625, 630.

<sup>30</sup> Osagioduwa Eweka and Toluwanimi Oluwakorede Olusegun, Management of Internally Displaced Persons in Africa: Comparing Nigeria and Cameroon. <http://dx.doi.org/10.42314/afrev.v10i1.15>.

<sup>31</sup>NuzhatParveen Khan, *Child Rights and the Law* (Universal Law Publishing Co., 2012) 12.

<sup>32</sup>Helynn Oriaifo, (n. 637)

participants and uprooted from their homes suffer serious psychological and behavioural disturbances. 'These were boys and girls whose war experiences, including loss and separation, were compounded by the traumas and deprivations, including the witnessing of murder, homelessness, hunger, persecution, and direct involvement in violent activities.'<sup>33</sup> Anja Kublitz poignantly describes life in the camp as consisting 'of minor mundane catastrophes of chronic illness, unemployment and discrimination that not only never end, but also never add up to anything that elicits a moral response'.<sup>34</sup>

With all the evidence mustered against these IDP camps, it is evident that these people who had physical torture that made them flee are undergoing psychological torture in most of these camps. Of great concern is the long-term psychological impact of life in camps on the mental health and personalities of the children and what could be done to mitigate the situation. There is a great need, as a matter of urgency, for attention to be paid to the recovery and reintegration into society of these children who have been scared physically and psychologically by the experience of displacement. Most of the children in these camps suffer deprivation and malnutrition, confront problem of survival and loss of their childhood by taking up responsibilities early. 'The overall wellbeing of these children is affected by the violation of their rights which has serious psychological, physical and social consequences on them'<sup>35</sup>. Fulminating against the plight of displaced persons, Boothby states thus:

*It has long been recognised that psychological costs may be associated with forced displacement and the process of adaptation to another socio-cultural context but never before in history has the forcible uprooting of so many people been accompanied by the additional trauma of direct experiences of violence.*<sup>36</sup>

It is even more worrisome that some of these children arrive the camps unaccompanied, having lost their parents. Harrell-Bond attempting to effectively paint a graphic image of the situation states that:

*Many families are broken, children being cared for by only one parent, or without either parent. Sometimes a child has to act as head of family, trying to care for its younger siblings. In camp situations children also lose role models to guide their development. Even where both parents are present, these children grow up under abnormal conditions. To feed their children, parents are dependent on hand-outs from strangers. Parents are deprived of their authority; their roles as carers and breadwinners are undermined by their dependence on a system over which they have no control. Parents become degraded in the eyes of their children. Parents suffer the further humiliation of standing in queues to get food, being forced to manipulate the system to get extra ration cards in order to have enough food they may also suffer from enforced idleness which contributes to the loss of self-esteem, particularly that of men.*<sup>37</sup>

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<sup>33</sup>Neil Boothby, 'Displaced Children: Psychological Theory and Practice from the Field', *Journal of Refugee Studies*, volume 5, No. 2, 1992, 106.

<sup>34</sup>Anja Kublitz, 'The Ongoing Catastrophe: Erosion of Life in the Danish Camps', *Journal of Refugee Studies* <<http://jrs.oxfordjournals.org/>> at University of Sussex on May 30, 2016, 3. Accessed 8 February 2017.

<sup>35</sup>Khan (n 31)

<sup>36</sup>Boothby (n 33)

<sup>37</sup>Barbara Harrell-Bond 'Are Refugee Camps Good for Children?' 7 [www.unhcr.org/research/.../refugee-camps-good-children-barbara-harrell-bond.html](http://www.unhcr.org/research/.../refugee-camps-good-children-barbara-harrell-bond.html)

She further adds that ‘there is increase in domestic abuse as the men and women may suffer anxiety and depression because the hopelessness of the situation in the camp. Also because of the despondency of their situation, there is a recorded increase in substance abuse as a means of forgetting’.<sup>38</sup>

Another tragedy about camp life is that children do not grow up in conditions that permit their socialisation according to the values of their own culture. ‘Sadly, these children do not only have to grapple with adapting to another environment but also have to go through psychological trauma and the incidences that accompany being forcibly displaced from their homes due to no particular fault of theirs. This whole experience leaves them very vulnerable as their parents who should care for them are in most cases embattled and unstable. Some of these children were witnesses to the killings and other brutalities while some not only witnessed but themselves victims of violence’.<sup>39</sup>

Another disconcerting issue as regards children in IDP camps is the fact that the academic calendar of most of them is interfered with, even after returning to their communities some of them never return to school thereby having a permanent adverse effect on their lives.

Expressing concern about the situation Khan states that ‘Education is one of the most important investments that any developing country can make for its future. It is the most effective tool for empowerment and human development, so the government is required to implement the “Right of children to free, and compulsory Education”...’<sup>40</sup>

These children in IDP camps should, in spite of the experience, be entitled to an education that will mould them into agents of social transformation, by making them take position to improve their lives. Education could afford the children the opportunity of making their voices heard and stand out as agents of transformation within their families and the community.

IDP camps are planned as places of temporary refuge, it is not surprising that in most cases providing education for the temporary population of children is omitted in the agenda. When they leave their communities where they may have had access to education and usually settle temporarily in a place where no provision is made for education. Schools provide one of the arenas in which refugees and humanitarian agencies alike can nonetheless project hopes for overcoming the stasis of encampment.<sup>41</sup> ‘Children often experience disrupted or no schooling. One of the most damaging effects of war is the way it disrupts and

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<sup>38</sup>ibid

<sup>39</sup>Boothby (n. 33)

<sup>40</sup>Khan (n 31)

<sup>41</sup>Khan (n 31)

destroys children's education. There is much evidence that education is really the best weapon against poverty and conflict . . . children are often forced to move into refugee or displaced persons' camps where they may wait for years in extremely trying and difficult circumstances for normal life to resume, if it ever does'.<sup>42</sup> Increasingly, many children are subjected to rape and sexual violence as these are frequently used as "weapons" of war. Girls and young women may have babies as a result, or are so injured and maimed that they will not be able to bear children in the future. The psychological effects of war and war-related trauma may be severe. Post-traumatic stress disorder (PTSD) may result as the effects on vulnerable and impressionable children can be worse than on adults. Many children cannot understand the cause of the conflict or why it is happening. Severe losses and disruptions in their lives lead to high rates of depression and anxiety in war-affected children. These impacts may be prolonged by exposures to further privations and violence in refugee situations. Their experiences may make it difficult for them to form healthy relationships with adults or with their parents. The recognition of the rights of these children in exile is essential whether it is the right to food, health or education. They in effect require shelter, food, safe water and medical care. They also need to have access to education and thus be able to go to school. Having lost everything, education represents the opportunity for them to have a better life once they return from exile and all children should be entitled to this vital requirement.<sup>43</sup>

Making a case that camp children should not only be fed and healed, but also educated and sensitised, Fresia and Kanel lend their voices, emphasising the need for displaced children to be given education. They state that "Indeed the very presence of school system in camp settings suggests that (re)including refugees in the social realm and addressing some of their social rights may also preoccupy humanitarian actors along with keeping bodies alive. These children embody at once the paradigmatic figure of the innocent victim and hopes for a better world".<sup>44</sup> Recounting her observations in a camp she visited in Sudan in April, 1997 Harrell-Bond said that at least primary schools are available for all children in camps, education never constitutes a priority; schools are often set up long after a population is well established in a camp; putting aside questions about the curriculum and in what language it is taught and whether it is one the children speak, unwashed children in dirty clothes do not show up for school. She adds that parents, usually a woman who heads a household on her own, often need children to share the burdens of cooking, fetching water and firewood, or watching the young children while the parent labour elsewhere. The school attendance of girls, but also of boys, is affected by camp life. The single most common cause of

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<sup>42</sup>V. Vick, 'The Impact and Effects of War on Children'.

<[www.edu.gov.mb.ca/k12/docs/support/building\\_hope/impact\\_effects-pdf](http://www.edu.gov.mb.ca/k12/docs/support/building_hope/impact_effects-pdf)> accessed 18 January 2017.

<sup>43</sup>Morgan Daget (trans. Amanda Buckel), 'Displaced children. Children in Exile', October, 2011, 2 <[www.humanium.org/en/displaced-children/](http://www.humanium.org/en/displaced-children/)> accessed 3 March 2017.

<sup>44</sup>Fresia and Kanel, (n 252)

school absenteeism is the need to be present at food distribution to secure and to transport family ration.<sup>45</sup>

#### 4. THE RIGHTS OF CHILDREN: LEGAL FRAMEWORK

The legal grounds on which a person will be protected from a place of 'refuge' deserve comparable scrutiny.<sup>46</sup> Therefore, as mentioned earlier, this paper is concerned with how these egregious abuses of the rights of displaced children can be prevented or curbed by legal and non-legal means.

There should be effective constitutional, legislative and judicial safeguards for the protection of the rights of displaced persons, including the children. It is because of the importance and gravity of this issues that the United Nations has always placed premium on policies relating to children. As early as 1924 the United Nations (then League of Nations) came up with *The Declaration of the Rights of the Child*,<sup>47</sup> also referred to as the *Geneva Declaration of the Rights of the Child*, making it the first international document promoting child rights. The Declaration is important as it highlights the social and economic entitlements of children and establishes internationally the concept of the rights. In 1959, the United Nations adopted an expanded version of the Declaration<sup>48</sup>. It stressed that because of the physical and mental state of the child, he requires special care and safeguards which includes legal protection. The Declaration, in its Preamble stated thus:

*Whereas the United Nations has, in the Universal Declaration of Human Rights, proclaimed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,*

*Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,*

*Whereas the need for such special safeguards has been stated in the Geneva Declaration of the Rights of the Child of 1924, and recognized in the Universal Declaration of Human Rights and in the statutes of specialized agencies and international organizations concerned with the welfare of children,*

*Whereas mankind owes to the child the best it has to give*

It went further to provide in Principle 2 that:

*The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.*

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<sup>45</sup>Harrell-Bond, (n. 7)

<sup>46</sup>Kate Ogg 'Protection from "Refuge": On What Legal Grounds will a Refugee Be Saved from Camp Life?' International Journal of Refugee Law <<http://jrt.oxfordjournals/>> at Ryerson University on October 10, 2016, 1 accessed 3 March 2017.

<sup>47</sup>Geneva Declaration of the Rights of the Child of 1924

[www.eods.eu/library/AU\\_KAMPALA%20CONVENTION\\_2009\\_EN.pdf](http://www.eods.eu/library/AU_KAMPALA%20CONVENTION_2009_EN.pdf)

<sup>48</sup>Declaration of the Rights of the Child, 1959

<[www.humanium.or/en/childrens-rights](http://www.humanium.or/en/childrens-rights) .../on-child-rights/declaration-rights-child/> 21 January 2017.

Since the Declaration did not have legal force and the United Nations saw the need to create an enabling environment through legislation which can address the issues of child abuse and Child Rights exhaustively and make a policy on child protection, it came up with The Convention on the Rights of the Child<sup>49</sup>. The Convention which is the most widely and rapidly ratified human rights treaty in history deals with the specific needs and rights of the child and bounds State parties to act in the best interest of the child. A legally-binding instrument, it sets out the civil, political, economic social and cultural rights of every child irrespective of their race, religion or ability. It states in Article 2 that:

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members. It goes further in Article 24 to state that the child has the right to the enjoyment of the highest possible standard of health and to have access to healthcare and medical services. Article 28 provides that the child has the right to education and places on States parties the obligation to make primary education compulsory and free for all children.

The UN Guiding Principles<sup>50</sup> on IDPs which represent a brilliant one-stop source of what these human rights obligations set out the rights of IDPs, the responsibilities of national authorities and the role of humanitarian and development actors. Though they are not legally binding, the Guiding Principles give recommendations to states. 'In fact, there has never been such a plethora of sources, references and guidance to address the situation of IDPs, especially those displaced by conflict and natural disasters'.<sup>51</sup> In Principle 1 (1) it states that 'Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.' Recognising the special needs of those in the vulnerable group, Principle 4 provides thus: (1) These Principles shall be applied without discrimination of any kind, such as race, color, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.

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<sup>49</sup>United Nations Convention on the Rights of the Child. <https://www.unicef.org/crc/>

<sup>50</sup>Guiding Principles on Internal Displacement, Sept. 2004

<[www.unhcr.org/protection/idps/](http://www.unhcr.org/protection/idps/) . . ./ guiding-principles-internal-displacement.html>18 January 2017.

<sup>51</sup>Cecilia Jimenez-Damary

(2) Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

At the regional level is the African Charter on the Rights and Welfare of the Child<sup>52</sup> (the Banjul Charter) which entered into force in 1999 and ratified by 47 of the 54 states of the African Union including Nigeria. Like the Child Rights Convention (CRC), it is a comprehensive instrument that sets out rights and defines universal principles and norms for the status of children and covers the whole spectrum of civil, political, economic, social and cultural rights. There is also the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (The Kampala Convention)<sup>53</sup> which addresses, in great detail, internal displacement in Africa. State parties undertake in Articles 2 and 3 to ‘Establish a legal framework for preventing internal displacement, and protecting and assisting internally displaced persons in Africa; also to “Respect and ensure respect and protection of the human rights of internally displaced persons, including humane treatment, non-discrimination, equality and equal protection of law’.

Similarly, the Nigerian Child’s Right Act<sup>54</sup> catalogues the rights of children and emphasises that ‘In every action concerning a child, whether undertaken by an individual, public or private body, institutions or service, court of law, or administrative or legislative authority, the best interest of the child shall be the primary consideration’. The various instruments and laws on these rights summarily, are centred on the best interest and welfare of the child.

From the provisions of the CRC, it is clear that the drafters had particular concern about the issue of children and armed conflict. Articles 38 and 39 provide that:

- 1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.*
- 2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.*
- 3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who*

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<sup>52</sup>The African Charter on the Rights and Welfare of the Child  
<[https://www.unicef.org/esaro/African\\_Charter\\_articles\\_in\\_full.pdf](https://www.unicef.org/esaro/African_Charter_articles_in_full.pdf)> 21 January 2017.

<sup>53</sup>African Union Convention for the Protection and Assistance of Internationally Displaced Persons in Africa (Kampala Convention)

<[www.eods.eu/library/AU\\_KAMPALA%20CONVENTION\\_2009\\_EN.pdf](http://www.eods.eu/library/AU_KAMPALA%20CONVENTION_2009_EN.pdf)> accessed 21 January 2017.

<sup>54</sup>Child Rights Act 2003<[https://www.unicef.org/nigeria/ng\\_publications-Childs\\_Right\\_Act\\_2003.pdf](https://www.unicef.org/nigeria/ng_publications-Childs_Right_Act_2003.pdf)> 21 January 2017

*have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.*

*4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.*

*States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.*

As already noted, “there are plethora of instruments for the protection of children during armed conflict. . . the protection has always been with the application which is also complicated in view of the changing face and character of war in the fast changing world’.<sup>55</sup> The goals of these instruments are quite commendable but the effectiveness of these instruments are weakened by the lack of implementation and compliance. Unfortunately, most governments, after ratification and domestication do not entrench effective mechanisms for the realisation of these rights they rather prefer adopt a double standard. According to the UNICEF 2004 review ‘We can only positively affect the lives children if the countries are committed and match it by effective law enforcement, allocation of adequate resources and the engagement of all levels of society’.<sup>56</sup>

Considering the fact that childhood is entitled to special care and assistance, governments are obligated to strive for the observance of these rights. Children’s rights are an integral part of human rights. That is why Trevor quips that ‘Children’s rights can be properly understood only in the context of the wider human rights framework’.<sup>57</sup> Human right protection at the national level is the main and undoubtedly the best guarantee for the protection and promotion of human rights.<sup>58</sup> It is also important that international safeguards be ensured to especially where there are shortcomings in domestic safeguards. Although, some of these persons are not yet aware of the contravention of their rights, it still behoves the government to ensure that the rights of displaced persons are protected ‘Poverty means that even if the hurdle of ignorance is overcome, ordinary people cannot afford to pursue the remedies which are available’.<sup>59</sup> According to Oriaifo, ‘Many Nigerian parents are not aware of the rights of the child, due to illiteracy and nonchalant attitude, they do not think it is anything to be respected because it will affect moral and cultural

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<sup>55</sup>Kate Chinwe Okoli and Oluwabunmi Lar, ‘The Plight of Children Refugees in an Armed Conflict Situation: A Call for Collaboration of Humanitarian Agencies’, *Beyond Shenanigans: Jos Book of Readings on Critical Legal Issues*, University of Jos, 2015, 642.

<sup>56</sup>United Nations Children’s Fund (UNICEF) Review on ‘The State of the World’s Children 2004 <[https://www.unicef.org/Sowc04/files/SOWC\\_04\\_ENG.pdf](https://www.unicef.org/Sowc04/files/SOWC_04_ENG.pdf)> accessed 12 February 2017.

<sup>57</sup>Buck Trevor (n. 20)

<sup>58</sup>John Hatchard, (n. 156)

<sup>59</sup>I. Donovan, ‘The Lawyer’s Role in the Protection of Human Rights in Zimbabwe’: Address to the Law Society of Zimbabwe, 1986.

beliefs'.<sup>60</sup> Considering the fact that human rights are inherent and inalienable and that they apply irrespective of wealth or poverty, occupation, merit, religion or ideology, and 'cannot be transferred, forfeited or waived; they cannot be lost by having been usurped, or by one's failure to exercise them. Every child despite individual differences and uniqueness is to be considered of equal worth no matter. They should therefore be entitled to equal social, civil, economic and political rights, in order to fully realize their inherent potential and share equally in life.'<sup>61</sup>

## 5. POSSIBLE INTERVENTIONS AND SOLUTIONS

It is very important that strategies are devised to protect these children in IDP camps from the psychological and other negative effects of the experience of displacement. There has to be safeguards against the abuses they presently face. There is great need to deliberately fashion out ways to create a positive social reality for these children and make the experience of displacement less traumatic and burdensome. The earlier something is done the better because the longer these children live in these camps under these conditions 'the more likely their personalities, behaviour, and moral sensibilities will become altered in the process'.<sup>62</sup>

Via the instrumentality of the law these children could be 'rescued' from impending grim and gloomy future. Mechanisms should also be put in place for the reporting of child right violations in the camps and protecting the persons responsible for the reporting. The government should take seriously its responsibility of ensuring children's rights in displacement because presently the assistance and protection given them seem quite inadequate. We must drive towards real, measurable improvements in their lives in the form of specific outcomes in health, education, economic well-being and safety. Elucidating this point, Cecilia Jimenez-Damary maintains that with the recognition of the primary responsibility of States for addressing the plight of IDPs, particularly through the endorsement of the UN Guiding Principles on Internal Displacement and the evolution of the work of the Special Rapporteur and the international community (i.e. creation of the cluster system), ensuring the human rights of IDPs has become increasingly recognised as a valid, legitimate and necessary endeavour, both for national jurisdictions and the international community.<sup>63</sup>

The approaches towards migrants, refugees and IDPs will need to be synchronised in order to assure effective and relevant policies as well as appropriate levels and allocation of funding.<sup>64</sup> It is also necessary to critically evaluate the ways in which decision makers approach issues relating to the rights of IDPs, especially the

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<sup>60</sup>Oriaifo Helynn, 650-651

<sup>61</sup>Kate Ogg, (n. 639)

<sup>62</sup>Neil Boothby, op cit 120

<sup>63</sup>Cecilia Jimenez-Damary

<sup>64</sup>Cecilia Jimenez-Damary

children. It has been shown that, in most cases, decision makers do not concern themselves with the protection of their rights and future but on shelter and food.

The Federal government should, as a matter of urgency, mandate the states that are yet to domesticate the Child Rights Act to do so immediately. The National Assembly should swiftly domesticate the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (The Kampala Convention) which was ratified by Nigeria in 2009. While this is done there should be an effective and efficient machinery to monitor and ensure implementation to guarantee the realisation and delivery of these rights. It is also important and necessary to embark on vigorous human rights education. Children should be informed of their rights and taught how to safeguard them. A major obstacle to the realisation of human rights in Nigeria is the fact that the average person, young and old inclusive, for whom these rights were crafted, is ignorant or not abreast of their relevance to him/her. Oriafio insists that knowledge is power and education is light. It is not enough to have copious provisions on human rights in various proclamations, declarations, bills of rights and covenants in the absence of human rights education. It follows that human rights learning is the key to developing a lasting culture of human rights.<sup>65</sup>

Okoli and Lar acknowledge that 'there is need for public enlightenment in order to bring to the knowledge of the public, both civilians and military the rules and principles of international law that apply in situations of armed conflict in order to curtail the abuses of children during armed conflict.'<sup>66</sup> Adding also that there is need for an independent international body whose sole responsibility will be to monitor and implement Child's Rights in times of armed conflicts.<sup>67</sup> It may be necessary also to organise public legal education programmes which includes grassroots legal education. Legal practitioners or para-legal staff could be used to educate and improve the knowledge of displaced persons on their basic rights.

Furthermore, non-governmental organisations 'can also make a crucial contribution both in the formulation of human rights standards and in the implementation of such standards.'<sup>68</sup> They 'contribute to the suspension of the observation of individual freedoms by calling attention to violations, by gathering information and by helping victims of such violations'.<sup>69</sup>

As a practical interim solution to the problem of access to justice by the IDPs, the services of the Nigerian Ombudsman Institution, The Public Complaints Commission, could be employed especially for the indigent who cannot afford expensive, lengthy and complex legal procedure. Aggrieved IDPs could approach and seek the advice of

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<sup>65</sup>Oriafio Heylun, 650

<sup>66</sup>Kate Chinwe Okoli and Oluwabunmi Lar, (n. 642).

<sup>67</sup>ibid 649

<sup>68</sup>John Hatchard, 154

<sup>69</sup>John Hatchard, 155

the ombudsman for the enforcement and protection of their fundamental rights. This is not recommended to replace or be a substitute to the normal legal system but could be useful in providing quick legal assistance to displaced persons.

The Commission could assess the situation and advise the government on the adequacy, effectiveness and efficiency of the various organs working with the displaced persons. This can serve as a vehicle steering the wheel of government policies in the right and more effective direction. This will certainly encourage improvements in government policies and the protection of rights.

Since one of the primary obligations of the office of the ombudsman is to offer practical means of protecting the rights of citizens, it will not be out of place for displaced persons who are victims of incompetent, intransigent and callous officials and victims of abuses of power to benefit from their services. As guardians of the rights of citizens at all levels, more powers could be conferred on the office to enable it take effective action and offer speedy remedies for breaches of human rights. In Hatchard's opinion, 'The wide-ranging investigations of the ombudsman may well also uncover criminal conduct on the part of government officials . . . such a power is welcome in that it gives the office an important new weapon when tackling abuses of power'.<sup>70</sup>The Commission should be properly developed and empowered so it can, as initially intended, serve as a veritable tool for promoting peace, justice and administrative transparency in our Country.

A non-legal but practical means that could be adopted in curbing hunger and malnutrition of children in the IDP camps is the involvement of women in the distribution of food and other relief materials this could also serve as a remedy against sexual abuse and exploitation which happens to be prevalent in the camps. Women's participation in food distribution is therefore expected to improve efficiency and reduce corruption and abuse. In this case, increasing women's participation was chosen as a central strategy to address deficits in the capacity and transparency of food distribution. Olivus describes women as "the secret weapon to beat hunger" and as "key actors in influencing the public health of the household".<sup>71</sup> He pointedly states that 'the participation of women is not primarily represented as an issue of equality, justice, or power; rather, it is discussed in terms of the contribution it can make towards the achievement of humanitarian goals such as public health or food security. . . . In development aid, women's participation in the economy is represented as crucial to poverty eradication and sustainable development as they are assumed to be more risk-adverse, more focused on the welfare of the household. . . .'<sup>72</sup>Thus, having women involved in the distribution of food as well as delivering the food ration into women's hands is represented as vital to combat

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<sup>70</sup>John Hatchard, (n.152).

<sup>71</sup>Elisabeth Olivius, 'Displacing Equality? Women's Participation and Humanitarian Aid Effectiveness in Refugee Camps', 112, <<http://jrs.oxfordjournal.org/>>at Queen Mary University of London on August 22, 2014, accessed 12 January 2017.

<sup>72</sup>ibid 111.

corruption and misuse of food aid. Ensuring women's equal participation therefore facilitates the work of humanitarian organizations.

## **CONCLUSION**

It is necessary to address the issue of the protection of internally displaced persons, especially the needs of the children through legal and non-legal instruments. All stakeholders are to ensure that internally displaced persons are provided with adequate legal framework to ensure their protection and assistance as well as with durable solutions.

The UN Secretary-General has called for renewed efforts to prevent internal displacement, address the root causes and support safe, dignified and durable solutions for internally displaced people, with the aim of halving internal displacement globally by 2030. The New York Declaration for Refugees and Migrants<sup>73</sup> also recognises the plight of those displaced within national borders and notes the need for protection and assistance and prevention of displacement in the first place. To achieve this, the world must immediately do more to support IDPs and the communities that host them. All stakeholders should devote particular attention to the human rights of IDPs as they have to be prepared to resume normal lives after leaving camp. Human rights protection at the national level is the main and undoubtedly the best guarantee for the protection and promotion of human rights.<sup>74</sup>

This paper has acknowledged that it is in the domestic law of each nation that the most important safeguards are contained, our national laws play crucial roles in the protection of individual freedoms. Ideally, there should be effective constitutional, legislative and judicial safeguards for the protection of the rights of displaced persons, including the children. It is also important that international safeguards be ensured especially where there are shortcomings in domestic safeguards.

There is the need for concerted effort to be made to bridge the gap between aspiration and implementation. Theory has to transcend into practice. This paper has therefore explored the available legal and non-legal means by which the situation could be remedied and the rights conveyed to these children. It is driven by the quest to provide particularly psychological support to these already traumatised children displaced by violent political conflict and war.

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<sup>73</sup>New York Declaration for Refugees and Migrants.  
[www.unhcr.org/new-york-declaration-for-refugees-and-migrants.html](http://www.unhcr.org/new-york-declaration-for-refugees-and-migrants.html)

<sup>74</sup>John Hatchard, (n. 156)