

THE LEGAL PROTECTION OF WOMEN AND CHILDREN IN IDP CAMPS: THE CURRENT REALITIES

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Abstract

Women and children are very important stakeholders in the sustainable development of Nigeria. When combined, they represent the majority of the population of Nigeria. Whereas women are home builders and contribute immensely to socio-economic and political development, children are an epitome of intergenerational continuity. However, rising incidences of insecurity particularly the activities of the Boko Haram terrorist sect and bandits combined with natural disasters to induce displacements in Nigeria particularly in the North East region. Women and children are therefore often compelled to seek safety in Internally Displaced Persons Camps. Within the camps, however they are particularly vulnerable to abuse and exploitation. This work examined the legal protection of women and children in IDP camps vis-à-vis the current realities. The doctrinal method of research was adopted in this work hence, primary and secondary sources of law were used. In this work there are various laws and instruments at the national, regional and international levels which offer protection to women and children in IDP camps. Nevertheless, the work seeks to analyze the legal protection of women and children in IDP camps which is grossly inadequate. This is due essentially to the absence of binding legal framework targeted at IDPs, the limited nature of general human rights with regards to IDPs and the weak mechanisms for the enforcement of the protection of IDPs.

Introduction

The importance of women and children in any society cannot be overemphasised, hence the protection of women¹ and children² is secured

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¹ Violence against Persons (Prohibition) Act, 2015 (VAPP)

² Child Rights Act 2003, section 1(1)

through statutory provisions.³ Women are in most cases the pillars of the family which is the most critical socio-economic unit of every society.⁴ Women also contribute immensely to the national economy at large.⁵ Children are often referred to as the leaders of tomorrow.⁶ Boakye-Boaten,⁷ submits that the future of every society rests on the quality of its children. Consequently, the level of commitment towards the protection of children, considering their physical, mental, economic and social vulnerability is very crucial. The above notwithstanding, internal displacement which often forces women and children into Internally Displaced Persons Camps, continue to raise serious concerns over the rights and welfare of women and children as they are the most vulnerable in IDP camps.⁸

According to the UN Guiding Principles on Internal Displacement (UNHCR), 1998,⁹ Internally Displaced Persons (IDPs) are “persons or group 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 generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.”¹⁰ Thus, these are persons who have been forced to flee their homes and residence to another area within the geographical borders of the country, as a result of natural disasters or human-made disasters such as armed conflicts, generalised and gross violence or human rights abuse.¹¹

³ Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015, section 1

⁴ A Rodda, *Women and the Environment* (Zed Books Ltd, 1991) 3

⁵ A Giddens, *Structuration Theory: Past, Present and Future* (Routledge, 1991) 1

⁶ N Scheper-Hughes and C Sargent ‘Introduction: The Cultural Politics of Childhood’ in N Scheper-Hughes and C Sargent (eds), *Small Wars: The Cultural Politics of Childhood* (University of California Press, 1998) 1

⁷ A Boakye-Boaten ‘Changes in the Concept of Childhood: Implications on Children in Ghana’ <https://www.researchgate.net/publication/42637307_Changes_in_the_concept_of_Childhood_Implications_on_Children_in_Ghana> Accessed May 28, 2022

⁸ C A Abari and Others, ‘Living Condition and Health of Children in Internally Displaced Persons’ (IDP) Camps in Benue State, Nigeria’ [2019] (2)(2) *FUDMA Journal of Politics and International Affairs*, 134

⁹ UN High Commissioner for Refugees (UNHCR) Guiding Principles on Internal Displacement, 22 July 1998. ADM 1.1, PRL 12.1 PRO0/98/109

¹⁰ (n 11)

¹¹ S D Odebiyi and O Elegbe, ‘Human Rights Abuses Against Internally Displaced Persons (IDPs) in Nigeria: Investigating Media Reportage,’ (2020) *Handbook of Research on the Global Impact of*

Legal Protection of Women and Children in IDP Camps under Domestic Laws

This chapter provides a critical appraisal of the legal protection of women and children in IDP camps. It examines the nature, extent and adequacy of the protection offered under national, regional and international laws. The chapter further highlights the current realities vis-à-vis available legal protections. Lessons are drawn from the legal approaches in Columbia and Ukraine.

Protection under the Constitution of the Federal Republic of Nigeria 1999 (as amended)

Section 33(1) of the CFRN 1999 provides that every person has a right to life. In *Sogbesan v Chief of Naval Staff*,¹² the Court stated that where provisions of a statute are clear and unambiguous, the duty of a court is to give them their ordinary grammatical meanings in the context in which they are employed and used by the legislature. "Every person" therefore must be given its ordinary meaning which includes women and children in IDP camps. Although the Constitution did not define life, the Pakistani Supreme Court in *Zia v WAPDA*,¹³ described life as follows:

The word 'life' is very significant as it covers all facets of human existence... Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally... Any action taken which may create hazards to life will be encroaching upon the personal rights of a citizen to enjoy the life according to law.

From the above, for women and children in IDP camps, life does not mean the existence of breathe alone. This is because life as we know it does not exist in a vacuum. There are physical and social economic conditions necessary for life to exist. Again, the right to life is deliberately put as the first fundamental right. This is because it is only a person that has life that can enjoy other rights.

The above notwithstanding, the nature and extent of the right to life under the CFRN 1999 with regards to women and children in IDP camps is

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¹²(2015) All FWLR (Pt. 803) 1918 at 1947 paras. G-H.

¹³(1994) PLD 693 at 712 -713.

disappointingly narrow. The right to life merely means that 'no one shall be deprived intentionally of his life'.¹⁴ It does not guarantee a right to socio-economic and political conditions necessary for a productive life. Besides, since section 33 merely protects against intentional deprivation of life, by implication, unintentional deprivation of life is not a breach of the right to life. This is consistent with section 24 of the Criminal Code that a person is not criminally liable for an act which happened by accident.¹⁵ Thus, the right to life does protect women and children in IDP camps against life threatening situations such as starvation, poor environmental health, poor accommodation conditions in camps among others.

Protection under the Violence against Persons Prohibition Act 2015

One of the challenges faced by women and children in IDPs is violence which may be physical, emotional, psychological or sexual.¹⁶ Violence against women has been defined by the United Nations Declaration on the Elimination of Violence against Women as, 'any act that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts coercion, or arbitrary deprivation of liberty, whether occurring in public or in private life.'¹⁷ The Violence Against Person (Prohibition) Act 2015 came into existence to address gaps that existed in the protections and remedies available to women and children who had suffered various harms as a result of violence meted out to them on account of their gender or age respectively. Many women and children experienced domestic violence, including financial abuse, abandonment and eviction from their homes.¹⁸ Traditional approaches to violence did not take into adequate consideration the multifaceted forms of violence against women and children.¹⁹

¹⁴ CFRN 1999 (as amended) s 33.

¹⁵ *Abeke v State* (2007) 9 NWLR (Pt. 1040) 411.

¹⁶ D S Adekeye, A O Ajayi and O A Fawole 'Terrorism and the Plight of Women in Internally Displaced Persons Camps in Nigeria' [2019] (5)(1) *Osun Sociological Review*, 49.

¹⁷ United Nations General Assembly Declaration on the Elimination of Violence against Women G.A. Res.

48/104 (I), U.N. Doc. A/RES/48/104 (Dec. 20, 1993).

¹⁸ C Onyemelukwe 'Legislating on Violence Against Women: A Critical Analysis of Nigeria's Recent Violence Against Persons (Prohibition) Act, 2015' [2016] (5)(2) *DePaul Journal of Women, Gender and Law*, 1, 7.

¹⁹ C G Bowman, Domestic Violence: Does the African Context Demand a Different Approach?' [2018] (26) *International Journal of Law and Psychiatry*, 473, 473.

The VAPP Act 2015 provides extensive protection to women and children in IDP camps against violence. Under the Act, a person who willfully inflicts or causes physical injury to another commits an offense and liable to term not exceeding 5 years imprisonment and fine not exceeding 100k.²⁰ In addition, section 1(3) of the Act empowers the Court to award compensation to victims of violence. Section 4 also criminalises willfully placing a person in a state of fear of physical violence. Another important protection under the Act is section 13 which makes forced isolation from family and friends an offence. This way, women and children in IDP camps are entitled to be with members of their families. The definition of rape under the Act offers wider protection for women and girls in IDP camps.²¹ Similarly, section 16 of the Act makes it a criminal offense for a person to abandon his spouse, children and other dependants without sustenance.

Although the provisions of the Act are very extensive, the major limitation with regards to women and children in IDP camps is implementation. Section 28 of the Act allows a person who is a victim of violence or likely to be a victim of violence to apply to the Federal High Court for Protection Order against a named person (Respondent). If the Court is satisfied that the Respondent has committed, is committing or likely to commit violence against the person, the Court shall issue Protection Order in favour of the Applicant.²² This provision in practical terms offers no real protection to women and children in IDP camps. First, their ability to access a High Court from IDP camps is very limited. Secondly, litigation takes years in Nigeria and this may include proceedings to obtain Protection Order. Thirdly, Protection Order only mandates the named Respondent not to carry out any act of violence against the person. It does not affect third parties who are not named as Respondents. A woman or child who is a victim of violence will therefore have to obtain Protection Order against every subsequent person threatening him with violence.

Protection under the Child Rights Act 2003

The Child Rights Act 2003 provides extensive protection for children in IDP camps. Section 1 of the Act states that in every action concerning a child, whether undertaken by an individual, public or private body,

²⁰ VAPP Act 2015, s 2(1).

²¹ O Olantuji 'Penetration, Corroboration and Non-Consent: Examining the Nigerian Law of Rape and Addressing its Shortcomings' [2012] (8) *University of Ilorin Law Journal*, 79, 82.

²² (n 44) s 29-30.

institutions or service, court of law or administrative or legislative authority, the best interest of the child shall be the primary consideration. The word “shall” makes the provision of a statute mandatory and peremptory. In *Salik v. Idris*,²³ it was held thus:

The word “shall” denotes obligation or a command and gives no room for discretion. By its nature, it is mandatory and one cannot wriggle out of the same. It imposes a duty. Where a thing shall be done, it goes without equivocation that a pre-emptory mandate is enjoined.

It has to be noted that the “best interest of the child” is a question of fact which is determined having regard to the entire circumstances of each case. In *Williams v Williams*,²⁴ Karibi Whyte, J.S.C stated as follows:

The determination of the welfare of a child is a composite of many factors. Consideration such as the emotional attachment to a particular parent, mother or father; the inadequacy of the facilities, such as educational, religious, or opportunities for proper upbringing are matters which may affect determination of who should have custody. What the court deals with is the lives of human beings and ought not to be regulated by rigid formulae. All the relevant factors ought to be considered and the paramount consideration being the welfare of the child. By paramount consideration, I mean pre-eminent and superior consideration.

Similarly, in the case of *Odogwu v Odogwu*,²⁵ Belgore, J.S.C observed as follows:

Welfare of a child is not the material provisions in the house, good clothes, food, air-conditioners, television, all gadgets normally associated with the middle class, it is more of the happiness of child and his psychological development. While it is good a child is brought up by complementary care of the two parents living happily together, it is psychologically detrimental to his welfare and ultimate happiness and psychological development if material care, available, is denied him.

²³ (2015) All FWLR (Pt. 790) 1307 at 1340.

²⁴ (1987)2NWLR (Pt.54) at 89.

²⁵ (1992) 2NWLR (Pt. 225) 539.

The best interest of the child offers wide standard for protecting children including children in IDP camps. Similarly, section 2(1) of the Act mandates that a child shall be given protection and care necessary for his well-being. Section 3 of the Act is to the effect that the provisions in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999, or any successive constitutional provisions relating to Fundamental Rights, shall apply as if those provisions are expressly stated in the Act with regards to the child. The Act guarantees a child right to survival and development.²⁶ Every child is entitled to his privacy, family life and home.²⁷ In addition, every child is entitled to respect for the dignity of his person, and accordingly, no child shall be-

- i. subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse;
- ii. Subjected to torture, inhuman or degrading treatment or punishment.²⁸

Section 12 of the Act is to the effect that every child is entitled to rest and leisure and to engage in play, sports and recreational activities appropriate to his age. Similarly, every child is entitled to participate fully in the cultural and artistic activities of the Nigerian, African and world communities.

Protection under the National Policy on Internally Displaced Persons (IDPs) in Nigeria 2012

The National Policy on Internally Displaced Persons (IDPs) in Nigeria 2012 provides important protection for women and children in IDP camps in Nigeria. Paragraph 2.4.1 (a) of the Policy recognises that the government of the Federal Republic of Nigeria has the primary responsibility of protecting and assisting its citizens in the event of internal displacement. Government like most legal terms does not yield easily to definition. Section 318 of the Constitution of the Federal Republic of Nigeria, 1999 provides: 'Government' includes the Government of the Federation, or of any State, or a local government council or any person who exercises power or authority on its behalf'. The Black's Law Dictionary, defines government to mean inter alia, an organisation through which a body of people exercises political authority;

²⁶ Child Rights Act 2003, s 4.

²⁷ *Ibid*, s 8.

²⁸ (n 5), s 11.

the machinery through which sovereign power is expressed.²⁹ It includes 'any person who exercises power or authority' on behalf of the State whether at Federal, State or local level. As a process, government incorporates all the process and procedures in the administration of a State.³⁰

It is not clear why the Policy vests the duty only on the government of the Federation. Moreover, IDP is not a matter under the exclusive legislative list.³¹ Besides, section 14(2)(b) of the Constitution provides that the security and welfare of the people shall be the primary purpose of government. Government under this section includes the Government of the Federation, State and Local Government Area. IDPs should therefore come under security and welfare of the people. By limiting the responsibility for protecting and assisting IDPs to the Federal Government, the Policy has missed a bottom up approach which would have been more effective. Moreover, internal displacements happen usually in rural communities closer to the Local and State governments.³² Notwithstanding, the Policy contains other important provisions. Paragraph 2.4.1 (d) states that designing, planning, implementation, monitoring and evaluation of interventions targeting internally displaced persons or their host communities must actively involve them at all stages. They must be carried along in decision-making processes, and be duly consulted and informed on decisions related to their relocation, provision of relief, rehabilitation, return, resettlement or re-integration. They must also be actively involved in the management of relief, resettlement and rehabilitation camps, and conscious effort must be made to include women and children in such decision-making processes. This takes a democratic approach to management of IDPs and provides important decision making powers for women and children in IDP camps which they can take advantage to protect themselves.

Unlike the general rights contained in the Constitution, the Policy provides for rights specifically targeted at IDPs while taking their peculiar

²⁹ B A Garner (ed.), *Black's Law Dictionary* (9th edn. Thomson Reuters, 2009) 782.

³⁰ D Fasenfest 'Government, Governing, and Governance' [2016] (36)(6) *Critical Sociology*, 171-174.

³¹ The CFRN 1999, Third Schedule, Part 1 provides the exclusive legislative list which is exercisable only by the Federal Government.

³² W G Akuto 'Challenges of Internally Displaced Persons (IDPs) in Nigeria: Implications for Counselling and the Role of Key Stakeholders;' [2017] (5)(2) *International Journal of Innovative Psychology & Social Development*, 21.

vulnerability into consideration. For instance paragraph 3.1.1(c) provides that IDPs shall have-

- i. The right to seek safety in another part of the country;
- ii. The right to leave their country;
- iii. The right to seek asylum in another country; and
- iv. The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

IDPs also have a right to request and receive protection and assistance from the state and local authorities and shall not be punished or persecuted for making such a request.³³

Paragraph 4.1 details the obligations of government with regards to IDPs which include:

- i. Preventing all causes of displacement in Nigeria and minimise its adverse effects
- ii. Collecting data on the number and conditions of internally displaced persons in Nigeria
- iii. Supporting training on the rights of internally displaced persons among all relevant government authorities, host communities and the IDPs themselves.
- iv. Creating a legal framework for upholding the rights of internally displaced persons including domestication and implementation of the Kampala Convention.
- v. Creating the institutional framework for effectively coordinating all interventions targeting all phases of internal displacement in Nigeria.
- vi. Ensuring the active participation of internally displaced persons in decision making
- vii. Supporting durable solutions from prevention of displacement to long term development goals.
- viii. Allocating adequate resources to tackling the problem of internal displacement through the various intervening ministries, departments and agencies of government.

In order to address the coordination gaps in responding to internal displacement in Nigeria, the president is to designate a focal coordinating institution under the Presidency to provide overall leadership and coordination on IDP issues and the implementation of the provisions of this policy framework.³⁴

³³ National Policy on Internally Displaced Persons (IDPs) in Nigeria 2012, paragraph 3.1.1(d).

³⁴ (n 69) Para 5.3.1.

Current Realities in the Legal Protection of Women and Children in IDP Camps

In Nigeria, the violence caused by the Boko Haram and other insurgent groups, specifically in the northern parts, has resulted in more than a million people being displaced.³⁵ Izzi and Adiela,³⁶ capture the situation thus:

Many IDP camps in Nigeria are characterized by makeshift structures which are usually overstretched and inadequate for the number of users. They are usually overcrowded with very limited access to basic hygiene and health services. The nature of challenges faced by women in IDP camps include hunger caused by shortage in the supply of food; sexual exploitation; rape; molestation; restricted movement; and poor sanitation caused by inadequate toilet and waste disposal facilities.

It has been observed that “sexual exploitation goes on daily on the camps as displaced persons have to be married or attached sexually to camp officials in order to get the best supply of aids. Some of the women get involved in sexual relationships with these camp officials believing they are married, only to later discover that the “camp officials” are not prepared for any serious commitment whatsoever, only for sexploitation. Therefore, they face the risk of getting pregnant for the enemy soldiers or soldiers placed in charge of their safety and security within the IDP camp. Women also get raped by these camp officials.

IDPs have limited physical assets, savings, investments, or operational business capital. IDPs are separated from their extended social network structure that existed in their original locations which, in line with cultural practices, often represents the only reliable form of insurance many, especially rural, populations can rely upon.³⁷ Women make up more than 50 percent of the IDP population in Nigeria. And as they are forced to survive on less than ₦780 (US \$1.90), their livelihoods are largely reliant on goodwill donations from charitable and government organizations.

³⁵ A S Barau, ‘Boko Haram: Protection Issues for Displaced and Distressed Women and Children in Northern Nigerian Cities’ [2018], available < <https://pubs.iied.org/pdfs/10842IIED.pdf> > Accessed June 24, 2022.

³⁶ M O Izzi and O N P Adiela ‘Appraising the Rights of Women in Internally Displaced Persons’ Camps in Nigeria’ [2021] (1)(1) *International Journal of Law, Justice and Jurisprudence*, 20, 23.

³⁷ J Ishaku and others, *Building the Resilience of Internally Displaced Persons in Nigeria* (Centre for the Study of the Economics of Africa, 2020) 13.

Consequently, due to overlapping vulnerabilities related to economic security and protection, many find themselves at risk of sexual and gender-based violence in the camps.³⁸

The problem of these vulnerable groups of Nigerian citizens is a testimony of the total neglect from the government as they prefer to rehabilitate repentant Boko Haram members while those they killed their relatives, houses and properties are allowed to die in hunger and grief.³⁹ The totality of the above evidences the inadequacy of the total legal framework for protection of women and children in IDP camps. The current reality therefore is a total disconnect between the legal protections available and protection offered women and children in IDP camps in real terms. The protection therefore exists in Statutes, Charters, Conventions and Policy without real implementation.

Summary of Findings

Internally Displaced Persons refer to persons who have been forced to flee their homes of habitual residence, in particular, as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violation of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border. Involuntary departure and the fact that the individual remains within his/her country are the two defining elements of IDPs which distinguishes them from refugees. It is clear that there are several laws and policies which offer protection to women and children in IDP camps. At the national level, legal protection exists in the Constitution of the Federal Republic of Nigeria 1999 (as amended) , Child Rights Act 2003, Violence against Persons (Prohibition) Act 2015, Criminal Code Act 1916 (as amended), Compulsory, Free Universal Basic Education (UBE) Act 2004, Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015 and the National Policy on Internally Displaced Persons (IDPs) in Nigeria 2012.

³⁸ J N U Ejikeme, I Ifeanyi and O C Ukaogo 'Sexual Violence and the Plights of Internally Displaced Persons During the Covid-19 Pandemic Lockdown in Nigeria' [2021] (13)(3) *Rupkatha Journal on Interdisciplinary Studies in Humanities*, 1, 8.

³⁹ *Ibid.*

Conclusion

The rising spat of insecurity occasioned by the boko haram insurgency, banditry, farmers/herders clashes and other forms of hostilities continue to result in internal displacements across Nigeria. This is in addition to displacements caused by natural disasters such as flooding. The number of IDPs in Nigeria has therefore remained on steady increase over the years. IDPs in Nigeria like other countries are often obligated to settle into camps. The conditions of the camps are often worrisome with women and children being the most vulnerable.

In Nigeria, although there is no specific legislation that provides legal protection for women and children in IDPs, they are nonetheless, protected by the general legal framework of rights. This is because IDPs are citizens who are merely displaced. Accordingly, they are still entitled to all the rights and privileges which citizens are entitled to. Under the Constitution of the Federal Republic of Nigeria 1999 as amended, the rights include right to life, dignity of the human person, personal liberty and right to privacy. For children in IDP camps, the Child Rights Act 2003 particularly offers extensive rights which they are entitled to benefit from.

However, the ability of women and children in IDP camps to access and take advantage of these rights is particularly challenging. Displaced persons are generally handicapped financially. This seriously impedes their ability to access the courts for enforcement of their rights. The delay in the judicial process is also another challenge. Moreover, there is totally no institution or agency specifically saddled with the responsibility to address the challenges of women and children in IDP camps. The National Agency for Prohibition of Trafficking in Persons which is required to extend its mandate to addressing the plight of IDPs is handicapped by several bottlenecks such as inadequacy of funds and lack of personnel. Rights in statute books, conventions and policies have no real protective value for women and children in IDP camps without their full and transparent implementation. In the current reality therefore, despite existing frameworks for legal protection of women and children in IDP camps, they remain exposed to all forms of exploitation, inhuman and degrading treatments.

Recommendations

a) Enactment of Specific Legislation on IDPs

The absence of specific legislation to address the plights of women and children in IDPs has been identified as a major challenge to effective protection of women and children in the camps. The National Policy on IDPs although broad, lacks the binding force of law necessary to translate it into effective legal protection. It is therefore recommended that a specific legislation be enacted by the National Assembly to address the issue of IDPs and more specifically, the challenges faced by women and children in IDP camps. The United Nations Guiding Principles on IDPs and the Kampala Convention should be used as models in the framing of the legislation. The examples of Columbia and Ukraine should provide further guidance.

b) Creation of National Commission for IDPs

The effectiveness of the suggested new legislation on IDPs will depend largely on its enforcement. Accordingly, it is suggested that a National Commission for IDPs should be created under the Law. The Commission should be given the statutory mandate to protect IDPs including women and children in IDP camps. Rights which vest in IDPs both under the new law and the Constitution should be enforceable against the Commission. The Commission should also have the mandate to undertake litigations on behalf of IDPs or a group of them. It is further recommended that a robust funding mechanism should be created for the Commission with extensive transparency frameworks.

c) Adoption of Preventive Approach to Displacement

In the case of Nigeria, the major cause of displacements is insecurity. Insecurity is also a major threat to a durable solution that will allow women and children in IDP camps to return home. Consequently, it is recommended that Nigeria should adopt a preventive approach to displacement which is focused on addressing insecurity across the country. Without this approach, the number of IDPs will continue to increase and a durable solution will remain a mirage. Addressing insecurity will also offer better opportunities for women and children in IDP camps to return home.

d) Enforcement of Law

Laws are made to achieve an aim in a society, the absence of a monitoring team to supervise the enforcement of these laws will leave the internally displaced persons in a hopeless situation in Nigeria.