

**TRAFFICKING OF WOMEN AND CHILDREN VIS-À-VIS TRAFFICKING IN PERSONS (PROHIBITION) LAW ENFORCEMENT AND ADMINISTRATION ACT 2015 AND OTHER RELEVANT LAWS\*\***

**Abstract**

*Trafficking of women and children has become a cause of serious concern to the world and the crime is perpetuated by some very powerful syndicates. Human trafficking especially women and children is deplorable trend in the modern labour market and a growing menace that requires urgent swift response. One of the biggest issues preventing effective development of many nations today is trafficking of women and children. However, women and children made up the majority of victims that NAPTIP recovered in 2019, 44% of the rescued people were women whereas 6% were men, nearly 75% of the youths who were rescued were girls. The study evaluates Nigeria's legal framework to combat the menace of trafficking of women and children. The aim of the study was to examine trafficking of women and children Vis-A-Vis Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015 and other relevant laws. The research methodology was doctrinal approach, using expository and analytical research design. The main sources of data collection were various legal literatures, both from the physical library and the e-library. It was observed that the laws have not been able to adequately stem the tides of the crime, considering its rising profile in recent times. It was recommended among others that Nigerian legislatures should make continuous amendment of the NAPTIP Act, Nigeria constitution and other relevant laws to have stiffer sanctions to meet with the ever changing strategies of traffickers. Amend the laws to remove sentencing provisions that allow fines in lieu of imprisonment for sex trafficking crimes to cooperate with international community to protect victims of trafficking.*

**Keywords:** children, perpetrators, traffickers and women.

**1. Introduction**

Human trafficking is a global problem affecting people of all ages but mostly affects women and girls severely. Traditional attitudes and practices, early marriage, and lack of birth registration further increase the vulnerability of children and women to exploitation<sup>1</sup>. It cannot be denied, however, that due to the feminization of poverty, gender discrimination and a lack of educational and professional opportunities in their countries of origin, especially women are in a position of vulnerability to become victims of trafficking in persons. Nor can it be denied that more specifically, trafficking in women for the purposes of sexual exploitation has increased in recent years in parallel to the development of the sex and prostitution sector<sup>2</sup>. It is estimated that 1,000,000

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<sup>1</sup> UNICEF, Trafficking in Human Beings, Especially Women and Children, in Africa (Second Edition) <https://www.unicef-irc.org/publications/406-trafficking-in-human-beings-especially-women-and-children-in-africa-second-edition.html>, Accessed on 7<sup>th</sup> July 2023.

<sup>2</sup> Gert Vermeulen, International Trafficking in Women and Children General Report, cain.info”<https://www.cairn.info/revue-internationale-de-droit-penal-2001-3-page837.htm>, Accessed on 7<sup>th</sup> July 2023.

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people are trafficked each year globally.<sup>3</sup> The United Nations divides human trafficking into three categories; sex trafficking, labour trafficking and removal of organs and defines human trafficking as the induction by force, fraud, or coercion of a person to engage in the sex trade, or the harbouring, transportation or obtaining of a person for labour service or organ removal.<sup>4</sup> The term ‘trafficking in persons’ is restricted to instances where people are deceived, threatened or coerced into situations of exploitation, including prostitution, child labour and organ transplant. In West Africa especially Nigeria, there is wide spread trafficking in women and children within the region as well as to overseas locations. Despite the fact that Nigeria has signed and rectified the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons especially, Women and Children, trafficking still rears its ugly head in Nigeria. However domestic legislation and legal practice in the area of trafficking remains erratic.<sup>5</sup> Across the globe, and on daily basis, women and children are confronted with various forms of violence, which the international community strives to address, albeit unsuccessfully. The aim of this paper is to evaluate international and Nigeria’s efforts towards child protection using the instrumentality of the law; interrogate the effectiveness or otherwise of the international and Nigeria’s legal framework for women and child protection; and make overarching recommendations on how to achieve effective women and child’s rights protection. The most prevalent form of human trafficking that results in servitude, is the recruitment and transport of people into the international sex industry.

It consists of different types of servitude, including forced prostitution, pornography, child sex rings and sex related occupations such as nude dancing and modeling. Victims of sexual slavery are often manipulated into believing<sup>6</sup> that they are being relocated to work in legitimate forms of employment. Those who enter the sex industry as prostitutes are exposed to inhumane and potentially fatal conditions, especially with the prevalence of Human Immune Deficiency Virus / Acquired Immune Deficiency Syndrome (HIV/AIDS). Forced labour is another form of modern involuntary servitude that are mostly unnoticed by the general public. Debt bondage (also called peonage) is the enslavement of people for unpaid debts and is one of the most common forms of contemporary forced labour. Another form of exploitation is domestic servitude. The victims are required to work for excessive periods of time under extremely hazardous working conditions and for little or no wages. Sometimes, they become street children and are used for prostitution, theft, begging or the drug trade. Children are sometimes trafficked into military services as soldiers and experience armed combat at very young age. Another recent and highly controversial occurrence involving human trafficking is the abduction or deception that results in the involuntary removal of bodily organs for transplant. For years, there have been reports from China that human organs were harvested from executed prisoners without consent of family members and sold to transplant recipients<sup>7</sup> in various countries. There has also been reported incidences of removal and transplant

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<sup>3</sup> Alese C. Wooditch and Leonard A. Steverson, ‘HumanTrafficking’ <<https://www.britannica.com>, Accessed on 1<sup>st</sup> August 2022

<sup>4</sup> *ibid*

<sup>5</sup> Htt Inews BBC, Co UK in/Programes

<sup>6</sup> ‘Child labour and Armed Conflict’, <<http://www.ilo.org/ipecc/areas/armedconflict>> Accessed 1 August 2022

<sup>7</sup> D Kigour and E Gutmann and D Mata, ‘Blood Harvest / This Slaughter: An Update’, (2016) <<https://endtransplantabuse.org>> Accessed 1 August 2022.

of organs by medical and hospital employees. One hospital in Durban South Africa pleaded guilty to 109 counts of illegal organ transplant.<sup>8</sup>

## 2. Acts that Constitutes Human Trafficking in Nigeria.

Trafficking of women and children is a serious crime and a grave violation of human rights. There are approximately 800,000 people trafficked across international borders annually and of these, 80% are women and girls and 50% are minors.<sup>9</sup> On the basis of the definition given in the Trafficking in Persons Protocol, it is evident that trafficking in persons has three constituents' elements in Article 3 of the Palermo Protocol<sup>10</sup> thus

- (a) The Act (What is done); Recruitment, transportation, transfer, harbouring or receipt of persons.
- (b) The Means (How it is done); Threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability or giving payments or benefits to a person in control of the victim.
- (c) The Purpose (Why it is done) For the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices and the removal of organs.

### 2.1 Human Trafficking for Forced Prostitution

Trafficking for sex represent at least two-third of the estimated \$150 billion in illegal profits generated annually by all forced labour around the world,<sup>11</sup> Nigerian women and children are trafficked both internally and externally for sex. In the last decade, thousands of women and young girls were trafficked into the sex industry, especially into Europe, so that many people in Nigeria came to equate trafficking with prostitution alone and no other forms of labour. While sophisticated criminal organizations are increasingly involved in the international sex trafficking of women and girls, many victims are trafficked locally or within limited geographic regions by unorganized pimps or semi-organized criminal networks.<sup>12</sup>

### 2.2 Human Trafficking for Forced Labour

Forced labour is a violation of fundamental human rights and has a specific meaning in international law. According to United Nations Office on Drugs and Crime (UNODC) 2006 forced labour refers to work or service that is exacted from any person under threat of penalty and where the individual has not entered into the agreement voluntarily. Debt bondage (also called peonage), is the enslavement of people for unpaid debts and is the one of most common forms of contemporary forced labour. Children are often sold or sent to areas with the promise of a better life but instead encounter all forms of exploitation. Domestic servitude places children to work for extended period of time which may be hazardous and injurious to health, affect or prevent their education and

<sup>8</sup> The State v Netcare Kwa-Zulu (Proprietary) Limited, Comercial Crime Court, Regional Court of Kwa-Zulu Natal, Durban South Africa. Case No. 41/1804/2010. Accessed 15 July 2020 as was cited in Ngozi Judith Maduechesi, 'A Comparative Analysis of the Fight on Human Trafficking in Nigeria and South Africa' (LL.M) Dissertation, Chukwuemeka Odumegwu Ojukwu University 2022)

<sup>9</sup> T Dovyalains, Human Trafficking : the Rule of the Health Care Provider, J Midwifery Women's Health (2010)55:462-467 available at Neha A Deshpande and Nawal M Nour (2013) Sex Trafficking of Women and Girls <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3651545/> Access 5 August 2022.

<sup>10</sup> Palermo Protocol (n 17)

<sup>11</sup> 'Trafficking and CommercialSexual Exploitation' [www.stopvaw.org.onlinesearch](http://www.stopvaw.org.onlinesearch) Accessed 5 August 2022.

<sup>12</sup> *ibid.*

drastically affect their entire wellbeing. Sometimes, they become street children and are used for prostitution, theft, begging, and other drug trade. In any case this form of unpaid labour has caused human trafficking to be described as a modern form of slavery.<sup>13</sup>

### **2.3 Trafficking for Organ Harvesting**

According to the World Health Organization (WHO), illegal organ trade occurs when organs are removed from the body for the purpose of commercial transactions.<sup>14</sup> Despite ordinances against organ sales, this practice persists, with studies estimating that anywhere from 5% to 42% of transplanted organs are illicitly purchased.<sup>15</sup> Research indicate that illegal organ trade is on the rise, with a recent report by Global Financial Integrity estimating that the illegal organ trade generates profits between \$600 million and \$1.2 billion per year, with a span over many countries. Criminal networks increasingly engaged in kidnappings, especially of children and teenagers, who are then taken to locations with medical equipment. There they are murdered and their organs harvested for the illegal organ trade.<sup>16</sup> There are no data or even estimated number of children trafficked for organ harvesting. Reason is because of the clandestine nature of the crime, however, there are reports across the globe where these clandestine activities are taking place.<sup>17</sup> Trafficking in human organs can be done only in the framework of complex networks, due to the required skills (medical specialists, surgeons, nurses), logistics (matching compatible patients and donors), and healthcare facilities (analytical laboratories, clinics, operating rooms).<sup>18</sup> Investigation by UNODC revealed that Eritrean migrants, who had been kidnapped along the route to North Africa and who were unable to pay ransoms, were killed to remove their organs. The organs were then sold for around US\$15,000.<sup>19</sup> Though claims of organ trafficking are difficult to substantiate due to lack of evidence and reliable data, cases of illegal organ trade have been tried and prosecuted. The cases and entities prosecuted have included criminal gangs,<sup>20</sup> hospitals, third-party organ brokers, nephrologists, and individuals attempting to sell their own organs through the internet.<sup>21</sup> One hospital in Durban South Africa pleaded guilty to 109 counts of illegal organ transplants, wherein Brazilian and Romanian victims were compensated as little as \$6,000 organs worth from \$100,000-120,000.<sup>22</sup> This a violation of South African Human Tissue Act of 1983 that protects minors from

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<sup>13</sup> A Adepoji, 'Review of Research and Data on Human Trafficking in Sub-Sahara Africa' (2005) (1-2):75-98. International Migration. 43 Accessed 5 August 2022.

<sup>14</sup> Tazeen H Jafar, 'Organ Trafficking: Global Solution for a Global Problem' (2009) (6): 1145 *American Journal of Kidney Disease*. 54

<sup>15</sup> Yosuke Shimazono, 'The State of the International Organ Trade: A Provisional Picture Based on Integration of Available Information', (2007) (12):55-62 *Bulletin of the World Health Organization* 85

<sup>16</sup> *ibid.*

<sup>17</sup> J Bruce, 'Italy Rushes in Law to Bar, Spare Parts Baby Sales', The Telegram Newspaper, (May 18 2003) <<http://archives.emn.com/200/world.europe/11/28/russiachildren/index.htm>>

<sup>18</sup> North and West Africa: INTERPOL report highlights human trafficking for organ removal 30 September 2021 <https://www.interpol.int/en/News-and-Events/News/2021/North-and-West-Africa-INTERPOL-report-highlights-human-trafficking-for-organ-removal>. Accessed 6 August 2022.

<sup>19</sup> UNODC 'Removal of Organs', [https://www.unodc.org/unodc/en/human-trafficking-fund/human-trafficking-fund\\_projects\\_removal-of-organs.html](https://www.unodc.org/unodc/en/human-trafficking-fund/human-trafficking-fund_projects_removal-of-organs.html). Accessed 6 August 2022.

<sup>20</sup> 'Mexico Cartel member held in organ theft case', Retrieved 12 November 2015; 'Police nab cartel member in organ trafficking case', USA TODAY 17 March 2014 <<http://...>> Retrieved 12 November 2015

<sup>21</sup> Alfred v State (2017) LPELR-42612 (CA)

<sup>22</sup> J Allain, 'Trafficking of persons for Removal of Organs and the Admission of Guilt by a South African Hospital' (2011) (1): 117-22 *Medical Law Review* 19

being used for organ transplant and the sale of organs for profit.<sup>23</sup> Recently, True Crime Daniel narrates a case of Judith Nakintu, a 38 years old woman from Uganda after her recovery from an accident she had with her boss, which caused her stroke, her boss took her to a hospital to receive COVID 19 vaccine and that on getting to the hospital she became unconscious and when she regained consciousness she noticed that her right Kidney was missing. The family instituted an action against the perpetrators for illegal harvesting of Judith's organ. The Court in Saudi Arabia awarded Judith \$70,000 US Dollars for the damage she received due to the accident but the court did not blame the boss for harvesting her organ. Is still a great mystery yet to be unraveled the gangs that conspired to harvest this innocent woman's organ. The hospital, Judith's boss and the Nile Treasure Gate should be investigated to ascertain the perpetrators of this heinous crime.

#### **2.4 Human Trafficking for Domestic Servitude**

The quest for greener pasture has made many innocent Nigerians to fall into the hands of these heartless traffickers who lure them into untold hardship that may even cost their lives or make them permanently disabled and depressed. They will finally know that they were deceived and betrayed. Many Nigerians are held in detention facilities in Libya. Even for those who succeeded most of them are bundled to prison by Italian authorities, at least 70,000 of these are women in detention camps.<sup>24</sup> Most of the youths between 18 and 25 embark on these trips without knowing the dangers ahead. They are deceived and in the process their organs are harvested. Some organs are sold as high as US\$250,000. NAPTIP has arrested 5,923 suspected human traffickers and rescued 13,950 victims in its 15 years of existence.<sup>25</sup> The following narratives capture the experiences of trafficked children for domestic help.<sup>26</sup>

Elizabeth, a native of Benue State never had any form of education because her parents were poor. Her brother brought her to Lagos along with other girls for domestic service work. She is employed by a madam to work in a food joint. She earns Two Naira monthly. The money is kept by her brother for her father in Benue State for the upkeep of the family. Elizabeth wakes up at 4.30 am and is asleep by 1.30 am. She is running 21 hour work daily, 7 days a week. She is also responsible for taking care of the house on return from restaurant. Often her employer curses and beats her. Obviously, Elizabeth is under a lot of pressure. She has not seen her brother since she started work and her madam told her that she had a two-year contract with her. The young girl summed up her feelings as follows: I wish I had a place I can go to. This suffering is too much to bear.

Young women and children are also lured into exploitative migration and sex work via their desire to go to Saudi Arabia for pilgrimage. Some of these girls are advertised on the internet for services as domestic helps to some rich families in the Middle East.

<sup>23</sup> M Leibrandt and A Finn and I Woolard, 'Describing and Decomposing Post Apartheid Income Inequality in South Africa' (2012) (1): 19-34 Development Southern Africa 29.

<sup>24</sup> Daily Trust, 'dailytrust.com/how-trafficked-nigerians-fall-victims-of-organ-harvest-in-europe (2019) Accessed 5 August 2022.

<sup>25</sup> *ibid.*

<sup>26</sup> These are excerpts from interviews carried out by Women's Consortium of Nigeria (WOCON) (2000) Report on Research on Trafficking in Women in Nigeria. Study commissioned by the Dutch Embassy, Lagos.

## **2.5 National Legal Framework Combating Trafficking of Women and Children.**

Nigeria enacted a comprehensive legal framework to prevent and combat trafficking of women and children.

### **3.1 Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015**

On July 14, 2003, the Federal Government of Nigeria promulgated a specific law against human trafficking titled the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 (hereinafter referred to as the NAPTIP Act). This is the first legal framework to combat trafficking of person in Nigeria. The NAPTIP Act was amended in 2005 as a result of some inherent conducts and criminal acts that were hitherto not criminalized in the 2003 Act because the crime is getting more sophisticated. However, with the heinous crime of human trafficking, there was need to further amend the 2005 Act. Accordingly, in 2015, the Act was further amended with substantial amendments.

The NAPTIP Act is specific to trafficking and is one of the first such laws in Sub-Saharan Africa. Evidently, the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons,, Especially Women and Children Supplementing the United Nations Convention Against Transitional Organized Crime (2000) (Palermo Protocol) influenced the drafting of the NAPTIP Act and as can be seen from Section 81 that incorporates the universally accepted definition contained in Article 3 of the Palermo Protocol with some slight changes. The Act defined ‘trafficking’ as follows:

Trafficking or Traffic in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person or debt bondage for the purpose of placing or holding the person whether for or not in involuntary servitude (Domestic, sexual or reproductive) in forced or bonded labour, or in slavery-like conditions, the removal of organs or generally for exploitative purposes.

The Act was the first of its kind to criminalize commercial carriers who transport trafficked victims with the knowledge of the trafficking transactions. However, the element of establishing the ‘guilt knowledge’ may be difficult to prove in order to obtain the conviction of a commercial carrier.<sup>27</sup>

The 2015 Act expressly prohibits all acts of human trafficking within Nigeria or trans-boundary trafficking.<sup>28</sup> Also under the current Act, the offence of human trafficking could be committed when a person abuses the position of another person’s vulnerability or the circumstance of the victim, in order to exploit such victim.<sup>29</sup> Section 13. (1) All acts of human trafficking are prohibited in Nigeria. The classification of offenders under the 2015 Act is similar to what is obtainable under the Criminal Code Act. Accordingly, where a person does or threatens any act in furtherance of the prohibited act; aids or facilitates activities of traffickers in order that the prohibited offence should be committed, uses any means to procure any person to commit the offence or actually participate in the commission of the prohibited acts as well as inducing another person by whatever means,

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<sup>27</sup> Attorney General of the Federation v MA Charge No. B/13C/2004

<sup>28</sup> NAPTIP Act 2015, s13(1) (3)

<sup>29</sup> Ibid s 13 (1)

the offence of human trafficking is said to be committed. In each of these cases, the penalty upon conviction is a jail term of not less than 2 years in addition to a fine of not less than N250,000<sup>30</sup>. Consent of the victim of the crime is not a vitiating factor at all and the Act is stated thus;

13(2) Any person who recruits, transports, transfers, harbours or receives another person by means of

(a) threat or use of force or other forms of coercion;

(b) abduction, fraud, deception, abuse of power or position of vulnerability; or

(c) giving or receiving of payments or benefits to achieve the consent of a person having control of another person, for the purpose of exploitation of that person, commits an offence and is liable on conviction to imprisonment for a term of not less than 2 years and a fine of not less than N250,000.00.

(3) For the purpose of subsection (2)(c), abuse of a position of vulnerability includes intentionally using otherwise taking advantage of an individual's personal, situational or circumstantial vulnerability recruit, transport, transfer, harbour or receive that person for the purpose of exploiting him or her, such that the person believes that submitting to the will of the abuser is the only real or acceptable option available to him or her and that this belief is reasonable in the light of the victim's situation.

The Act criminalizes and punishes some human trafficking related offences such as importation into Nigeria or exporting any person from Nigeria through any of the means discussed above with intent that such a person would be coerced into prostitution or other forms of sexual exploitation. The penalty is a jail term not less than 5 years upon conviction as well as a monetary fine of not less than N1,000,000.<sup>31</sup> And it is stated as follows;

14. Any person who

(a) imports another person into Nigeria, knowing or having reason to know that the person will be forced or induced into prostitution or other forms of sexual exploitation in Nigeria or while in transit; or

(b) exports another person from Nigeria, knowing or having reason to know, that the person will be forced or induced into prostitution or other forms of sexual exploitation in the country to which the person exported or while in transit, commits an offence and is liable on conviction to imprisonment for a term of not less than 5 years and a fine of not less than N 1,000,000.00.

Furthermore, procuring any below the age of 18 years through any of the means earlier stated, as well as a debt bondage, to move from one place to another, knowing that the person is likely to be forced to have an illicit sexual intercourse with any other person is an offence under the Act and the penalty on conviction is a jail term not less than 5 years and a fine of N500,000.<sup>32</sup> It is provided as follows

15. Any person who—

(a) by the use of deception, coercion, debt bondage or any means, induces any person under the age 18 years to go from one place to another to do any act with intent that

<sup>30</sup> Ibid 13 (2) a-c and (3)

<sup>31</sup> NAPTIP Act 2015 s 14 (a) and (b)

<sup>32</sup> ibid s 15 (a) and (b)

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such person may be, knowing that it is likely that the person will be forced or seduced into illicit intercourse with another person, or

(b) keeps, detains or harbours any other person with intent, knowing or having reason to know that such person is likely to be forced or induced into prostitution or other forms of sexual exploitation with or any person or an animal, commits an offence and is liable on conviction to imprisonment for 5 years and a fine of N500,000.00.

In the case of a child the law is strict. Accordingly, the recruitment, transportation, transfer, harbouring or receipt of a child for any exploitative purposes whatsoever, is tantamount to human trafficking even if it does not involve the use of threat, abduction, fraud, deception and the abuse of power or position of vulnerability of the child. The Act also considers in house trafficking where a person procures a minor that he may carnally know the victim or any other person, both within or outside Nigeria. This also covers an instance where the perpetrator concedes to the conveying of the minor from his or her usual residence to a destination where the victim would be forced into prostitution. The penalty in such case is a jail term not less than 7 years on conviction and a fine not less than N1,000,000.<sup>33</sup>

16.(1) Any person who procures or recruits any person under the age of 18 years to be subjected prostitution or other forms of sexual exploitation with himself, any person or persons, either in Nigeria anywhere else, commits an offence and is liable on conviction to imprisonment for a term of not less than 7 years and a fine of not less than N1, 000,000.00.

(2) Any person who procures or recruits any person under the age of 18 years to be conveyed from usual place of abode, knowing or having reasons to know that such a person may be subjected induced into prostitution or other forms of sexual exploitation in any place outside Nigeria, commits an offence and is liable on conviction to imprisonment for a term of not less than 7 years and a fine not less than N1,000,000.00.

Moreover, where a minor has been procured and harboured in a brothel in order to engage in a pornographic activities, the perpetrator is liable on conviction to a jail term not less than 7 years and a fine not less than N1,000,000.<sup>34</sup> If it is established that the perpetrator administered hard drugs on the victim, in order to stupefy the victim, an additional jail term not less than 1 year would ensue.<sup>35</sup>

17.(1) Any person who (a) procures, recruits, uses or offers any person under the age of 18 years for the production pornography or for pornographic performances ; (b) allows a person under the age of 18 years to be harboured in a brothel, commits an offence and is liable on conviction to imprisonment for a term of not less than 7 years and a fine of not less than N 1,000,000.00.

(2) Notwithstanding the punishment prescribed in subsection (1) of this section, a convicted person under this section shall, in addition to the prescribed punishment, be liable to a term of not less than 1 year imprisonment where he administered or

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<sup>33</sup> NAPTIP Act 2015 s 16 (1) and (2)

<sup>34</sup> *ibid* s 17(1) (a) and (b)

<sup>35</sup> *ibid* s 17 (2)



stupefied the victim with any drug substance. Foreign travel which promotes prostitution or sexual exploitation.

Equally, criminalized by the Act is organizing foreign travels in order to promote prostitution. The penalty on conviction in this case is imprisonment for a term not less than 7 years and fine not less than N1,000,000.<sup>36</sup> Heavier monetary fines are imposed in cases of procuring any person for purposes of taking active part in armed conflict, the penalty is a jail term not less than 7 years on conviction as well as a fine not less than N1,000,000.<sup>37</sup> All persons involved in the entire transaction of organ removal would also be charged with the crime. The penalty in each case is a jail term not less than 7 years on conviction as well as a fine not less than N5,000,000.<sup>38</sup> This particular prohibition on trafficking for purposes of organ removal is in tandem with the Palermo Protocol which Nigeria is a state party.

Furthermore the Act prohibits the exploitation of a child below the age of 12 years who is engaged as domestic worker.<sup>39</sup> Subjecting a child to any form of hazardous work which is injurious to his physical, social and psychological development is equally criminalized by the Act.<sup>40</sup> It is common place in Nigeria to witness young children being subjected to all forms of inhuman treatments due to their status as house helps.<sup>41</sup> A guardian who reneges in this obligation, is liable on conviction to a jail term not less than 2 years.<sup>42</sup> In cases where the child has been abused sexually or made to suffer some grievous bodily harm, the punishment is a jail term not less than 3 years.<sup>43</sup> Other acts that are criminalized by the Act are conspiracy, escape or aiding and abetting escape is liable on conviction to a jail term of 5 years.<sup>44</sup> The Act criminalized attempt to commit an offence under the Act,<sup>45</sup> this makes it easier to prosecute offenders who are caught in the act of trafficking without having completed the transaction.<sup>46</sup> Again, all commercial carrier airlines operators, sea vessel operators, tour operators and travel agents are under obligation not to aid the commission of the prohibited acts under the NAPTIP Act whatsoever.<sup>47</sup> A breach of this provision by any of the groups stated above attracts a fine not less than N10,000,000.<sup>48</sup>

More stringent penalties that have been introduced by the 2015 NAPTIP Act are attachment and forfeiture of assets. It is the law that any Nigerian who has been convicted under the Act, would forfeit his international passport to the Federal Government and such passport would in turn, be handed over to the Nigerian Immigration Service.<sup>49</sup> The import of this provision needs not be over emphasized, as it is aimed at preventing such convicts from travelling out, to continue perpetrating the heinous crime of human trafficking. In addition to forfeiting all international passport, a person

<sup>36</sup> *ibid* s 18

<sup>37</sup> *ibid* s 19

<sup>38</sup> *ibid* s 20 (1), (2) and (3)

<sup>39</sup> *ibid* s 23

<sup>40</sup> *ibid* 23 (2)

<sup>41</sup> *Gift Nonye Ukatu v FRN* (2021) 19 NWLR (pt 1785) 519

<sup>42</sup> NAPTIP Act 2015 s 23 (2) (a)

<sup>43</sup> *ibid* s 23 (2) (b)

<sup>44</sup> *ibid* s 28

<sup>45</sup> *ibid* s 29 and s 30 (1)

<sup>46</sup> *Attorney General of the Federation v Sarah Okoya*, Charge No. B/15C/2004

<sup>47</sup> NAPTIP Act 2015 s 35

<sup>48</sup> *ibid* s 35 (4)

<sup>49</sup> *ibid* s 48

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convicted under this Act, would also forfeit all assets and property which have been attached,<sup>50</sup> pursuant to an interim attachment Order of the Court, to the Victims of Trafficking Trust Fund. The foregoing improvement in the penalties in the 2015 NAPTIP Act, is a demonstration by Nigeria to comply with international best practices as far as human trafficking is concerned. However, it is submitted humbly that the penalties stipulated above by the NAPTIP Act are inadequate given the heinous nature of the crime of human trafficking and the consequences that victims are exposed to. I humbly advocate that stiffer penalties like life imprisonment for offences of organ transplant, sexual offences with a minor and any form of sexual promiscuity as well as a fine not less than N10,000,000 confiscations of assets together with forfeiture of perpetrators international passport. All public bodies; corporate bodies, hospitals, aircrafts, sea vessels that are involved in the offence of human trafficking should not be less than N100,000,000 including imprisonment of individual perpetrators.

### **3.2 Child's Rights Act 2003**

Child's Rights Act is one of the one of the specific laws and the most comprehensive law that protects the rights of the child. Most of its provisions are taken from the Convention on the Rights of the Child (CRC) and ILO Convention 182. In accordance with international norms, Section 277<sup>51</sup> of the CRA defines a child as a person below the age of eighteen years. Section 14<sup>52</sup> of the CRA states that a child must not be separated from his or her parents against their will, except where it is in the best interest of the child<sup>53</sup> Trafficking of a child for any purpose whether with or without the consent of the parents, is a clear violation of the child's right to parental care, protection and maintenance. Some elements of trafficking in persons such as exploitative labour and the unlawful removal of a child from the lawful custody of another are also covered under this Act. Section 28 of the CRA prohibits exploitative and forced labour of children, employment of children in any capacity except where the child is employed by a member of the family on light work of an agricultural, horticultural or domestic nature. The section is the same as Section 59 of the Labour Act, and the penalty for contravening the provisions of this section is 5 years imprisonment or N50,000 fine.<sup>54</sup> Section 30 of the CRA prohibits the buying, selling, hiring or otherwise dealing in children for the purpose of hawking or begging for alms or prostitution. This section is also wide enough to cover the almajiri system of semi-formal Koranic education. Section 30 of the CRA is against hazardous work and factors to be considered in determining whether or not work is likely to harm the health, safety or moral of children are: exposure of children to physical, psychological and sexual abuse; underground work; work with dangerous machines; work for long hours; night work; and work in which the child is unreasonably confined to the premises of the employer. A person who contravenes the provision of subsection (1) of this section commits an offence and is liable on conviction to imprisonment to a term of ten years.<sup>55</sup> Sections 31 and 32 of the CRA prohibit unlawful sexual intercourse with a child, other forms of sexual abuse and exploitation and punish the offence with imprisonment of 14 years or life imprisonment as the case may be.<sup>56</sup> Section 34 of CRA prohibits recruitment of children into the armed forces in accordance with ILO

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<sup>50</sup> *ibid* s 49

<sup>51</sup> Child's Rights Act 2003

<sup>52</sup> *ibid* s14

<sup>53</sup> *ibid* s1

<sup>54</sup> *ibid* s28

<sup>55</sup> *ibid* s 30 (1) and (3)

<sup>56</sup> *ibid* s 31 and s 32

Convention 182. A 12-year-old boy from Sierra Leone talked about how government soldiers burned his village during the war, killed his parents, gave him drugs and forced him to fight.<sup>57</sup> Recently in Nigeria, immigration officials arrested a security man at the Banki border who was trying to traffick young secondary school boys into Chad to join the Chadian rebel army.<sup>58</sup> Section 144 of the CRA places a restriction on inter-State adoption, this exposes children to the danger of human trafficking. It provides as follows;

- S 144 (1) Except under a license issued to section 145 of this Act, no person shall permit or cause or procure the care or possession of a child to be given to any person outside the State in which the adoption order was made with a view to getting the child adopted by any person.
- (2) A person who permits or causes or procures the possession of a child to be given to any person
- (a) Outside the State in which the fostering order was made, or
- (b) Outside Nigeria, with intent to getting that child fostered by that person commits an offence.
- (3) A person who contravenes the provisions of Subsection (1) of this section commits an offence and is liable on conviction to a fine of thirty thousand Naira or imprisonment for a term not exceeding one year or to both such fine and imprisonment.
- (4) A person who commits an offence under Subsection (2) of this section is liable on conviction to a term of-
- (a) In the case of an offence under Subsection (2) (a) of this section to imprisonment for a term of ten years;
- (b) In the case of an offence under Subsection (2) (b) of this section to imprisonment for a term of fifteen years.<sup>59</sup>

### 3.3 The Nigerian Constitution

In view of the fact that trafficking of women and children involve the violation of fundamental human rights. It is important to consider the relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999 that guarantees these rights. Chapter IV of the Constitution contains Fundamental Rights whilst Chapter II spells out the Fundamental Objectives and Directives Principles of State Policy. Many Nigerians lost their lives thorough human trafficking. Many died in the deep sea during transit, many women and girls are raped to death and others die out of starvation. Many are brutally murdered by the perpetrators in order to harvest their organs. All these acts violates section 33 of the Constitution<sup>60</sup> which provides that every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria. Human trafficking is against the freedom and dignity of human beings and is thus unacceptable under the Constitution. Section 34 of the Constitution guarantees the right to the dignity of the human person thus prohibiting the subjection of any person to slavery or servitude. It provides thus:

Every individual is entitled to respect for the dignity of the Person and accordingly, no person shall be subjected to torture or to inhuman or degrading treatment, no person shall be held In slavery or servitude; and no person shall be required to perform Forced or compulsory labour.<sup>61</sup>

<sup>57</sup> US Dept of State Report 2003 on Abolishing Modern Day Slavery: Facts, Faces and Freedom Produced by Office to Monitor and Combat Trafficking in Persons.

<sup>58</sup> Interview with Ogbole-Elijah and MD Mohammed of the Immigration Anti-Trafficking Unit on 22 February 2005.

<sup>59</sup> Child's Rights Act 2003 s 144.

<sup>60</sup> Constitution of Federal Republic of Nigeria 1999 (As Amended) (CFRN) s 33

<sup>61</sup> CFRN s 34

Human trafficking violates the right to personal liberty.<sup>62</sup> Many women and girls that are trafficked are subjected to all sorts of promiscuous act against their will and they are dehumanized, raped and subjected to all sorts of prostitution, pornography, nude performances and many other sexual atrocities which violates their right to private and family life.<sup>63</sup> Another relevant provision in the Constitution is the right to movement<sup>64</sup> and human trafficking violates this constitutional provision. Section 42, specifically prohibits any form of gender discrimination against women or girl child. However, the vulnerability rate of women and girl child to trafficking as opposed to men and boy child counter points to the irresistible conclusion that the age long customary belief that women are chattels is still very much with us.<sup>65</sup> These rights are fundamental rights that are enforceable in the Nigerian Courts. Section 46 of the Constitution provides that any violation of the fundamental human rights provisions is remediable by the High Court in the State where the violation occurs.<sup>66</sup> Nigeria is a signatory to many treaties and conventions, bilateral and multi- lateral agreements, which contain provisions for the protection of the rights of trafficked persons. Nigeria has ratified a good number of these conventions, but Section 12 of the Constitution stipulates that all treaties ratified by Nigeria have to be passed into law by the National Assembly before they can have force of law in Nigeria.<sup>67</sup> This is called ‘domestication of treaties’ and many international treaties and conventions are not yet domesticated and therefore do not have the force of law in Nigeria.

#### **4 International Legal Framework Combating Trafficking of Women and Children.**

Nigeria is a party to various international instruments dealing with human trafficking. However, for the purpose of this research I shall discuss the following international instruments.

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

The 1989 Convention was the first legally binding International Convention to protect the rights of children. It is the most universally accepted human rights instrument in history. It has been ratified by virtually every country in the world (except South Sudan and United States)<sup>68</sup> and therefore uniquely places children in the center stage in the quest for the universal application of human rights. This goes to show that children are human beings and subject of their own rights and not that of their parents. The convention protects children by setting standard obligation in the provision of health care, education and legal, civil and social services. The convention is as a result of global consensus reached to help establish the recognition of children’s rights, especially in the many countries where children’s lives are affected by armed conflict, child labour, sexual exploitation and other human rights violations<sup>69</sup> This convention consists of 54 Articles but for this research, I will focus specifically on Articles 1,3,11,21,32,33,34,35,36,37 and 38 which deals with trafficking of children. Article 1<sup>70</sup> defines a child to mean every human being below the age of 18

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<sup>62</sup> *ibid* s 35

<sup>63</sup> *ibid* s 37

<sup>64</sup> *ibid* s 41

<sup>65</sup> SC Ifemeje and AG Arowolo, ‘The Legal Battle against Trafficking in Women and Children in Nigeria: Problems and Prospects (2009) 168-178, Benin Journal of Public Law Vol5-7

<sup>66</sup> CFRN s 46

<sup>67</sup> *ibid* s 12

<sup>68</sup> <https://un..org>story>2015/9>

<sup>69</sup> D Band and others, ‘Working Papers in Early Childhood’, (August 2006) 32-33 A Summary Review, Vol 39(Amsterdam: Bern and Van Leer Foundation)

<sup>70</sup> Convention on the Rights of the Child (CRC) 1989.

years, unless under the law applicable to the child majority is attained earlier.<sup>71</sup> Article 3 of CRC<sup>72</sup> provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. In other words, it requires that in all actions concerning a child victim of trafficking, everything done shall be for the best interest of the child. Where some matters are to be decided, such a person shall be kept in a safe place and necessary amenities provided for her before decision is taken. Whatever decision that is taken must be for the child's best interest.<sup>73</sup> Article 11 of CRC<sup>74</sup> provides that states parties shall take measures to combat the illicit transfer and non-return of children abroad and to this end promote the conclusion of bilateral or multilateral agreements or accession to existing agreements. Article 21 of CRC<sup>75</sup> is a linking article. It links to Article 3 which provides for the best interest of the child, this article stresses the needs for state parties to ensure in permitting the system of adoption that the child's best interest be of paramount consideration. The adoption of a child should be processed by competent authorities to determine, in accordance with applicable law and procedures of the state of the child. Where the adoption is inter-country adoption, the child should enjoy safeguards and standards equivalent to those existing in the case of National adoption, appropriate measures like the informed consent of the guardian of the child is required in the absence of the child's biological parents. Moreover, under Article 32 of CRC<sup>76</sup> requires state parties to ensure protection of the child from economic exploitation and performance of hazardous work that will impair the child's development and ensure full implementation of the present article. State parties shall in particular ensure that the requirement of children admitted to employment complies with the age stated in the article, regulations of hours of work and conditions of employment are obeyed and penalties awarded for failure to enforce the law. Article 33 of the CRC<sup>77</sup> requires state parties to appropriate measure including legislative, administrative, social and educational measures to protect children from illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties and to prevent the use of children in the illicit production and trafficking off such substances. This obligation of states remains unattained or achieved. Article 34 of CRC<sup>78</sup> provides for states obligations to protect children from all forms of sexual exploitation and sexual abuse. In doing this, states are expected to take all appropriate National Bilateral, Multilateral measures to prevent any child from being coerced or induced into engaging in prostitution, pornographic performances and every unlawful sexual activity. Article 35 of CRC<sup>79</sup> gives states the responsibility to protect the child from being trafficked or from abduction and sale of children for any purpose and in any form. Also state parties should protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.<sup>80</sup> State parties shall ensure that no child shall be subjected to torture, or other cruel, inhuman or degrading treatment or punishment and no child shall be deprived his or her liberty unlawfully and arbitrarily.<sup>81</sup> Article 38

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<sup>71</sup> *ibid* Art 1

<sup>72</sup> *ibid* Art 3

<sup>73</sup> *Prince v Massachusetts* 321 US 158 (1944) Judgment of January 31<sup>st</sup> 1944

<sup>74</sup> *ibid* Art 11 (1) and (2)

<sup>75</sup> *ibid* Art 21 (a) – (e)

<sup>76</sup> *ibid* Art 32 (1) and (2) (a)–(c)

<sup>77</sup> *ibid* Art 33

<sup>78</sup> *ibid* Art 34 (a)(b)(c)

<sup>79</sup> *ibid* Art 35

<sup>80</sup> *ibid* Art 36

<sup>81</sup> *ibid* Art 37

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of CRC<sup>82</sup> require state parties to respect the international humanitarian law applicable to them especially those relevant to children in armed conflict and ensure that children less than 15 years do not take direct part in hostilities. They must not be recruited into armed forces. But this has not changed because these traffickers still traffic and involve children of about 13 years or less in armed conflict. An instance is where a female child victim, who was trafficked and used as a barmaid, was asked to ‘attend to the customer’s need behind closed doors’.<sup>83</sup> In recruiting those who have who have attained the age of 15 years but have not attained the age of 18 years, states parties shall endeavour to give priority to those who are oldest. All feasible measures must be taken to ensure the protection and care of children who are affected by an armed conflict should be taken.<sup>84</sup> Trafficking involves serious violations of child’s rights. The CRC and ILO Convention 182 on the Elimination of the Worst Forms of Child Labour is one of the treaties and convention which Nigeria signed and ratified. This law was domesticated by enacting the CRA 2003. Most of the provisions of the CRA 2003 are taken from the Convention on the Rights of the Child (CRC) and the ILO Convention 182.

The 1989 convention has its shortcomings despite the fact that most of its articles provided for the protection of children against exploitation. It failed to neither define trafficking nor address it as a specific issue. Its provisions were more on the obligations of states towards the child. It equally failed to stipulate and specify the punishment for the offenders like the previous conventions.

#### **4. Conclusion**

Trafficking of women and children is a serious crime that violates the basic human rights of victims. It is a sophisticated, complex and difficult issue to tackle. One of the areas of international criminal activity that is expanding rapidly is the trafficking of women and children for various types of exploitation which is of great concern to Nigeria. Traffickers lure victims with the promise of employment in respectable professions in Nigeria and the countries of destination. The victims are coerced into forced prostitution, domestic servitude and other types of exploitation. The porous borders, inadequate training, poverty, unemployment, illiteracy and lack of equipment for law enforcement agencies, are factors militating against the fight of this heinous crime. Human Trafficking laws need continuous amendment to have stiffer sanctions to meet with the ever changing strategies of traffickers. The anti-trafficking laws should be amended to remove sentencing provisions that allow fines in lieu of imprisonment for sex trafficking crimes. Nigerian legislatures should make continuous amendment of the NAPTIP Act. There is need for Nigeria constitution and other relevant laws to have stiffer sanctions to meet with the ever changing strategies of traffickers. The laws should be amended to remove sentencing provisions that allow fines in lieu of imprisonment for sex trafficking crimes to cooperate with international community to protect victims of trafficking.

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<sup>82</sup> *ibid* Art 38

<sup>83</sup> Okojie and others, ‘Report of Field Survey in Nigeria in Measures to Combat Trafficking in Human Beings where Trafficked Children were used as Labourers, Exploited and Denied Payment of their Wages’

<sup>84</sup> *ibid* Art 38 (1)