

# Legal Framework for Combating Human Trafficking In Nigeria: The Journey So Far

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## ABSTRACT

Human trafficking is a major global challenge confronting the world today. This ugly development pervades nearly all African countries including Nigeria. In recognition of the fact that human trafficking is not only a violation of human rights but a crime that is against all laws, efforts have been severally made by bodies at both domestic and international levels to contend with this insolent and dehumanizing practice. To this end, at the international level, several treaties, Protocols and Conventions to which Nigeria is a signatory to have been negotiated.<sup>1</sup> In Nigeria, the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003/2005, the Child Rights Act, 2003/2005, were enacted in addition to extant laws of different states dealing with Trafficking in Persons. This work, therefore, is a modest attempt at assessing the efficacy of these various legal regimes in curbing the menace in Nigeria. To this end, the researchers have carefully x-rayed the strength and weaknesses of the various legal regimes and made suggestions on how to better tackle the scourge of human trafficking. The work ends with the recommendations on the need to overhaul the legal regimes and its enforcement mechanisms.

**KEY WORDS:** Institutional, Framework, Combating, Human, Trafficking, Nigeria.

## 1. INTRODUCTION

Human trafficking has affected nearly all countries around the world either as countries of origin, transit or destination. Consequently, within the last one and half decades it has become highly imperative to combat the scourge. Prior to the passage of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003, amended in December 2005 Nigeria was in a state of denial and did not recognize trafficking in humans as a problem.<sup>2</sup> Non-Governmental Organizations and human rights activist forced the Nigerian government to pay attention to the problem of trafficking of women to Europe that was fast gaining notoriety across the globe. Even at that, the Nigerian government only started responding to the problem in 2003. Consequently, there was no specific law prohibiting the trafficking of persons (properly so-called) irrespective of gender. At best, what could be regarded as anti-trafficking legislation was enacted as a part of the existing Criminal or Penal Codes rather than a separate comprehensive law.

Before August 2003 when the Child Rights Act,<sup>3</sup> was enacted, Nigeria had no comprehensive special law protecting the rights of children. She had to rely on Federal Constitutions,<sup>4</sup> the Criminal and Penal Codes as well as African and United Nations Conventions protecting the rights of children in matters of the health, education, religion and general welfare of children.

This paper seeks to evaluate the legal framework for the prohibition and prevention of traffic in persons. Currently, the legal framework on human trafficking in Nigeria stands primarily on two main pieces of legislations that came into effect in 2003; Trafficking in Person (Prohibition) Law Enforcement and Administration Act, 2003 as amended and the Child Rights Act 2003. The Constitution of the Federal Republic

<sup>1</sup> United Nations Convention on the Declaration of Human Rights 1948, the United Nations Convention on Elimination of All Forms of Discrimination against Women, 1979, the UN Convention on the Rights of the Child, 1989, the UN Optional Protocol to the Convention on the Rights of the Child, especially on the Sales of a Child, Child Prostitution and Child Pornography, 2002.

<sup>2</sup> Programme of Action Against Trafficking in Minors and Young Women from Nigeria into Italy for the Purpose of Sexual Exploitation (Edo, 2003) p. 4. Print. The attention of the Nigerian government was drawn to the menace of trafficking in women in 1997 by Judith Attah, the then Nigerian Ambassador to Italy, through the Nigerian delegation to the 63<sup>rd</sup> Interpol General Assembly when she informed them of the nuisance level of Nigerian women involved in prostitution in Italy.

<sup>3</sup> Child Rights Act, 2003.

<sup>4</sup> Constitution of the Federal Republic of Nigeria (Promulgation) Act, 1999, Cap. 23 LFN, 2004 which prohibits forced labour, slavery, sexual exploitation and deprivation of personal liberty of Nigerians, young and old alike. Section 35 guarantees personal liberty while Section 34 provides for the dignity of the human person, which encompasses non-subjection to torture, inhuman or degrading treatment, slavery/servitude and freedom from forced or compulsory labour. Section 41 guarantees the right to freedom of movement of all citizens in Nigeria.

of Nigeria (1999) as amended, Labour Act (1974), Criminal Code (applicable in the Southern States of Nigeria), Penal Code (applicable in the Northern States of Nigeria), Immigration Act have also been identified for discussion. International conventions against human trafficking which have been ratified by Nigeria also constitute part of our assessment in this work.

## **2. TRAFFICKING IN PERSONS (PROHIBITION) LAW ENFORCEMENT AND ADMINISTRATION ACT, 2003**

To underscore the Nigerian government resolve to stem the tide of trafficking in persons, the Federal Government took a bold step in July 2003 when it passed the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (Trafficking Act).<sup>1</sup> This law established the National Agency for the Prohibition of Traffic in Person (NAPTI). The organization took over the functions of the special taskforce in human trafficking and was vested with the responsibilities to enforce laws against traffic in persons, and to take charge and coordinate the rehabilitation and counseling of trafficked persons; and other related matters.

This law was amended in December 2005 by the Trafficking in Persons (Prohibition) Law Enforcement and Administration (Amendment) Act. The Act as amended has a total of 65 sections and two schedules.<sup>2</sup>

The Act is a Federal Legislation and applies to all the 36 States including the Federal Capital Territory Abuja.

### **2.1 Powers, Functions and Administration**

To enable the agency carry out its functions effectively, the Act also establishes different departments comprising Investigation, legal, public enlightenment, counseling and Rehabilitation, and other relevant units like technical committee and task forces, each with its specific duties. The agency is also empowered to initiate, develop or improve specific training programmes for the relevant law enforcement agents and other personnel of the agency.<sup>3</sup> Such programmes include methods of crime detection, counter measures against techniques employed by traffickers and the routes they use, monitoring of the movement of traffickers and victims and dissemination of information on laws related to trafficking.

### **2.2 Offences under the Act**

All the offences under the Act are all retained in the amendment Act. In addition to these offences the Act as amended now includes some new offences while some old ones are broadened to include acts which were not previously offences such as child labour, keeping a brothel etc.

Section 64 of the Act defines the word “trafficking” as;

All acts involved in the recruitment, transportation within or across Nigerian Borders, purchases, sale, transfer, receipt or harbouring of a person, involving the use of deception, coercion or debt bondage for the purpose of placing or holding the person whether or not in voluntary servitude (domestic, sexual or reproductive) in forced or bonded labour or in slavery-like conditions.

This definition of trafficking is not broad enough to cover all the means and purposes envisaged by Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000 (Trafficking Protocol) to which Nigeria is a party. While the Act recognizes the fact that a person may be recruited, bought, sold, receive, laboured and transported, it failed to take into account that these actions may be achieved not only by means of deception, coercion or debt bondage, but also by means of fraud and more importantly by means of the abuse of one's power over someone else or of a victim's position of vulnerability commonly found among poverty stricken families, and those caught in the cross-fire of armed conflict. It does not also take into account the giving or receiving of payments of benefits to achieve the consent of a person having control over another person, for the purpose of exploration which is the most common method of recruitment of children for exploitation in Nigeria. The definition in the Act does not also recognize the fact that a person may be trafficked for the purpose of the removal of organs or ritual murders<sup>4</sup> that are commonplace in Nigeria even though an offence for this purpose is created under Section 20 of the Act. The definition does not impose the kind of liability the trafficking Protocol does, where a child is deemed to have been trafficked even when none of the means specified under Article 3(a) is employed in his recruitment, transportation, transfer,

<sup>1</sup> Act No. 24 of 14 July 2003.

<sup>2</sup> The sections amended are: Sections 1, 2, 3, 4, 5, 6, 9, 15, 22, 29, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 36, 47 and 48.

<sup>3</sup> Section 10 TIPLEA.

<sup>4</sup> Igwe, L., “Ritual Killing and Pseudoscience in Nigeria” available at: <http://www.sicop.org/sb/2004-06/nigeria.html>). (accessed 3<sup>rd</sup> October 2007).

habouring or receipt. The definition is also silent on the element of the victims consent to intended exploitation, which the trafficking protocol considers irrelevant when any of the means identified in Article 3(a) have been used in the process.

The obvious lapses in the Nigerian definition of trafficking may not be unconnected with the general societal attitude towards prostitution and the cultural practices of child placement by less privileged families with perceived more economically buoyant families elsewhere. One is tempted to think that these are silent recognition of Nigeria's traditional values on fostering and socialization and outright crimination and condemnation of prostitution.

The Act created 23 offences<sup>1</sup> of human trafficking and other related offences. In summary, Sections 11-28 define the specific offences of attempts or the actual procurement, export and import of minors (with or without their consent) by means of threats, fraud or drugging, for purposes of consensual or forced defilement, seduction, prostitution, pornography or other activities of a sexual nature within or outside Nigeria; or for trafficking of drugs or participations in armed conflict. Other offences include operating or keeping prostituted minors in brothels, organizing foreign travels for prostitution; the detention of any person with intent to defile; kidnapping of minors for guardianship; kidnapping or abduction of persons for culpable homicide; slave-dealing, buying and selling of persons for forced labour or any other purpose.

It is notable that some of these offences are not strictly trafficking offences. Keeping a brothel, organizing tours, obstructing the agency in its duties, kidnapping and abduction etc, are not on their own trafficking offences, except when they are done in furtherance of trafficking in persons.

The Act creates varying degrees of punishment ranging from monetary fines; imprisonment with or without option of fines; forfeiture of passports of convicted offenders;<sup>2</sup> seizure and/or forfeiture of assets and freezing of bank accounts of suspect or convicted offenders;<sup>3</sup> deportation or repatriation of aliens offenders; and liability for compensation to victims in civil proceedings.<sup>4</sup> Jail terms range from 12 months (for attempts), 2 years to life imprisonment depending on the degree of seriousness of the offence while fines range from N50,000 to N200,000 for individual traffickers or managerial staff of corporate bodies. Even when the offences are committed abroad by Nigerians or aliens with Nigerian permanent residence permits, the offenders are liable to punishment and/or forfeiture of assets in Nigeria upon their repatriation or return for "bring the image of Nigeria to disrepute" whether they had served on earlier punishment for the original offence abroad.<sup>5</sup> Alien offenders resident in Nigeria are punishable under the Act by imprisonment and subsequent deportation.<sup>6</sup>

The above provisions notwithstanding, the Act is far from being the "standard" anti-trafficking law that it is meant to be. The rationale for restricting punishable trafficking offences mainly to those made with respect to minors – that is, victims below 18 years of age is not clear. The irresistible question is, are the law makers by any means suggesting that persons above 18 cannot be trafficked or that such persons should take full responsibility for falling victims to trafficking? The result of this age restriction in the relevant sections is that persons above 18 years, particularly women are exposed to vices and manipulations of traffickers and have no protection and rights of restriction if similar offences defined in the sections limiting victims to 18 years and below are perpetuated against them. It is interesting to note also that few sections of the Act<sup>7</sup> define the offences therein contained in general terms without reference to age. Even then, the offences created are reminiscent of the old criminal code provisions relating to prostitution, abduction, kidnapping, enticement and slave dealing; the only difference being that there contain stiffer punishments.

Under related matters, offences are created for commercial carriers, tour operators, travel agents and airlines (either as corporate bodies or individually as management staffs as such bodies) who knowingly *aid, abet, facilitate or promote* in any way the traffic of and exploitation of persons with attendant penalties of imprisonment and fines.<sup>8</sup>

More remarkable is the provision of Section 31 of the Act, is to the effect that;

Every airline company shall promote through every possible means, public awareness of the guiding principles of this Act in in-flight magazine, tickets jackets internet units and video on long flights.

<sup>1</sup> Sections 11-29, 32, 42, 46 and 58 of TIPLEA.

<sup>2</sup> S. 34 TIPLEA.

<sup>3</sup> S. 35 TIPLEA.

<sup>4</sup> S. 52 TIPLEA.

<sup>5</sup> SS. 25, 61(1) TIPLEA.

<sup>6</sup> S. 26 TIPLEA .

<sup>7</sup> Ss. 15, 16, 20, 22, 23 and 24 TIPLEA.

<sup>8</sup> Ss. 29-32 prescribes 2-3 years imprisonment or between N200,000 and N2,000,000 or both.

Public enlightenment and the awareness which it is capable of generating is a veritable tool in the fight against trafficking in persons. Section 31 is a reiteration of the corporate responsibility expected of any body corporate doing business in Nigeria.

The provisions for compensation for victims of trafficking in the amended Act is comprehensive. Section 54(3)<sup>1</sup> provides for the establishment of victims of Trafficking Trust Fund where all proceeds of the sale of assets and properties of traffickers are paid into. Section 36 of the Act provides that all properties of a person convicted of an offence under this Act and shown to be derived or acquired from such illegal act which are already the subject of an interim order shall be forfeited to the Victims of Trafficking Trust Fund. Section 41 of the Act gives the National Agency for the Prohibition of Traffic in Persons (NAPTIP) the power, where a person is arrested for an offence under the Act, to immediately trace and attach all the assets and properties of the person acquired as a result of such illegal act and shall thereafter cause to be obtained an interim attachment order by the court.

The interesting aspect about this provision is that the victim of trafficking does not have to rely on the solvency of the trafficker for compensation. The Victims of Trafficking Trust Fund ensures that no matter the state of financial affairs of the trafficker, the victim shall not be deprived of the benefit of an order for compensation.

### 2.3 Prosecution

The rates of arrest and prosecution of traffickers remain low in relation to the size of the problem in Nigeria as elsewhere. The power to prosecute is a new feature of the amended Act. Section 5(c)<sup>2</sup> empowers the NAPTIP to prosecute persons who are involved or have committed any offence under the Act. This gives the agency independence and flexibility in initiating legal action against alleged offenders without dependence on any other authority. This is without prejudice to the power of the Attorney-General of the Federation to take over or discontinue such criminal proceedings.<sup>3</sup>

To facilitate the smooth conduct of prosecution, Section 8<sup>4</sup> establishes, among other departments, the legal department. Section 9<sup>5</sup> gives the legal department the task of prosecuting offenders under the Act. In addition, the legal department shall support the investigation department with legal advice and assistance; act as secretariat to the Board; conduct proceedings where necessary in order to recover assets or properties forfeited under the Act and perform such other legal duties as the agency may refer to it from time to time. To make for a more smooth and fast means of prosecuting traffickers or perpetrators, it is the view of the researcher that cases should not only be left to be prosecuted by the agency alone, but the law should also encourage a situation where the victims are aware of the fact that they can initiate civil actions against traffickers. Such civil proceedings are more likely to be successful than criminal ones because, the burden of proof is by a preponderance of the evidence rather than beyond reasonable doubt. Civil actions also have the effect of empowering victims more, because they can be initiated by victims giving them a degree of control, whereas the decision to bring criminal prosecutions lies mainly with the state through the agency for the prohibition of traffic in persons. The court that has the exclusive jurisdiction to handle civil matters that relate to human trafficking is the National Industrial Court.<sup>6</sup>

The Act confers jurisdiction to try and punish all offences created under the Act on the High Court.<sup>7</sup> The High Court has power to impose the penalties provided for in this Act notwithstanding anything to the contrary in any other enactment. Section 64 of the Act defines the High Court as the Federal High Court, High Court of the Federal Capital Territory and the High Court of a State. An offender can be arraigned before any of these High Courts. The law does not provide for the rules of procedure applicable to trial of offenders. This has been taken care of by the Criminal Procedure Act.<sup>8</sup> Law enforcement agents are empowered to search, seize, arrest suspects and perform other relevant acts necessary for the enforcement of the provisions of the Act.<sup>9</sup> The Anti-trafficking Law does not provide for the prosecution of those who use the services of trafficked persons when it amounts to exploitation of the trafficked victim and when there is full knowledge of the victim's status. In practice the establishment as a criminal offence of the use of services of a trafficked victim means, *inter alia*,

<sup>1</sup> S. 54(3) TIPLEA.

<sup>2</sup> S. 5(c) TIPLEA.

<sup>3</sup> S. 174, Constitution Federal Republic of Nigeria 1999.

<sup>4</sup> S. 8 TIPLEA.

<sup>5</sup> S. 9 TIPLEA.

<sup>6</sup> S. 254(1) (i) Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2011.

<sup>7</sup> S. 33 TIPLEA.

<sup>8</sup> S. 56 of the Criminal Procedure Act – it provides that the Criminal Procedure Act is applicable to offences created by the Criminal Code and any other law or enactment.

<sup>9</sup> S. 49 TIPLEA.

that those employing and exploiting trafficked domestic servants, the clients of trafficked prostitutes, the owner of the plantations. Where trafficked children are obliged to work and the recipients of organs and tissues ‘donated’ by a trafficked person should be punished. This will discourage the demand for services provided by trafficked victims.

## 2.4 Protection of Victims

Victims of trafficking are often seen as a threat to internal security because of their connection with criminal activities and organizations, and therefore such measures as detention and deportation are frequently taken.<sup>1</sup> The Trafficking in Persons Protocol<sup>2</sup> does not only recognize these challenges and the criminalization of conducts constituting trafficking in person’s offences,<sup>3</sup> but also provides that the domestic law of each of the states party to the Trafficking in Persons Protocol should strive to provide for the protection, privacy and identity of victims of trafficking in persons including *inter alia* by making legal proceedings relating to such trafficking confidential.<sup>4</sup> It further provides in the Trafficking in Persons Protocol’s statement of purpose, the need to protect and assist the victims of such trafficking with full respect for their human rights.<sup>5</sup>

The Nigerian anti-trafficking law, Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003 (as amended) provides for humane treatment, protection and non-discriminatory practices towards victims of trafficking by providing elaborately for the protection of the identity and persons of victims<sup>6</sup> of the crime. The law also provides immunity to a victim of the crime for offences committed in consequence of being a victim.<sup>7</sup> The question that readily comes to mind is, that of identification of victims of human trafficking in most cases. This is not included in the TIPLEA – if trafficking victims are not properly identified, there is no possibility on the one hand, of protecting them and, on the other, of gaining information on the traffickers to break the cycle of exploitation.

The agency is by law<sup>8</sup> empowered to ensure among others that the investigation, detection, gathering and interpretation of evidence in respect of trafficking in persons cases should be conducted in such a manner as to minimize intrusion into the personal history of the trafficked persons, that the identity of the trafficked person is protected from intimidations, threats, and reprisals from traffickers and their associates including reprisals from persons in position of authority<sup>9</sup> (steps should be taken to rehabilitate the trafficked person and where the circumstances so justify, trafficked persons shall not be detained, imprisoned or prosecuted for offences related to being a victim of trafficking, including possession of valid travel, false travel or other documents).

The agency in pursuance of this established safe houses<sup>10</sup> has put in place operational guidelines for the management of all cases with particular reference to the handling of victims of the crime. These safe houses cannot provide the needed assistance to victim of human trafficking in a country like Nigeria which has thirty-six States and the Federal Capital Territory, Abuja. The Act does not only give protection to the victim of trafficking, the protection is also extended to members of the victim’s family. This is an effort to protect the victim of trafficking so that he is relieved of threats, reprisals, intimidation and other forms of undue influence that may prevent him from giving evidence at the trial of the trafficker.<sup>11</sup> In Gina’s case, an interview was conducted by Anti-Slavery International, with “Sunday” in Abuja on the 4<sup>th</sup> of March 2002.<sup>12</sup> The relevance of this interview is

<sup>1</sup> Obokata, T., “Trafficking of Human Beings as a Human Rights Violation: Obligations and Accountability of States”. In Trafficking of Human Beings from a Human Rights Perspective Towards a Holistic Approach, (Boston: Martins Nijhoff Publishers, 2006) p. 153.

<sup>2</sup> Adopted by the General Assembly of the UN in its Resolution 55/25 of 15<sup>th</sup> November 2000 signed and ratified by Nigeria on the 13<sup>th</sup> October 2000 and June 2001.

<sup>3</sup> Article 5 of the Protocol.

<sup>4</sup> Article 6 of the Protocol.

<sup>5</sup> Article 2(b) of the Protocol.

<sup>6</sup> Ss. 36, 37 and 38 TIPLEA.

<sup>7</sup> S. 37 TIPLEA.

<sup>8</sup> TIPLEA Act as amended.

<sup>9</sup> S. 37 TIPLEA.

<sup>10</sup> In Lagos, Abuja, Kano, Benin-City, Uyo and Enugu in addition to collaboration with some NGOs such as WOTCLEF and India Renaissance for ease of operations. In “Management of Trafficking in Persons Cases from Arrest through Prosecution to Rehabilitation”. Being a paper presented by Usman Shadrach Haruna at a two day Zonal Sensitization Workshop for the Bar and the Bench held on 14-17 May 2007 at Gateway Hotel, Ijebu-Ode, Ogun State.

<sup>11</sup> Pearson E., Traffic: Redefining Victim Protection Anti-Slavery International 2002, pp. 166-167.

<sup>12</sup> Sunday, who is a key witness against the traffickers was threatened despite the fact that 17 traffickers were imprisoned. According to Sunday, his life is in danger as associates of the traffickers tried to kidnap his daughter and burn down his parents’ house in Benin City. Sunday was given some protection: he was relocated from his home town Benin City to another place in Nigeria. He was provided housing and some financial assistance. Sunday has also been given a card that states he is a government witness and authorities should provide him appropriate assistance when in need. Sunday wants to be relocated to another country after the trial to protect him from the traffickers. Whilst Sunday himself has been

to show the effort of government towards protecting witnesses. This case was before the Nigerian anti-trafficking Act was enacted. The Act provides protection from intimidation, threats of reprisals and reprisals from traffickers, their associates and persons in position of authority. It states that safety and integrity of trafficked persons and witnesses must not be subordinated in the interest of prosecution before, during or after any legal proceedings.

The Act sees a trafficked person as a victim of a greedy, deceitful and fraudulent trafficker who has either exploited the vulnerable condition of the victim or abused his duty of care and protection towards him.<sup>1</sup> The Act has provided ways of protecting the victims of this crime, but this work contends that it can do more by making it the right of the victims to participate in the investigation and judicial processes against traffickers. The participation of victims is beneficial from a criminal justice perspective, in that testimony and evidence provided by them should expedite investigation, prosecution and punishment. Participation by victims from a human rights perspective, allows them to have their voices heard, which has a therapeutic value. It also assists them in handling their anger and trauma in a constructive way, which can lead to the restoration of their sense of control, dignity and self worth.

## 2.5 Jurisdiction of the Court

The issue of jurisdiction is described as a threshold issue because it is fundamental to adjudication. A trial that is conducted by a court without jurisdiction is a total waste of precious judicial time. The outcome of such trial is a nullity.<sup>2</sup> Issues relating to jurisdiction may arise in certain cases border on:

- (i) Local jurisdiction
- (ii) Territorial jurisdiction
- (iii) Extra-territorial jurisdiction

### 2.5.1 Local Jurisdiction

A person charged for the offences created by the Act may be charged to a State High Court, Federal Capital Territory (FCT) High Court and Federal High Court in the relevant State where the exportation or importation occurred.<sup>3</sup> The National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters.<sup>4</sup>

### 2.5.2 Territorial Jurisdiction

A trafficker or his accomplice could be prosecuted outside his State of abode once the commission of the offence is discovered in the State to which the victim is trafficked. He could be taken there for prosecution and it will not be an excuse that he was taken there involuntarily.<sup>5</sup>

### 2.5.3 Extra Territorial Jurisdiction

Criminal offences committed outside Nigeria cannot be tried by any court in Nigeria, except a part of the elements of the offence happened within Nigeria.<sup>6</sup>

However, Section 61 of the Trafficking in Person (Prohibition) Law Enforcement and Administration Act 2003 provides as follows:

- (1) Where an offence under this Act is committed in any place outside Nigeria by any citizen or person granted permanent residence in Nigeria, he may be dealt with in respect of such offences as if it was committed at any place within Nigeria.
- (2) The agency has the power to engage the service of international police or any local or international agency on the detection of cross border crimes through the Nigeria police.

By the foregoing provision any Nigerian citizen or other national granted permanent residence in Nigeria who commits an offence under the Act in any place outside Nigeria may be tried in Nigeria as if the offence was committed at any place in Nigeria. However, the alleged offender must have returned to Nigeria before he can be effectively prosecuted. This is a very unique provision and peculiar to the Act. Related to this

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provided protection, his family are kept unprotected. Although a higher level of protection was provided initially, this was downgraded because he did not observe basic principles regarding the protection scheme and is consequently described as a difficult witness to protect.

<sup>1</sup> Haruna, U.S., "An Overview of Anti-Trafficking in Person Laws in Nigeria". Presented at the Sensitization Workshop on Anti-Trafficking in Persons for the Bench and the Bar, organized by NAPITIP in Collaboration with UNICEF held in Jos, September 2005, p. 9.

<sup>2</sup> *Madukolu v. Nkemdilim* (1962) 2 SCNR 341.

<sup>3</sup> If A sends a victim to an accomplice in another judicial division B, and the crime is detected in place B, the trafficker who is resident in judicial division A could be arraigned with the accomplice in B for the offence of trafficking. See *Tete Lawson & Ors. v. The State* (1975) NSCC 245 at 248.

<sup>4</sup> S. 25C(1) Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2011

<sup>5</sup> *Njovens v. The State* (1973) NSCC 257.

<sup>6</sup> *Matharadon & Ors. v. Ahu* (1995) 8 N.W.L.R. (Pt. 412) 225; *Commissioner of Police v. Oludeko* (1970) P.L.R. 409; *R. v. Osoba* (1960) 1 All N.L.R. 1.

provision of Section 25 of the Act, which is to the effect that, persons convicted outside Nigeria can still be tried in Nigeria for bringing the image of Nigeria into disrepute. Upon conviction such persons are liable to forfeit their assets to the Federal Government, in addition to serving a term of imprisonment not exceeding two years.<sup>1</sup>

It is submitted that this provision violates the provision of double jeopardy contained in Section 39(a) of the 1999 Constitution. This is double punishment through the backdoor. Although the defence may be that, the trafficker in this case is not tried for the same offence rather he is tried for a related offence, which is bringing the image of Nigeria into disrepute by committing the offence of trafficking in persons for which he was convicted outside Nigeria.

Other sundry provisions of the Act include: punishment of 5 years imprisonment or fine of N50,000 for obstruction of justice;<sup>2</sup> protection of informants and information;<sup>3</sup> ministerial policy guidelines directed to the agency and power of the Minister to make rules and regulations with respect to the exercise of the duties, powers and functions of the agency;<sup>4</sup> engaging the services of the International Police (Interpol) or other local or international agency on the detection of cross-border crimes through the Nigeria police; and a constitutional right of appeal by convicted traffickers.<sup>5</sup>

Finally, supplementary provisions related to the proceedings, committee and miscellaneous provisions concerning the activities of the Board of NAPTIP and declaration of assets form by trafficking suspects are contained in the two schedules to the amended Act.

## 2.6 Sentencing

This is the judgment of a court, particularly in a criminal cause. The Act created twenty-three (23) offences<sup>6</sup> with varying degrees of punishment ranging from 12 months imprisonment<sup>7</sup> to life imprisonment<sup>8</sup> and also provided for fines ranging from ₦50,000<sup>9</sup> to ₦2,000,000.<sup>10</sup> The Act also made provision for forfeiture of assets,<sup>11</sup> passport<sup>12</sup> of convicted persons as the case may be or even deportation.<sup>13</sup> Where the law does not provide for an option of fine, the discretion of the court is limited to impose a term of imprisonment; the court cannot give an option of fine.<sup>14</sup>

Where the Act provides for a term of imprisonment, the maximum number of years that could be imposed is what the Act stipulates. The judge could exercise his discretion in imposition of sentence. The judge could impose a maximum term of imprisonment imposed by law he cannot exceed it.

The types of offences dealt with by the Act are serious offences, no doubt. They are capable of damaging the future of any nation if not checked. They are issues that cannot be treated with laxity. In fact they are usually subject of public debate and opinion.

In passing sentence, the trial court should aim more at the object of reforming the criminal by imposing lesser sentence particularly in the case of first offenders, except where the sentence is fixed by law, such as in the case of capital offences. Deterrent sentence should only be imposed in the case of hardened criminals who should be put away from the society for a very long time. The unfortunate thing is that in this society a person who has been jailed many times could pass for a first offender before a court because of inadequate record.

It is humbly contended that the term of imprisonment which ranges from 12 months to life imprisonment as appropriate. It becomes inappropriate when a few months or years is meted out to an offender. The monetary penalty which ranges from ₦50,000 to ₦2,000,000 that is most times, optional or is left at the discretion of the judge whether or not to impose the maximum is not sufficient because an individual or a corporate body involved in this crime will not have any difficulty paying off this fine. It is in the interest of justice and the need to prohibit trafficking in person that it is suggested that these financial penalties be increased and judges with due respect, should impose appropriate years of imprisonment where necessary.

The purpose of criminal sentence is supposed to be retribution, deterrence and rehabilitation. It is obvious that the different sentences available to the court serve these purposes in very different measures. The

<sup>1</sup> S. 25 TIPLEA.

<sup>2</sup> S. 58 TIPLEA.

<sup>3</sup> S. 59 TIPLEA.

<sup>4</sup> Ss. 60 & 63.

<sup>5</sup> Ss. 61(2) & 62.

<sup>6</sup> Ss. 11-29, 39, 42, 46 and 58 TIPLEA.

<sup>7</sup> S. 27 TIPLEA.

<sup>8</sup> Ss. 11, 20, 23-24 TIPLEA.

<sup>9</sup> S. 27 TIPLEA.

<sup>10</sup> S. 29 TIPLEA.

<sup>11</sup> Ss. 35 - 39 TIPLEA.

<sup>12</sup> S. 34 TIPLEA.

<sup>13</sup> S. 26(2) TIPLEA.

<sup>14</sup> *State v. Dr. Cosmas I. Okechukwu* (1994) 9 NWLR (Pt. 368) 271 at 296.

society should bear it in mind that the jail term would keep the convict away for a season when he returns to the community he is likely to become a more dangerous person for this reason, we believe that the number of years are sufficient but thought should be given towards the reformation of the trafficker while he is in prison. Mention of rehabilitation often provokes different reactions. The tendency is to feel that it is an ineffective way of enabling the offender an opportunity to escape the punishment he deserves. Reformation can also be achieved by addressing problems in the community that give rise to this offence.

The forfeiture of assets and properties of traffickers where all proceeds of sale are channeled into victims trafficking trust fund which can be used as a form of compensation to the victim is a step in the right direction because an award of compensation serves to affirm public respect for the victim and give public recognition of the wrongdoer's fault in failing to respect basic rights. We suggest that the Act should hold the state of transit and destination responsible for the crime of human trafficking by making them pay compensation to victims when they fail to fulfil pertinent human rights obligations. Thus, while it is admitted that the TIPLEA has provided limited sentencing options to the courts, it is worthy of note that even the inadequate options are grossly underutilized by the courts that further constricts these to imprisonment and fine.

Sentencing and compensation should be carried out summarily because the victim's dignity can be affected if it is prolonged and excessive. Compensation if excessive may be seen as "buying silence" or "blood money". Therefore, the best interest of the victim should be the utmost thing in deciding issues of sentencing and compensation. What good is a sentence to a victim if he or she no longer has any hope for the future outside the dependent relationship which trafficking in human beings has led to? Support and educational offers could open up some options and lead to renewed hope.<sup>1</sup>

### 3. THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999

The 1999 Constitution also provides constitutional protection against slavery and forced labour or compulsory labour, sexual exploitation and deprivation of personal liberty of Nigerians.

Trafficking in persons violates the provisions of Sections 17, 34 and 42 of the Constitution of the Federal Republic of Nigeria 1999. Section 17<sup>2</sup> provides that:

- (1) The state social order is founded on ideals of freedom, equity and justice.
- (2) In furtherance of the social order – the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced.
- (3) The state shall direct its policy towards ensuring that –
  - (f) Children, young persons and the aged are protected against any exploitation whatsoever and against moral and material neglect.

#### Section 34:<sup>3</sup>

Every individual is entitled to respect for the dignity of his person and accordingly:

- (a) No person shall be subjected to torture or to inhumane treatment or to degrading treatments.
- (b) No person shall be held in slavery; and
- (c) No person shall be required to perform forced or compulsory labour.

#### Section 42(2):

No citizen of Nigeria shall be subjected to any disability or deprivation merely because of the circumstances of his birth.

A trafficked person can challenge the infringement of the above mentioned rights under Section 46 of the 1999 Constitution, which states as follows: Any person who alleges that his or her fundamental human rights has been or is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.<sup>4</sup> Also, the Third Alteration of the Constitution provide, that ... the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters – connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto.<sup>5</sup>

### 4. CRIMINAL LAWS

<sup>1</sup> *Koke v. Trafficking in Women in Germany (Germany Koke v. 2008)* p. 134.

<sup>2</sup> S. 17 CFRN 1999.

<sup>3</sup> S. 34 CFRN 1999.

<sup>4</sup> Gbadamosi, O.A., International Perspectives and Nigerian Laws on Human Trafficking (Benin City: All-Nations Press, 2006) pp. 88-89 Print.

<sup>5</sup> S. 254C(1) Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2011.

Nigeria has two codes of criminal law; the Criminal Code covering the Southern States of Nigeria,<sup>1</sup> and the Penal Code applying to the North.<sup>2</sup>

#### 4.1 Criminal Code

Under the Criminal code, there are various offences against liberty or slave dealing which could be used to prosecute trafficking in persons and prostitution.

Section 223 of the Criminal Code provides that:

Any person who –

1. Procures a girl or woman who is under the age of eighteen years and is not a common prostitute or of known immoral character to have unlawful carnal connection with any other person or persons, either in Nigeria or elsewhere, or
2. Procures a woman or girl to become a common prostitute, either in Nigeria, or elsewhere; or
3. Procures a woman or girl to leave Nigeria with intent that she may become an inmate of a brothel elsewhere; or
4. Procures a woman or girl to leave her usual place of abode in Nigeria, with intent that she may, for the purpose of prostitution, become an inmate of a brothel, either in Nigeria or elsewhere; is guilty of a misdemeanor, and is liable to imprisonment for two years.

Section 224 of the Criminal Code also provides that:

Any person who –

- (1) by threats or intimidation of any kind procures a woman or girl to have unlawful carnal connection with a man, either in Nigeria or elsewhere, or
- (2) by any false pretence procures or girl who is not a common prostitute or of known immoral character to have unlawful carnal connection with a man, either in Nigeria or elsewhere; or
- (3) administers to a woman or girl, or causes a woman or girl to take, any drug or other thing with intent to stupefy or overpower her in order to enable any man, whether a particular man or not, to have unlawful carnal knowledge of her is guilty of misdemeanor and is liable to imprisonment for two years.

A person cannot be convicted of any of the offences defined in this section upon the uncorroborated testimony of one witness. The offender may be arrested without warrant.

Section 365<sup>3</sup> deals with unlawful confinement or detention against a person's will while Section 366<sup>4</sup> covers compelling someone to do something by threats, surveillance or other intimidation and is punishable by one years imprisonment. If this involves assault, the penalty increases to five years. These provision cover some of the main methods of intimidation used by traffickers in Nigeria, particularly with regards to the situation of debt-bondage in which most women who are trafficked from Nigeria for purposes of prostitution find themselves.

Section 369<sup>5</sup> regards slave dealing as purchasing, selling, dealing with or transferring persons so they may be treated or held slaves or placed in servitude as a pledge or security for debt or entering into a contract or agreement in furtherance of these purposes. This is punishable by imprisonment for up to 14 years.

#### 4.2 Penal Code

The Penal Code which is applicable to the Northern States of Nigeria contains similar provisions of the Criminal Code on trafficking. The relevant provisions of the Penal Code are Section 275 which provides:

Whoever by any means whatsoever induces a girl under the age of eighteen years to go from any place or to do an act with intent that the girl maybe or knowing, that it is likely that she will be forced or seduced to illicit intercourse with another person shall be punished with imprisonment which may extend to ten years shall be liable to a fine.

Section 278<sup>1</sup> provides that any person who buys, sells, hires, lets to hire or otherwise obtains possession or disposes of any person below 18 years with intent that the person will be or is likely to be employed or used

<sup>1</sup> These are: Abia, Akwa-Ibom, Anambra, Bayelsa, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Imo, Lagos, Ogun, Ondo, Osun, Oyo and Rivers States.

<sup>2</sup> These include: Adamawa, Bauchi, Benu, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Nasarawa, Niger, Plateau, Sokoto, Taraba, Yobe and Zamfara States plus the Federal Capital Territory, Abuja.

<sup>3</sup> Criminal Code.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

for prostitution or other unlawful or immoral purposes is guilty of an offence punishable with imprisonment up to ten years and liable to pay a fine in addition.

Section 279<sup>2</sup> creates the offence of slave dealing and provides that any person who exports, imports, removes, buys, sells, disposes of, traffics or deals in any person as a slave or accepts, receives or detains such person is liable to imprisonment for a maximum of 14 years and a fine.

Section 280<sup>3</sup> punishes forced labour with a fine and one year imprisonment; enticement or leading away of any woman or girl (with or without her consent); for immoral purpose with imprisonment of up to 7 years and a fine. In our view the punishment does not seem to be adequate. It is not enough to deter perpetrators.

The Penal Code did not define the term traffic. The term used in the penal code is “slave” which makes the provision extremely restrictive and not useful to prosecute traffickers.

The lack of adequate provisions regarding trafficking in Nigeria’s criminal laws led the Federal Government to enact a new law on trafficking entitled the Trafficking in Person (Prohibition) Law Enforcement Act 2003.

## 5. IMMIGRATION ACT 1963

The Department of Immigration is an administrative organ of a state. Its primary responsibility is the issuance of travel documents to desiring citizens for the purpose of traveling outside their country of origin. The department is also charged with the duty of regulating the entry of aliens with its territory. Officials of the department have the duty to check and ascertain that the entering immigrants are in possession of the necessary travel document while also ascertaining their purpose of entry and the duration of stay etc.

Section (1) (g – h) of the Act<sup>4</sup> frowns at brothel keepers and householder, which permit the defilement of young girls on his premises, persons, encouraging the seduction or prostitution of girls under thirteen years of age, person trading in prostitution or a procurer. If such a person is not a Nigerian, he is liable to be declared a prohibited immigrant and deported. The age provided by the Act does not provide protection for most victims of human trafficking. There is a bill in the National Assembly for the Immigration Act of 1963 to be repealed and replaced with a new Act which will be in tune with the current global trends that affect migration and issues of human trafficking.

## 6. STATE LAWS

Notwithstanding the existence of two operational codes for crime prevention and punishments in Nigeria, some states of the federation have enacted several relevant laws to suit their peculiar socio-cultural circumstances.

### 6.1 Edo State Law against Human Trafficking

Edo State Government has been aggressively involved in the fight against human trafficking particularly woman trafficking for some obvious reasons; most importantly that most of the sex workers trafficked out of this country, to Italy, come from within the state. The state government has put in place various strategies in collaboration with NGO’s and traditional institutions from the state to see that women and girls from that state do not fall into the hands of traffickers whereas those who are already sex workers in Italy for example are helped back and reintegrated into the society. The government has promulgated laws to combat the menace and is equally collaborating with the Edo Cultural Association and Oba Erediauwa of Benin.<sup>5</sup>

The Edo State Government has enacted stringent laws against exported prostitution to Europe and specifically Italy. The government enacted a Law clearly making women trafficking for prostitution an offence in Edo State. Governor Lucky Igbinedion signed the bill into law, formally, on the 11<sup>th</sup> September 2000. The Law is cited as the “Criminal Code (Amendment) Law 2000”, it is an amendment of some of the provisions of Criminal Code Law Cap 48 Laws of former Bendel State 1976 as applicable to Edo State. The new law has made some changes in the old law in different forms.

The Criminal Code (Amendment) Law, 2000 of Edo State, in its effort to curb human trafficking, introduced stiffer punishments for the offence. Again, a new section 223A was inserted and prescribed punishment of two years imprisonment or a fine of ₦500,000.00 or both for any person who “sponsors a girl or woman by giving her any financial, physical or material assistance to enable her travel out of Nigeria” for prostitution or any immoral act or administers any oath on any woman or girl or performs any fetish ritual in order to enable her travel out of Nigeria or engage in sexual dealings with any person.

<sup>1</sup> Penal Code.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> Immigration Act Cap. 171, Laws of the Federation of Nigeria, 2004.

<sup>5</sup> Dadin, S., Bring Back the Lost Daughters: A Fight Against Trafficking in Nigerian Women and Girls for the International Sex Market (Jos: Fab Educational Books, 2005) p. 83.

These changes have not moved the definition of the offence in line with the Trafficked Protocol. They relate more to the criminalization of third parties (sponsors and traditional priests) who facilitate migration out of Nigeria for prostitution or immoral purposes. The Edo State law criminalizing prostitution has had significant negative effects for trafficked women who are now regarded as criminals on their return to Nigeria if they had been involved in prostitution.

## 7. CHILD RIGHTS ACT, 2003

This Act sets out the rights and responsibilities of a child in Nigeria and provides for a system of child justice administration, and the care and supervision of a child among other things.<sup>1</sup> The Child Rights Act was passed in 2003 and has been adopted by 23 states including the Federal Capital Territory (FCT). The Child Rights Act was adopted with the intention of domesticating the Convention on the Rights of the Child. The legislation made a very wide provision for certain rights of children. They border on children justice and the family. It falls under the concurrent legislative list. The national assembly cannot make laws that are binding on states on those issues. Therefore, the Child Rights Act enacted by the National Assembly is only applicable to the Federal Capital Territory and with respect to capital offences. It is the responsibility of the State Houses of Assembly in compliance with Section 12 of the Constitution to adopt and make their own state laws. It is unfortunate that the process has been very slow. With respect to trafficking, forced labour and other harmful practices to children, the law creates the following offences and relevant punishment for each. Sections 21-23 of the Act prohibit child marriage and prescribe the penalties. Section 21 of the Act specifically provides that no person under the age of 18 years is capable of contracting a valid marriage and accordingly a marriage so contracted is null and void and of no effect whatsoever. While Section 23 provides that, the penalty for such an offence on conviction, is a fine of ₦500,000 or imprisonment for a term of five years or to both such fine and imprisonment.

One issue that had attracted both national and international attention at a time was that of Senator Ahmed Yerima's marriage to a 14 year old Egyptian girl. NAPTIP was said to have briefly arrested, detained and quizzed him.<sup>2</sup> Senator Yerima in the BBC interview claimed rather ignorantly for a law maker, that as Zamfara State from where he hails had not enacted the Child Rights Act, it did not apply to him.<sup>3</sup> This assertion is not correct because the marriage to this child was contracted in Abuja, where the Child Rights Act does apply and the provision of Section 21 of the Act has been breached, and nothing seems to have been done! The NAPTIP Act also applies throughout the Federation. The attention of the Director of Investigation of the National Agency for the Prohibition of Traffic in Person has been drawn to this matter once investigations are concluded and a *prima facie* case is established then the agency's legal department will take off from there.

Our inquiry at NAPTIP Office, Abuja<sup>4</sup> revealed that the case was transferred to child welfare because, the Trafficking in Persons (Prohibition) Law Enforcement and Administrative Act 2003 does not provide for the offence of early marriage. Section 25 of the Act prohibits the exposure of children to the use, production and trafficking of narcotic drugs and prescribed punishment for breach of that provision to be life imprisonment for offenders. The Child Rights Act under Section 26 prohibits the use of children in criminal activities of whatever nature. The penalty for breach is 14 years imprisonment. Section 27 of the Act prohibits the abduction, removal and transfer of children from the lawful custody of their parents or guardians and penalizes offenders with between 10 and 20 years imprisonment depending on the gravity of the offence involved. Section 28 prescribes punishment of 5 years imprisonment or fine of between ₦50,000.00 and ₦250,000.00 for the exploitation of children in forced labour of any kind of hazardous or exploitative activities. Corporate bodies shall be liable on conviction to a fine of ₦250,000.00. Section 30 of the Act prohibits the buying, selling, hiring or otherwise dealing in children for the purposed of hawking or begging for alms or prostitution or other similar practices and any breach is punishable with 10 years imprisonment. All forms of sexual abuse and exploitation of children below the age of 18 years are equally prohibited by sections 31 – 32 of the Act. Sanctions for breach are life imprisonment and 14 years imprisonment respectively. Section 34 of the Act prohibits the recruitment of children into the armed forces but strangely did not make any provision for sanction for breach. Section 29 of the Child Rights Act specifically provides that the provision relating to "young persons" in sections 59–62 of the Labour Act, 2004<sup>5</sup> shall apply to children. The relevant sections of the Labour Act provide:

- i. No child or young person shall be employed in any capacity outside his family's light agricultural, domestic, or horticultural work as approved by the Ministry of Labour; or be required to lift, carry or move anything so heavy as to be likely to injure his physical development; or be employed or work in

<sup>1</sup> Ezeilo, J.N. Human Rights Documents Relevant to Women and Children's Rights in Nigeria (Lagos: Eddy Asae Nigeria Press, 2008) p. 499.

<sup>2</sup> "Yerima: We'll Go the Whole Hog, Says NAPTIP DG, Egede". *Thisday Lawyer*, Tuesday, May 25, 2010, p. ix. Print.

<sup>3</sup> Yerima: Senators, We're Watching. *Thisday Lawyer*, Tuesday, May 4, 2010, p. iii.

<sup>4</sup> Interview with Mr. Obi, Legal Officer NAPTIP Abuja on the 7<sup>th</sup> September, 2012.

<sup>5</sup> Cap. L1, Laws of the Federation of Nigeria (LFN) 2004.

- any industrial undertaking except work done in technical schools under the relevant supervisory agency; or be employed in circumstances in which it is not reasonably possible for him to return home each day; or employed to work underground, or on machines or on public holidays; or be employed in any employment which is injurious to his health, dangerous or immoral; or be required to work for a longer period than four consecutive hours and for a total of more than eight hours a day.<sup>1</sup>
- ii. No young person shall be employed to work at night except those above 16 years and only under special circumstances.<sup>2</sup>
  - iii. No young person below 15 years shall be employed in a vessel except such a vessel is a school or training vessel or that in which only his family is employed subject to a medical certificate of witness.<sup>3</sup>
  - iv. Every employer of young persons in an industrial setting is required to keep a register of all such persons with particulars of their employment.<sup>4</sup>

As rich as the above provisions of the Child Rights Act is, it is turning out again to be one of those exercises in futility that is the bane of Nigerian laws – that is, a poor enforcement machinery and the absence of the enabling environment for the effective operation of the law.

Notable, is the provision which prohibits the employment of a child as domestic help outside his own home or family environment. It is the contention of this work, that this provision of the law is the most breached aspect of labour law or Child Rights Act as nearly every, if not all privileged homes have house helps. A more pragmatic approach, therefore, would be that homes where these children are employed as domestic help must be treated as the child's family environment, subject to good care being taken of them.

There are a lot of instances where these laws are flaunted, for example child beggars and child hawkers are common sights in Nigerian cities. Police stations across the country are flooded with cases of children who run away from their "employers" and are found wandering in towns and cities yet, no single conviction has been made under the Child Rights Act. If this law must achieve what it has been set out to achieve then the government must go beyond the provisions of the law and look critically at enforcement strategies.

## **8. INTERNATIONAL CONVENTIONS AGAINST HUMAN TRAFFICKING RATIFIED BY NIGERIA**

Trafficking in human beings is a lucrative business for globally active perpetrators. Based on the insight that this crime cannot effectively be combated on a national level, various initiatives have been launched on the international level. Nigeria has ratified and is a signatory to a number of international conventions which are directly or indirectly related to trafficking.

It is imperative to at this point mention a few of those international instruments which Nigeria is a signatory or had ratified. They are to serve as insight for Nigeria for she can take a cue from provisions of these conventions in areas that have not been dealt with in its own anti-trafficking legislations. Specifically, the National Human Right Commission Act<sup>5</sup> in its commencement provides that the Commission has as one of its functions to facilitate Nigeria's implementation of its various treaty obligations. Judges and stakeholders in the fight against human trafficking can rely on this provision of the National Human Rights Commission Act to apply some provisions of these conventions entered into by Nigeria. These Conventions include:

### **8.1 United Nations Universal Declaration of Human Rights**

This was adopted by the United Nation General Assembly on the 1 December 1948. It was the first International Act to acknowledge in its preamble that the 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'.<sup>6</sup> Article 1 provides that everyone is born free and with equal dignity and rights. From basic assumption, the Universal Declaration prohibits among other things, slave trade in all forms, servitude, slavery or slave-like practices. Therefore, Article 4 of the UDHR states that: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Finally, Article 13(1) of the UDHR adds that everyone has the right to freedom of movement and residence in any State and Article 23(1) declares the right to freely choose employment and to obtain just and favourable condition of work.

### **8.2 United Nations Convention against Transnational Organized Crime<sup>7</sup>**

<sup>1</sup> S. 59 Labour Act 1971.

<sup>2</sup> S. 60 Labour Act 1971.

<sup>3</sup> S. 61 Labour Act 1971.

<sup>4</sup> S. 62 Labour Act 1971.

<sup>5</sup> National Human Rights Commission Act (1993 No. 22) Cap. C23 LFN 2004.

<sup>6</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res. 217 A(III) (UDHR). As emphasized by Saulle, this premise is explicitly or implicitly made in every human rights instrument elaborated after the Universal Declaration on Human Rights. M.R. Saulle, Dalla tutela giuridica all'esercizio dei diritti umani (Edizioni Scientifiche Italiane, 1999) 15.

<sup>7</sup> Supplementing Protocol to Prevent, Suppress, and Punish Trafficking in Persons. Especially Women and Children,

Nigeria signed and ratified this Convention on 13<sup>th</sup> December 2000 and 28<sup>th</sup> June 2001 respectively. It was the first international agreement that included a comprehensive, legally binding definition of the term trafficking in human beings. The term includes, apart from the Act itself, actions which are carried out before the sales transaction itself or which accompany it, as well as those which are not connected to the sale and purchase of human beings. Significant to the definition is the commission of the offence in combination with the use of force or deceptive means proves that the perpetrator exercised power and control over another human being for the purpose of exploitation. The catalogue of the possible criminal purposes is not exhaustive and yet it includes any imaginable form of exploitation, starting from the exploitation of the prostitution of another person to forced labour to the removal of organs.<sup>1</sup> The consent of the victim is irrelevant with regard to the perpetrator's culpability and sentencing.<sup>2</sup> Countries that ratify it are obligated to take all necessary steps to make trafficking in human beings and any attempt to do so or participation therein as a criminal offence.<sup>3</sup> This protocol also helps in terms of victim protection.

The implementation of the United Nation Convention against Transnational Organised Crime and its Supplemental Protocol is regularly monitored within the context of conferences held for the parties to the Convention. The conference is not a controlling body that could force a ratifying country to act in a certain manner. Its primary purpose is the exchange of information and experience and the improvement of international cooperation between the contractual countries.

### **8.3 Convention on the Rights of the Child**

Although mention of the abolition of traffic in children and their exploitation was already contained in the Declaration on the Rights of the Child adopted by the UN General Assembly on 20 November 1959,<sup>4</sup> the 1990 Convention on the Rights of the Child, dedicates to this issue various measures, banning the illicit transfer of children abroad, their exploitation and trafficking.<sup>5</sup> Nigeria signed this Convention on 26<sup>th</sup> January 1990 and ratified on 19<sup>th</sup> April 1991. Article 1 of the Convention on the Rights of the Child defines a 'child' as 'every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier'. It does not establish a relationship between trafficking and forced prostitution thus acknowledging – in line with the definition given by the UN Trafficking Protocol that children may be subjected to various forms of exploitation.

Consequently, State Parties has the duty to prevent child exploitation, to protect and recover minors in case they are or have been exploited or abused and to combat against their illicit transfer.

### **8.4 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

Convention on the Elimination of all forms of discrimination against women, 1981<sup>6</sup> enjoins State parties to take all appropriate legislative and other measures to suppress all forms of traffic in women and the exploitation of the prostitution of women. It derives what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. Nations and States that have ratified the Conventions welfare expected to commit themselves to undertake series of measures to incorporate the principle of equality of men and women in the national legal system abolish all discrimination and adopt appropriate ones, prohibiting discrimination against women, establish tribunals and other public institutions to ensure the effective protection of women against discrimination, ensure the elimination of all forms of discrimination against women by persons, organizations or enterprises. Can this be said to be true about Nigeria, though it has ratified the Convention. Nigeria signed and ratified this convention on 23<sup>rd</sup> April 1984 and 13<sup>th</sup> June 1985 respectively.

Article 6 of this Convention is dedicated specifically to trafficking in women. This anti-trafficking measure was drafted having in mind the well-established link between trafficking in women and forced prostitution. Nevertheless, taking into consideration the UN Trafficking Protocol's definition, trafficking in women should be interpreted broadly to cover other forms of exploitation as well.<sup>7</sup>

### **8.5 African Charter on Human and Peoples' Rights (Enforcement) Act**

Supplementing the United Nations Convention against Transnational Organized Crime dated 15 November 2000 (BGBI 2005 11, S. 995). It became effective on 25-12-2003.

<sup>1</sup> Article 3a SP.

<sup>2</sup> Article 3c SP.

<sup>3</sup> Article 5(2) SP.

<sup>4</sup> Declaration on the Right of the Child, UNGA Res. 1386 (XIV) (20 November 1959). In particular, principle 9 of the Declaration states that: 'The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic in any form'.

<sup>5</sup> Convention on the Right of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC).

<sup>6</sup> Convention on the Elimination of all Forms of Discrimination Against Women (adopted 18<sup>th</sup> December 1979, entered into force 3<sup>rd</sup> September 1981) 1249 UNTS 13. as of 15<sup>th</sup> December 2007, 185 States have ratified it.

<sup>7</sup> Scarpa, S., *Trafficking in Human Beings: Modern Slavery* (New York: Oxford University Press Inc. 2008) p. 94.

The ACHPR provides that “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade and torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”.<sup>1</sup> It has been domesticated through the African Charter on Human and People’s Rights (Enforcement) Act.<sup>2</sup>

#### **8.6 ECOWAS Declaration and Plan of Action Against Trafficking in Persons (2001)**

It urges member States to commit themselves to measures that prevent trafficking in persons, protect and support victims of trafficking, promote awareness raising activities and establish cooperation for law enforcement officials at borders, share data amongst ECOWAS nations and the United Nations.

The Plan of Action, which is the consensus of all heads of governments of member States of ECOWAS itemized all necessary actions to be taken against trafficking in persons.<sup>3</sup>

The Declaration and the Plan of Action Against Trafficking in Persons were adopted during the annual ECOWAS Summit held in DAKAR in December 2001. These two instruments mainly focus on criminal justice related responds to trafficking in human beings.

#### **8.7 Forced Labour Convention, 1930**

Nigeria ratified the Convention on the 17<sup>th</sup> October 1960. It provides a basic definition of forced labour that is still applicable to such present day international instruments on protocols against smuggling and trafficking. The Convention requires the suppression of the use of forced or compulsory labour in all its forms by State parties. The International Labour Organization (ILO) Forced Labour Convention defines forced or compulsory labour as “all work or services which is exacted from any person under the menace of any penalty or for which the person has not offered himself voluntarily”.<sup>4</sup> This is precisely how labour trafficking is perpetuated.

#### **8.8 Minimum Age Convention (No. 138) 1973**

The Minimum Age Convention, states the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons depending on the type of employment or work. Article 2 provides that State parties shall declare a minimum age for children to be admitted to work. The minimum age shall not be less than the age of completion of compulsory schooling and, in any case, not less than 15 years. Nigeria ratified this Convention on the 2<sup>nd</sup> October 2002.

The International Labour Organization believes that not all forms of work performed by children have to be abolished. On the contrary, some kinds of work that are appropriate to the age and maturity of children may be helpful in increasing their sense of responsibility, gaining skill and contributing to the family welfare. Therefore, there is a difference between child work and child labour; where the former comprises light work and those activities that do not harm the health and well being of minors, and the latter refers to hard labour that should not be performed by children.<sup>5</sup>

#### **8.9 Worst Forms of Child Labour Convention (No. 182) 1999**

This Convention, deals specifically with the abolition of worst forms of child labour. Article 1 of this treaty calls on State parties to abolish the worst forms of child labour ‘as a matter of urgency’ and Article 3 defines the worst forms of child labour,<sup>6</sup> as including:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities in particular for the production and trafficking of drugs as defined in relevant international treaties;
- (d) work which, by its nature or circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Convention No. 182 is the broadest international instrument dealing specifically with child labour exploitation, including but not limited to child trafficking and the sale of children for sexual or other forms of exploitation. It was ratified by Nigeria on the 2<sup>nd</sup> October, 2002.

#### **8.10 Memorandum of Understanding between Nigeria and Republic of Benin**

<sup>1</sup> Article 5.

<sup>2</sup> Cap. A9 LFN 2004.

<sup>3</sup> Gbadamosi, O. International Perspectives and Nigerian Laws on Human Trafficking (Benin City: All Nations Press, 2006) p. 80.

<sup>4</sup> Article 2(1) ILO Forced Labour Convention, 1930.

<sup>5</sup> ILO, A Future Without Child Labour (ILO, 2002) 25.

<sup>6</sup> For the purpose of the ILO Convention No. 182, a child is any person under the age of 18.

A memorandum of understanding was signed between Nigeria and the Republic of Benin on the 14<sup>th</sup> August, 2003 on Cross Border Issues, pledging cooperation on cross-border crimes, smuggling, human trafficking and drug trafficking. Both countries are to cooperate in the areas of law enforcement, joint border patrols, detection, investigation and prosecution of crimes including human trafficking cases, the protection of victims of trafficking and extradition of criminals pursuant to the existing quadripartite Extradition Treaty between Nigeria, Benin, Ghana and Togo.

The above Conventions and memorandum of understanding represent some of the legislative policy tools at the disposal of Nigeria to combat human trafficking. However, Nigeria's policy on international treaty can only be part of Nigeria's domestic law by the process of specific adoption that is domestication by local enabling law.<sup>1</sup> Section 12(a) of the 1999 Constitution<sup>2</sup> provides that no treaty between the Federation and any other country shall have the force of law except to the extent to which the National Assembly has enacted any such treaty into law. The effect of this policy is that though Nigeria is a party to these Conventions and Protocols with respect to her international obligations in the Comity of Nations, the provisions of those Conventions and Protocols do not have binding force in Nigeria unless and until they are specifically enacted into her domestic laws,<sup>3</sup> reinforces this domestication policy. This presupposes that it is only the bilateral and multilateral treaties and conventions relating to human trafficking specifically adopted or domesticated by Nigeria that are within the mandate of NAPTIP. Trafficking victims cannot rely on these provisions to enforce their rights therein contained in Nigerian courts except to the extent that those rights are provided for under the Constitution or other relevant domestic laws. If that is the case, of what relevance are all the anti-trafficking Conventions and protocols listed above to which Nigeria is a party, to trafficking victims in Nigeria? If, that is not the case, is it not important that the exact intention of the legislature be made very clear in order to avoid ambiguity in the light of the constitutional provision relating to treaties? This is moreso, considering that the examination of the provisions of the Trafficking Act revealed that the law falls short of the standards set in the protocol to prevent, suppress and punish trafficking in Persons, especially in Women and Children supplementing the United Nations Convention against Transnational Organized Crime, 2000 which Nigeria ratified but has not been domesticated.

## 9. CONCLUSION

Human trafficking, as earlier revealed thrives both within and across the borders of Nigeria and have severe implications, particularly for women and children as well as the future of the nation. As a country of origin, transit and destination there is usually the out flow and inflow of trafficked victims, most especially through Nigeria's porous borders, which facilitates easy access for traffickers to operate without being caught by the law enforcement agents.

The Federal Government has responded to promote the eradication of human trafficking from Nigerian society. Nigeria became the first and only country in the West African Sub-region to sign, ratify and domesticate the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children as well as the Convention on the Rights of the Child. The Federal Government in July 2003 also passed the Child Rights Act as a legal basis for ensuring that children are protected from any form of exploitation. There are provisions in the Constitution of the Federal Republic of Nigeria 1999 which provide for the protection of the liberty of individuals and respect for the dignity of persons. The Trafficking in Persons (Prohibition) Enforcement and Administrative Act, 2003 was also enacted by Federal Government. This law established the National Agency for the Prohibition of Trafficking in Person (NAPTIP). The organization is vested with the responsibilities of enforcing the laws against traffic in person investigation and prosecution of persons suspected to be engaged in traffic in persons and to take charge and coordinate the rehabilitation and counseling of trafficked persons; and other related matters. There are provisions contained in the Criminal Laws, these are the Penal and Criminal Codes. The laws prohibit prostitution or other sex-related activity.

The pre 2003 legal framework i.e. the Criminal Laws was basically sanction-orientated; no attention whatsoever was paid to prevention and protection measures. Usually, such procured or exploited persons were treated as criminals themselves and subject to deportation.

The state of Anti-Trafficking Laws and Policy in Nigeria is far from being satisfactory. The Trafficking Act is not broad based enough to accommodate the provision of International Human Rights Convention. The definition of trafficking under the Nigeria Anti-Trafficking Act 2003 has excluded a very important phrase 'for the purpose of exploitation'. The Act does not include offences of organ trafficking and human smuggling etc. Nigeria has ratified, acceded and is signatory to a number of international conventions which are related to

<sup>1</sup> S. 3(2) (a) of the Treaties (Making Procedure) Act Cap. T20, LFN 2004.

<sup>2</sup> CFRN (Promulgation) Act, 1999, Cap. C22 LFN 2004.

<sup>3</sup> S. 4(g) Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 (Reinforcing and supplementing measures in such bilateral and multilateral treaties and conventions on traffic in persons as may be adopted by Nigeria to counter the magnitude and extent of traffic in persons and its grave consequences).

human trafficking. However, Nigeria's policy on international treaties is an inhibiting factor because treaties validly entered into by Nigeria can only be part of Nigeria's domestic law by the process of specific adoption that is, domestication by local enabling laws. Rather than specifically adopting the most critical international anti-trafficking laws to make it part of her domestic law, Nigeria has opted to create home-grown alternatives that would not offend some well-entrenched cultural, religious and social practices the international community obviously considers as abuse of human rights. Consequently, these issues would be the foundation on which to propose an effective legal framework and enforcement mechanisms in the fight against human trafficking in Nigeria.

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