



**CHECKING THE SCOURGE OF INTERNALLY DISPLACED PERSONS,
ECONOMIC AND POLITICAL REFUGEES, AND THE PROTECTION
OF THEIR FUNDAMENTAL HUMAN RIGHTS – THE OPTIONS OPEN
TO A RESPONSIVE AND RESPONSIBLE GOVERNMENT**

BY

CHARLES AYODEJI ADEOGUN-PHILLIPS*

PARTNER

CHARLES ANTHONY LLP

A PAPER PRESENTED AT

THE 13TH ANNIVERSARY LECTURE OF CRUSADE FOR JUSTICE

DATE:

21ST OCTOBER, 2015

VENUE:

SHERATON HOTELS AND TOWERS LTD, IKEJA, LAGOS

Introduction:

According to annual figures from the United Nations,¹ in 2014 there were almost 60 million refugees and internally displaced people (IDPs) around the globe right now. That is about one in every 122 people worldwide. This is roughly the equivalent of the entire population of Italy. The number of refugees and IDPs last exceeded 50 million during World War II. However, the figure was astonishing at that time given that the global population was significantly smaller then.

As a result of ongoing and deep-seated conflicts – particularly those in the Middle East and Africa -- internal displacement is at the highest level the world has ever seen. With over 11 million newly internally displaced persons (IDPs) in 2014, there were a reported 38 million IDPs globally by the end of the year, compared to less than 20 million refugees who have fled beyond their borders.

Of the world's IDPs, 77% are to be found in just ten countries, all but one of which are located in the Middle East and Africa. Perhaps somewhat unsurprisingly, of those ten countries, eight of them are to be found among the 15 most fragile countries in The Fund for Peace's Fragile States Index. In many of these cases, such as Nigeria and Kenya, displacement – both of refugees and IDPs – can be linked to the heightened security threats by insurgency groups, particularly Boko Haram and al Shabaab in these cases.

The Governments of Nigeria and Kenya, as well as international organizations protecting IDPs, are faced with the challenge of balancing the short-term basic needs of the IDPs while also combating the underlying structural issues that

¹United Nations High Commissioner for Refugees, Internally Displaced People Figures 2014 retrieved from <http://www.unhcr.org/pages/49c3646c23.html>, accessed September 21, 2015.

have created the situation. Another limitation is that in conflict-ridden areas, collecting data is difficult in the first place. Additionally, because there are few consistent methods of data collection of IDPs, data can easily vary from source to source.

The ever-increasing number of refugees and IDPs pose enormous challenges to the international community and has even proved capable of sparking tensions in areas and regions that were previously untroubled. Simple requirements as to food, shelter, medical care and hygiene, through sheer quantitative needs, create huge logistical problems for the host government and communities in terms of procurement, adequate and equal distribution.²

In Nigeria, particularly in the Northeast region, Boko Haram has carried out consistent attacks on civilians, as well as abductions, abuses, and other terrors. Kenya faces the threat of al Shabaab, and in addition to direct terror threats within their borders, the influx of refugees from neighboring countries affected by the violence perpetrated by the militant group. Both countries have seen heightened insecurity resulting in migration and displacement at internal and external levels.

It is against this backdrop that this lecture seeks to analyze the legal protection available to displaced persons and refugees with respect to their fundamental human rights and recommend some viable options for a responsive and responsible government.

² See Forced Migration Review, Supplement (October 2005): - Refugee Studies Centre, University of Oxford, UK, at pp. 9-11.

Internally Displaced Persons

The United Nations (UN) Guiding Principles on Internal Displacement defines IDPs as persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.³

Causes of Internal Displacement

The causes of displacement in Africa and other parts of the world ranges from natural disasters, lack of development, armed conflict or situations of violence, poverty, the effects of climate change, scarcity of resources, political instability, and weak governance and justice systems. Of these instances, it is clear ~~from the records~~ that armed conflicts account for the root cause of the highest number of displaced persons.

The armed conflicts and situations of violence in Rwanda, DRC, South Sudan, Somalia, CAR, Burundi, Sierra Leone, Liberia, Guinea and Côte d'Ivoire created an extremely complex situation of displacement across the sub-region, both internally and across borders with countless people losing their homes and livelihoods, families separated and communities destroyed.

With a population of about 130 million and more than 250 ethnic groups, Nigeria is Africa's most populous nation – with a multitude of religious, ethnic and political fault lines that periodically erupt into communal violence. Such violence has created a sizeable population of displaced persons.

³ Guiding Principles on Internal Displacement; E/CN.4/1998/53/Add.I, February 11. New York: United Nations

Currently, Nigeria has the third largest population of IDPs in the world, after Syria and Iraq. The majority of these displacements are a result of significant conflict within the country. It has been reported that up to three quarters of the displacements stem from Boko Haram insurgency violence, while the last quarter is due to increases in communal conflicts. In 2013, as the insurgency worsened and the Nigerian government declared a state of emergency, thousands were displaced within the country's three northern-most states, Borno, Yobe, and Adamawa - the epicenter of Boko Haram's violence. This trend continued into 2015, with a surge in numbers of IDPs in the first half of the year. The majority of displacements in Nigeria are caused by violence, but between October 2012 and October 2015, an estimated 66,000 Nigerians were displaced due to flooding, as the country is particularly prone to such natural disasters. Thousands more have been displaced due to desertification.

According to a 2015 report by the United Nations High Commissioner on Human Rights, Nigeria currently has over 1.5 million IDPs within its borders, while over 90,000 Nigerian refugees have fled the country.

Another significant cause of violence with specific reference to Nigeria is the entrenched divisions throughout the country between people considered indigenous to an area, and those regarded as settlers. Even though settlers may have lived in an area for hundreds of years, they are consistently discriminated against in terms of land ownership, control of commerce, jobs and education. The case Plateau State is apt on this point.⁴ Another major cause of violence in

⁴ See *Human Rights Watch*, New York, USA, (2006) - "NIGERIA: They do not own this place": - Government discrimination against Non-indigenes, vol. 18, No. 3(A), at pp. 32-50.

Nigeria is poverty and unequal access to resources. Despite Nigeria's oil wealth, at least two thirds of Nigerians live on less than \$1 per day.⁵

Displacement has also been closely linked to oil production in the Niger Delta. While the Delta region has been volatile for many years, with impoverished local communities accusing successive governments as well as oil companies of depriving them of their fair share of oil revenue, tensions escalate dramatically in oil wealth, clashing with the Nigerian army, kidnapping a number of foreign oil workers and destroying oil installations, reducing the country's oil export by at least 20 per cent. Violence between local militia and security forces as well as inter-militia fighting in the Delta region has frequently forced people to flee their homes and widespread destruction of property has occurred.⁶

Summarily, estimated data on these causes of displacement and the number of persons affected internationally will give us a better understanding of the actual causes of displacement thus:

- About 50 million people are displaced in any given year by natural disasters.
- Countries that currently experience the highest number of violence-induced displacements are: Syria (7.6 million), Colombia (6 million), Iraq (4 million), Sudan (3.1 million), Democratic Republic of the Congo (2.8 million), South Sudan (1.6 million), and Ukraine (1.4 million), Pakistan (1.8 million), Nigeria (1.5 million), Yemen (1.4 million) and Somalia (1.1 million).⁷

⁵ The 2006 United Nations Human Development Index states that 70.8 per cent of the Nigerian population lives on less than one dollar a day and 92.4 per cent on less than two dollars a day (Human Development Report, 2006).

⁶ *Supra* note 3 at pp. 55-56.

⁷ *Supra*, note 1.

The Guiding Principles on Internal Displacement (GPID)

The Guiding Principles on internally displaced persons developed by the United Nations Commission on Human Rights ('Guiding Principles')⁸ are the first international standards specifically tailored to the needs of IDPs. The Guiding Principles are consistent with international human rights law and international humanitarian law and to a large extent thus codify and make explicit guarantees protecting internally displaced persons that are inherent in these bodies of law.

The Guiding principles provides as follows:

Principle 3(1) provides that national authorities have the primary duty and responsibility to provide protection and assistance to IDPs within their jurisdiction. This principle further stipulates that IDPs are entitled to enjoy full equality of rights and freedoms like other persons in the country and shall not be discriminated against because of their displacement.

Principle 4(2) acknowledges that certain groups of IDPs – especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons – may require specific attention and goes further to address the issue of protection from displacement. On this note, the principles articulate the right not to be arbitrarily displaced and specify minimum guarantees to be observed when displacements are unavoidable.

⁸ The document was submitted by the then Representative of the UN Secretary-General on Internally Displaced Persons, Francis M. Deng to the UN Commission on Human Rights. The Principles, although not a binding legal instrument, were unanimously recognized by The Heads of State and Government assembled in New York for the September 2005 World Summit as an “important international framework for the protection of internally displaced persons.” (UN General Assembly GA Resolution A/60/L.1 para. 132).

The Guiding Principles also identifies the full range of civil, political, economic, social and cultural rights that all persons, including IDPs, should enjoy. These include the rights stated in Principle 11(2) (a) – Namely the right to be protected against acts of violence, torture and cruel, inhuman or degrading treatment or punishment as well as the right to be protected against the use of anti-personnel landmines provided in Principle 10(2) (e). Principle 22(d) specifically identifies the right of IDPs to vote and to participate in governmental and public affairs, whether or not they are living in camps.

Principle 18 relates to the right to an adequate standard of living, including ensuring safe access to essential food, potable water, basic shelter and housing as well as appropriate clothing and essential medical services and sanitation. The third section also states in (Principle 19(3) that special attention should be given to the prevention of contagious and infectious diseases, including HIV, among IDPs.

The fourth section deals with the issue of humanitarian assistance and specifies that when governmental authorities are unable or unwilling to provide assistance to the displaced, international organizations have the right to offer their services, and that consent for them to do so shall not be arbitrarily withheld.

The final section of the Guiding Principles emphasizes the importance of providing IDPs with long-term options, namely voluntary return in safety and dignity or resettlement in another part of the country. It also emphasizes the importance of ensuring durable solutions, including the need to provide IDPs with reintegration assistance, whether they return or resettle, and to ensure they have equal access to public services.

In addition, this section explains the duty of national authorities to assist IDPs recover the property and possessions they lost upon displacement or, when this is not possible, to assist them in obtaining compensation or another form of just reparation.

The Guiding Principles pay special attention to the protection, assistance and reintegration needs of women and children. These two groups typically comprise the overwhelming majority of displaced populations. They are currently estimated as comprising 70-80% of the IDP population worldwide.⁹

The Guiding Principles call for the participation of women in the planning and distribution of relief supplies. They require special attention to be paid to the health needs of women, including access to female health care providers and services, and special efforts be made to ensure the full and equal participation of women and girls in educational programmes.

They also prohibit sexual violence, stress the need for family reunification, and highlight the right of women to equal access to personal identity and other documentation and to have such documentation issued in their own names. Principle 23 recognizes the right to education and states that special efforts must be made to ensure that women and girls enjoy equal and full participation in educational programs. In relation to children, Principle 13 (2) adds that under no circumstances are children to be recruited or to be required or permitted to take part in hostilities. Importantly, the Guiding Principles are being used at the national level in countries affected by internal displacement. Particularly

⁹ Supra, Note 16 at p. 27.

noteworthy is the development of national laws and policies based on the Principles.

In Africa, Angola led the way as the first country in the world to incorporate the Guiding Principles into domestic legislation, with the Norms for the Resettlement of Displaced Populations. Adopted in January 2001 in anticipation of the end of the conflict in the country and the possibility of durable solutions for the displaced, the Norms set forth minimum standards for the protection and assistance of IDPs during their resettlement. For instance, they affirm that all returns must be voluntary and occur in conditions of safety.

They specify that returning IDPs are to have access to land and should receive seeds and tools. Further, the Norms provided that rule of law and public infrastructure such as schools must be in place in areas of return. In West Africa, the President of Liberia announced the endorsement of the Guiding Principles which have been referenced in domestic law. Several African countries including Burundi, Colombia, Georgia and Uganda, have also expressly referenced the Guiding Principles in their national laws and policies.¹⁰ Nigeria is in the process of developing a policy on internal displacement, a recent draft of which reveals the comprehensive response that Nigeria takes to displacement, addressing all its causes including conflict, natural disasters and development projects.

¹⁰ See Kalin W., opening Speech at the 1st Regional Conference on IDPs in West Africa, held at the ECOWAS Secretariat, Abuja, 26-28 April 2006, Organized by FGN, ECOWAS, UNHCR and Brookings Institution, Washington D.C., USA, p. 1.

Moreover, around the world, civil society groups have been instrumental in disseminating the Guiding Principles and using them as a basis for advocating for the rights of the internally displaced. IDPs themselves are using the Guiding Principles as an empowerment tool.¹¹ As a sign of their broad use, the Guiding Principles have been translated from English into over 40 languages, including French, Portuguese, Hausa, Ibo and Yoruba.¹²

At the regional level, the African Union has adopted the principles¹³ and called on their member states to disseminate and apply them. This regional instrument is an important step forward in ensuring the protection of the IDPs as well as assisting them. The Kampala Convention, which came into effect in 2012, is a continent-wide agreement which legally binds governments to take responsibility for IDPs within their own countries, to protect them from human rights abuses, and to provide them with basic necessities. Additionally, its legal definition of an IDP allows for clearer guidelines for governments to act upon.

Another reason why Kampala Convention was created is to ensure that there is a codified convention expressly written to serve as model for member states to follow having at the back of their minds that Africa is most affected by all forms of displacement arising from either political, economical, inter-ethnic clashes and conflicts, natural or man-made disasters. In Nigeria for example, the Kampala Convention as well as other international treaties have been given constitutional backing.¹⁴

¹¹ Forced Migration Review, supra note 3, at pp. 17-18.

¹² *Ibid.*

¹³ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) adopted by the Special Summit of the Union in Kampala on 22 October 2009.

¹⁴ Section 19 of the Constitution of the Federal Republic of Nigeria 1999 as amended.

Responsibility of Government on Internal Displacement

The task of addressing the problem of internal displacement is primarily the responsibility of national governments. A framework has been developed by the Brookings Institution – University of Bern project on Internal Displacement. This framework sets out the benchmarks for an effective national response and identifies twelve key steps for national authorities to take in responding to internal displacement.¹⁵

These steps are:

1. **Prevention.** Governments have a responsibility to try to prevent conditions on their territory that might compel populations to flee.
2. **Raising National Awareness for the Problem.** The governments have to create awareness through public pronouncements about the problems. This will help to build national consensus and promote solidarity with the displaced.
3. **Data Collection.** Government must endeavour to keep accurate data of the numbers, locations and conditions of IDPs in order to design effective policies and programs. Data should be disaggregated by age, gender, and other key indicators so that the specific needs of particular groups are taken into account. Attention must also be given to whether IDPs are uprooted by armed conflict and violence or by natural disasters or by development projects.

¹⁵ See The Brookings Institution – University of Bern Project on Internal Displacement, (2005): - Addressing Internal Displacement: - A Framework for National Responsibility.

4. **Training.** Training programs for government officials, including camp administrators, military and police, in the Guiding Principles on Internal displacement is essential for ensuring that they are aware of the rights and needs of the displaced and their own official duties to protect and assist them.

5. **A National Legal Framework.** States have been encouraged by United Nations resolutions to develop laws to uphold the rights of IDPs, taking into account the Guiding Principles. A growing number of governments around the world have been adopting new laws or revising existing legislation. However, it has been noted only a limited number of States have ratified *Protocol I to the Fourth Geneva Convention of 1949* which means that many internally displaced persons cannot benefit from these guarantees.

6. **A National Policy or Plan of Action.** A national policy can complement national legislation. The roles of national and local institutions in responding to internal displacement should be clearly stated. Such national policy should extend to all relevant branches of government – national, local, military and police – and also to non-state actors who also must be held accountable. This policy should be developed in consultation with civil society and IDPs communities and disseminated to IDPs in their own language and in form they can easily understand.¹⁶

¹⁶ *Supra*, note 16 at p. 32.

7. **National Institution Focal Point.** This could be by assigning responsibility for internal displacement to governmental agency or establishing an inter-departmental task force or committee.
8. **National Human Rights Institutions.** These institutions are to work with governments to adopt and implement policies and laws that respect the rights of IDPs and also investigate reports of violations of their rights in a given country.
9. **Participation of IDPs in Decision Making.** Engaging displaced persons in consultations and building upon their skills is something often overlooked but critical to an effective response. The participation of women can reduce their vulnerability to sexual extortion and violence.¹⁷
10. **Supporting Durable Solutions.** Governments must ensure that IDPs return voluntarily, in safety and dignity, to their places of habitual residence or, if they choose, to resettle in another part of the country. The government is to assist IDPs to recover property and possessions or obtain compensation or reparation.
11. **Allocation of Adequate Resources.** A responsible government must devote to the extent they can, resources to address situations of internal displacement.
12. **Cooperation with International and Regional Organizations.** A responsible and responsive government should invite or accept international assistance, especially when the government in question does not have

¹⁷ *Supra* Note 16 at p. 33.

adequate resources to tackle the challenge of displacement. Cooperating with, giving safe and unimpeded access to international agencies is a sign of responsible sovereignty.¹⁸

Conclusion

Internal displacement is undisputedly a serious challenge in the Africa generally and the ECOWAS sub-region particularly. Some significant displacement crises have controlled by the ending of hostilities while many of the IDPs are still unable to return to their original place of residence and remain in unsafe conditions while new situations of internal displacement continues to occurs. A responsible and responsive government will have a lot to do to protect the IDPs, assistance needs and to find durable solutions to their plight and to prevent further displacement from taking place.

Responsible national governments are to first and foremost, avoid situations that will lead to displacement. They are to provide adequate security for civilians resident in violence-prone communities during any crises and conflicts particularly for those civilians who are not engaged in the violence. Moreover, ones there are displaced persons, responsible national governments must ensure the rights of these persons are protected in accordance with international human rights law and international humanitarian laws and principles.

Governments are to also seek the collaboration of the international community and other non state actors to help them address the challenge of resettling and providing for displaced person. Based on the complexity of the challenge posed by the crises of internal displacement, working in partnership with regional and international bodies is essential to ensure effective responses.

¹⁸ *Ibid.*

While Nigeria is currently struggling to support all of its' displaced people, it is important to recognize that in 2006, it hosted one of the first conferences focusing on IDP rights and national responsibilities in Abuja, a conference that played a crucial role in subsequently fostering the Kampala Convention in 2009. Nigeria's National Commission for Refugees, Migrants, and Internally Displaced Persons has recently announced a new policy which will focus on the rehabilitation and reintegration of IDPs into society. Additionally, the country's National Policy on Internal Displacement discusses the rights of IDPs as well as the responsibility of the host country, international humanitarian agencies, and communities. These steps will create a framework for the nation to support its IDPs as the violence in Nigeria continues to escalate.

*Charles A. Adeogun-Phillips is the Founding Partner of Charles Anthony LLP. He is a former lead international prosecutor and senior UN lawyer, who for over a decade led teams of international lawyers in the prosecution of persons responsible for the Rwandan genocide. He is currently admitted to represent the interests of victims, defendants and/or claimants before several international and regional courts including, the International Criminal Court, the Special Tribunal for Lebanon and the African Court on Human and Peoples' Rights, where between 2011 and 2013, he successfully represented Rev. Christopher Mtikila, the outspoken Tanzanian politician, in his precedent setting case against the Government of The United Republic of Tanzania resulting in amendments to Tanzania's electoral laws to allow for independent candidacy for election to public office. Charles Adeogun-Phillips would like to acknowledge the contribution of Mr. Mathew Ugochukwu, a 300 level undergraduate student at the Faculty of Law of the University of Nigeria, Nsukka, who as part of his 4 week internship at the firm, undertook to research and draft this paper.