

## Legal Framework for Combating Trafficking of Women and Children in Nigeria\*

### Abstract

Trafficking in human beings, especially women and girls, is not new, historically it has taken many forms, but in the context of globalization, it has acquired new dimensions. It is a complex, multi-faceted phenomenon involving multiple stakeholders at the institutional and commercial level. It is a demand-driven global business with a huge market for cheap labour and commercial sex confronting often insufficient or unexercised policy framework or trained personnel to prevent it. Human trafficking especially trafficking of women and children has become a cause of serious concern to the world and this has become a new trend of modern-day sex slavery and a new trend of money-making by some very powerful syndicates in the world. The aim of this paper is to evaluate international and Nigeria's efforts towards women and children protection using the instrumentality of the law; interrogate the effectiveness or otherwise of the international and Nigeria's legal framework for women and children protection; and make overarching recommendations on how to achieve effective women and children's rights protection. 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 Nigerian laws have not been able to adequately stem the tides of the crime, considering its rising profile in recent times. It is essentially because the laws are selective and not all-inclusive. Policy makers are merely formulating and adjusting strategies on an experimental basis. It was recommended among others that Nigerian governments are to make sustained efforts to cooperate with international community, assist in the prosecution of traffickers and protect victims of trafficking by linking up local law enforcement agencies with Interpol when dealing with the more complex problems associated with trafficking of women and children.

**Keywords:** *Children, Legal, Traffickers, Victim and Women.*

### 1. Introduction

Trafficking in women and children recently emerged as a global issue. This study assessed the pattern of trafficking in women and children and factors influencing it. The most frequent type of trafficking was commercial sex followed by child labour. Educated and enlightened people appeared to be the main perpetrators of women and child trafficking followed by intimate/close associate. Contributing factors for trafficking in women and children are poverty, illiteracy, parental discrimination of preference of male children over female children, ignorance, family disintegration, political insurgencies, religious wars, increase in school dropouts, unemployment and poor socio-economic conditions appeared to be significantly associated with trafficking in women and children. This paper suggests that human trafficking could be tackled by, enacting a comprehensive law that specifies stiffer sanctions, severe punishment for traffickers, rehabilitate victims and increased security at border posts. Nigeria ratified the UN protocol to prevent, suppress and punish trafficking in persons and enacted Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015, established an office of National Agency for the Prohibition of Trafficking in Persons, media houses campaigns against

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the act and many awareness raising activities. Despite these initiatives, human trafficking remains a critical problem in Nigeria. There is a continuing need for further ratification and implementation of international legislation along with the use of national legal tools currently available to fight against trafficking in women and children. The problem with our plethora of laws is its implementation and enforceability.

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

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

### **2.1 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 through 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 violate section 33 of the Constitution<sup>1</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>2</sup> Human trafficking violates the right to personal liberty.<sup>3</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>4</sup> Another relevant provision in the Constitution is the right to movement<sup>5</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>6</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

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<sup>1</sup> Constitution of Federal Republic of Nigeria 1999 (As Amended) (CFRN) s 33

<sup>2</sup> CFRN s 34

<sup>3</sup> Ibid s 35

<sup>4</sup> Ibid s 37

<sup>5</sup> Ibid s 41

<sup>6</sup> SC Ifemeje and AG Arowolo, 'The Legal Battle against Trafficking in Women and Children in Nigeria: Problems and Prospects (2009) (5-7) *Benin Journal of Public Law*, 168-178

violation occurs..<sup>7</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>8</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.

## **2.2 Trafficking in Persons (Prohibition) Law Enforcement & 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. In 2015, the Act was further amended. 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:

*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>9</sup> The 2015 Act expressly prohibits all acts of human trafficking within Nigeria or trans-boundary trafficking.<sup>10</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>11</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, 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

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<sup>7</sup> CFRN s 46

<sup>8</sup> Ibid s 12

<sup>9</sup> *Attorney General of the Federation v MA Charge No. B/13C/2004*

<sup>10</sup> NAPTIP Act 2015, s13(1) (3)

<sup>11</sup> Ibid s 13 (1)

years in addition to a fine of not less than N250,000<sup>12</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>13</sup> Furthermore, procuring any person 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>14</sup> In the case of a child the law is strict. 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>15</sup> 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>16</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>17</sup> Equally, the Act criminalised 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>18</sup> Heavier monetary fines are imposed in cases of

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<sup>12</sup> Ibid 13 (2) a-c and (3)

<sup>13</sup> NAPTIP Act 2015 s 14 (a) and (b)

<sup>14</sup> Ibid s 15 (a) and (b)

<sup>15</sup> NAPTIP Act 2015 s 16 (1) and (2)

<sup>16</sup> Ibid s 17(1) (a) and (b)

<sup>17</sup> Ibid s 17 (2)

<sup>18</sup> Ibid s 18

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>19</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>20</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>21</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>22</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>23</sup> A guardian who reneges in this obligation, is liable on conviction to a jail term not less than 2 years.<sup>24</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>25</sup> Other act 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>26</sup> The Act criminalized attempt to commit an offence under the Act,<sup>27</sup> this makes it easier to prosecute offenders who are caught in the act of trafficking without having completed the transaction.<sup>28</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>29</sup> A breach of this provision by any of the groups stated above attracts a fine not less than N10,000,000.<sup>30</sup> Any Nigerian who has been convicted under the Act, would forfeit his international passport to the Federal Government<sup>31</sup> and also forfeit all assets and property that have been attached,<sup>32</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.

### 2.3 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>33</sup> of the CRA defines a child as a person below the age of eighteen years. Section 14<sup>34</sup> of the CRA states that a child must not be separated from his or her parents against their

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<sup>19</sup> Ibid s 19

<sup>20</sup> Ibid s 20 (1), (2) and (3)

<sup>21</sup> Ibid s 23

<sup>22</sup> Ibid 23 (2)

<sup>23</sup> *Gift Nonye Ukatu v FRN* (2021) 19 NWLR Part 1785, 519

<sup>24</sup> NAPTIP Act 2015 s 23 (2) (a)

<sup>25</sup> Ibid s 23 (2) (b)

<sup>26</sup> Ibid s 28

<sup>27</sup> Ibid s 29 and s 30 (1)

<sup>28</sup> *Attorney General of the Federation v Sarah Okoya*, Charge No. B/15C/2004

<sup>29</sup> NAPTIP Act 2015 s 35

<sup>30</sup> Ibid s 35 (4)

<sup>31</sup> Ibid s 48

<sup>32</sup> Ibid s 49

<sup>33</sup> Child's Rights Act 2003

<sup>34</sup> Ibid s14

will, except where it is in the best interest of the child<sup>35</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>36</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. 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>37</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>38</sup> Section 34 of CRA prohibits recruitment of children into the armed forces in accordance with ILO 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>39</sup> Recently in Nigeria, immigration officials arrested a security man at the border who was trying to traffic young school boys into Chad to join the Chadian rebel army.<sup>40</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.

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<sup>35</sup> Ibid s1

<sup>36</sup> Ibid s28

<sup>37</sup> Ibid s 30 (1) and (3)

<sup>38</sup> Ibid s 31 and s 32

<sup>39</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>40</sup> Interview with Ogbole-Elijah and MD Mohammed of the Immigration Anti-Trafficking Unit on 22 February 2005.

(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>41</sup>

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

Nigeria is a party to various international instruments dealing with human trafficking.

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

The 1989 Convention was the first legally binding International Convention to protect the rights of children. It has been ratified by virtually every country in the world (except South Sudan and United States)<sup>42</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>43</sup> This convention consists of 54 Articles but only Articles 1,3,11,21,32,33,34,35,36,37 and 38 which deals with trafficking of children will be discussed in this paper. Article 1<sup>44</sup> defines a child to mean every human being below the age of 18 years, unless under the law applicable to the child majority is attained earlier.<sup>45</sup> Article 3 of CRC<sup>46</sup> provides that in all actions concerning children, 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>47</sup> Article 11 of CRC<sup>48</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>49</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

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<sup>41</sup> Child's Rights Act 2003 s 144.

<sup>42</sup> <<https://un.org>> 2015/9

<sup>43</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>44</sup> Convention on the Rights of the Child (CRC) 1989.

<sup>45</sup> Ibid Art 1

<sup>46</sup> Ibid Art 3

<sup>47</sup> *Prince v Massachusetts* 321 US 158 (1944) Judgment of January 31<sup>st</sup> 1944

<sup>48</sup> Ibid Art 11 (1) and (2)

<sup>49</sup> Ibid Art 21 (a) – (e)

guardian of the child is required in the absent of the child's biological parents. Moreover, under Article 32 of CRC<sup>50</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>51</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>52</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>53</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>54</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>55</sup> Article 38 of CRC<sup>56</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>57</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>58</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 either define trafficking or address it as a specific issue. Its provisions were more on the obligations of states towards the child. It

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<sup>50</sup> Ibid Art 32 (1) and (2) (a)-(c)

<sup>51</sup> Ibid Art 33

<sup>52</sup> Ibid Art 34 (a)(b)(c)

<sup>53</sup> Ibid Art 35

<sup>54</sup> Ibid Art 36

<sup>55</sup> Ibid Art 37

<sup>56</sup> Ibid Art 38

<sup>57</sup> Okojie *et. al.*, '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>58</sup> Ibid Art 38 (1)



equally failed to stipulate and specify the punishment for the offenders like the previous conventions.

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

The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour Convention was adopted by the International Labour Organization (ILO) in 1999 as ILO Convention No 182. It is one of the eight ILO Fundamental Conventions.<sup>59</sup> The Convention comprises of 16 articles but this paper shall review Articles 1 to Article 7. Article 1<sup>60</sup> provides that by ratifying this Convention No. 182, a country commits itself to taking immediate action to prohibit and eliminate the worst forms of child labour. The purpose of the Convention which is the elimination of child labour was one of the main goals of the ILO. According to the UN agency, 152 million children worldwide are affected by the convention, almost half of which do dangerous work. Most child labour is carried out in the agricultural sector, mainly due to poverty and the difficulties faced by parents. The Convention supports the prohibition and elimination of the worst forms of child labour, including slavery, forced labour and trafficking in human beings. It prohibits the use of children in armed conflicts, prostitution and pornography, illegal activities such as drug trafficking and dangerous work.<sup>61</sup> According to the ILO, the proportion of child labour fell by almost 40 percent between 2000 and 2016 as the ratification rate increased and countries passed laws and policies, including the minimum age of employment.<sup>62</sup> Convention No.182 has been signed by all ILO Member States by 4 August 2020. This has become the fastest ratified agreement in the United Nations history.<sup>63</sup> Article 2<sup>64</sup> provides that the term child shall apply to all persons under the age of 18 years. Article 3 provides that the worst forms of child labour comprise;

- (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 the relevant international treaties;
- (d) Work which by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children

Article 4<sup>65</sup> provides that the type of work referred to under Article 3 (d) shall be determined by National Laws or Regulations or by the competent authority after consultation with the organizations of employers and workers taking into considerations relevant international standards. The ILO also adopted the Worst Forms of Child Labour Recommendation No. 190 in 1999. This recommendation contains among others, recommendations of the types of hazards that should be considered to be included within a country-based definition of worst forms of

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<sup>59</sup> 'Conventions and Ratification', International Labour Organization. 27 May 2011.

<sup>60</sup> Worst Forms of Child Labour Convention, 1999 (No. 182) Article 1

<sup>61</sup> <<https://en.wikipedia.org/wiki/worst-forms-of-child-labour-convention>

<sup>62</sup> 'Convention on the Worst Forms of Child Labour receives universal ratification'. UN News 4 August 2020.

<sup>63</sup> Ibid

<sup>64</sup> Worst Forms of Child Labour Convention, 1999 (No. 182) Article2

<sup>65</sup> Ibid Art 4

hazards faced by children at works.<sup>66</sup> The worst forms of child labour that should be prohibited in ILO Recommendation No. 190 are:

- Any work that exposes children to sexual abuse (physical or psychologically)
- Any work that is done underground, under water, at dangerous heights or in confined spaces.
- Any work that is done with dangerous machinery, equipment and tools
- Any work that is done in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health.
- Any work that is done under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer<sup>67</sup>

Article 5<sup>68</sup> enjoins members to consult with employers and workers to establish mechanisms to monitor the implementation of the provisions giving effect to the Convention. The ILO's International Programme on the Elimination of Child Labour (IPEC) is responsible for assisting countries in monitoring compliance. One of the methods used by IPEC to assist countries in this regard are time bound programmes, such as the Time-Bound Programmes for the Eradication of Child Labour: and Country Programmes on Commercial Sexual Exploitation of Children. All coordinated by ILO or other organizations to stimulate adherence to the convention. The Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography play a role in the coordination of activities. Article 6<sup>69</sup> enjoins member states to design and implement programmes to eliminate as a priority the worst forms of child labour. Furthermore Article 7<sup>70</sup> mandates member states to ensure the effective implementation and enforcement of the provisions by application of penal sanctions. Also each member states should take into account the importance of education in eliminating child labour.<sup>71</sup> The Convention also requires ratifying states to provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. It also requires states to ensure access to free basic education and, wherever possible and appropriate, vocational training for children removed from the worst forms of child labour.<sup>72</sup>

### **3.3 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime (2000)**

A major step was taken under the auspices of the United Nations to address the issue of human trafficking is the adoption of UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the Convention against Transnational Organized Crime signed in Palermo, Italy in 2000. (Palermo Protocol) The Protocol is divided into four parts and consists of 20 Articles. Articles 1 to 5 are general

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<sup>66</sup> R 190 Worst Forms of Child Labour Recommendation 1999 (No.190) ILO 17 June 1999

<sup>67</sup> Worst Forms of Child Labour (IPEC)<sup>2</sup>, [www.ilo.org](http://www.ilo.org). Accessed 7 August 2022

<sup>68</sup> Worst Forms of Child Labour Convention, 1999 (No. 182) Article 5

<sup>69</sup> Ibid Art 6

<sup>70</sup> Ibid Art 7

<sup>71</sup> Ibid Art 7 (2)

<sup>72</sup> Ibid Art 7 (2)(a)-(e)

provisions, articles 6 and 7 provide for protection of victims of trafficking and 9 to 12 provide for the prevention, cooperation and measures used in dealing with trafficking and articles 13 to 20 are the final provisions of the Protocol. The Protocol does not stand alone, but must be read and applied together with the parent Convention. Article 1 of the Protocol deals with the general provisions and provides that, the protocol supplements the UN Convention against Transnational Organized Crime.<sup>73</sup> The provision of the Convention shall apply *mutatis mutandis* to the protocol unless otherwise provided.<sup>74</sup> The purposes of the protocol as set out in Article 2 are;<sup>75</sup>

- a) To prevent and combat trafficking, paying particular attention to women and children;
- b) To prevent and assist victims of trafficking with full respect for their human rights; and
- c) To promote cooperation among States Parties in order to meet those objectives.

The protection of, and assistance to victims is identified as a core purpose of the Protocol and governments are obligated to adopt domestic laws and policies to guarantee such protection and assistance in accordance with international human rights standards. Article 3 deals with the definition of trafficking and provides thus;

*“Trafficking 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, of abduction, of fraud, of deception, of the abuse of power or 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 for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>76</sup>*

In line with Article 6 of the protocol, it requires States parties to provide assistance to victims of trafficking in appropriate cases<sup>77</sup> The Protocol in fact imposes obligations on State Parties to protect and provide assistance to trafficked persons, to ensure that repatriation is voluntary.<sup>78</sup> And in the case of children their interest and welfare should be of paramount consideration.<sup>79</sup> It is important to note that Nigeria is one of the first countries in Sub-Saharan Africa to ratify and domesticate the Palermo Protocol, which shows the political will of the government to combat trafficking in person especially women and children in Nigeria. However, there are inherent dangers in the verbatim adoption of international instruments as domestic laws. Some of the provisions may be inappropriate in the socio-political context of the country in question. The Palermo Protocol extensively targets the relationship between state parties, in dealing with cases of human trafficking while national laws target the country adopting the laws. Furthermore, the Palermo Protocol focuses on law enforcement that assumes the commission of crimes by crime syndicates. In the Nigeria context however, most crimes relating to human trafficking are committed by individuals who could be close relatives or neighbours and who

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<sup>73</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the Convention against Transnational Organized Crime, Adopted by G.A. Res. 25, annex 11.C.N. GAOR, 55<sup>th</sup> Sess. No 49, at 60 UNDOC A/45/46, (vol.1)(2001) entered into force September 9, 2003

<sup>74</sup> Ibid Art 1 (2)

<sup>75</sup> Ibid Art 2

<sup>76</sup> Ibid Art 3

<sup>77</sup> Ibid Art 6(2), Art 2(1)

<sup>78</sup> Ibid Art 8(2)

<sup>79</sup> Ibid Art 6(4)

are not embedded in sophisticated networks. To that extent the verbatim domestication of the Protocol creates difficulties in implementation.<sup>80</sup> Nonetheless domestication of the Palermo Protocol strengthens the national legal framework in combating human trafficking and forced labour. The definition in the Protocol has enabled the inclusion within the ambit of trafficking of acts committed by parents or guardians who give out their children to intermediaries who place them in exploitative labour or slaver-like conditions.<sup>81</sup> It went further to state that a child shall mean any person under 18 years of age.<sup>82</sup> It is observed that the Palermo Protocol also provides for the recovery of properties from the trafficker to redress the injuries suffered by the trafficked persons.<sup>83</sup> This provision is replicated in section 27 of the NAPTIP Act 2015, and its implementation will in no small measure assist victims in their rehabilitation. One of the weaknesses in the Palermo Protocol is that its language in certain clauses are not mandatory but discretionary especially in the provisions for the protection and assistance to trafficked persons. The language of the protocol gives discretionary powers to state parties through the use of words like “*appropriate cases and to the extent possible*”...<sup>84</sup> Each state party shall consider taking measures...<sup>85</sup> Such wordings gives room to state parties to manoeuvre and legally escape their obligations under the Protocol. However, since Nigeria is a party to many international human rights instruments, the human rights standard approach should be adopted when dealing with cases of trafficked persons; some of these human rights standards have been compiled in a publication “*Human Rights Standard for the treatment of trafficked Persons (1999)*”<sup>86</sup> The standards set out state responsibilities to provide trafficked persons with access to justice and reparation, access to the right to seek asylum, access to health and other social services and assistance with repatriation and re-integration in their home countries. The Palermo Protocol and the Convention against Transitional Organized Crime place the burden of enforcing the treaties on national governments but unfortunately there is no body establish to monitor the actual establishment of administrative and legislative bodies at the domestic level to assess if the fight against human trafficking has been successful in all member states including Nigeria.

### **3.4 Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography**

The 2000 Protocol was adopted to consolidate the existing laws and combat the trafficking in children, sale, prostitution and child pornography which was not adequately addressed by the Convention on the rights of the Child. This Protocol consists of 17 articles.<sup>87</sup> Article 1 provides for the duty of states to prohibit the sale of children, child prostitution and child pornography as provided by the Protocol.<sup>88</sup> Article 2 gives the definition of the concept of sale of child, child

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<sup>80</sup> 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>81</sup> Palermo Protocol Art 3(c)

<sup>82</sup> Ibid Art 3(d)

<sup>83</sup> Ibid Art 6(6)

<sup>84</sup> Ibid Art 6(1)

<sup>85</sup> Ibid Art11(5)

<sup>86</sup> Foundation Against Trafficking in Women and International Human Rights Law Group and Global Alliance Against Traffic in Women (GAATW), Human Rights Standards for the Treatment of Trafficked Persons (3<sup>rd</sup> edn, 2001)

<sup>87</sup> Optional Protocol to the Convention on the Rights of the Child, on the Sale of Children, Child Prostitution and Child Pornography. GA Res, A/RES/54 262 of May, 2000, entered into force on 18 January, 2002.

<sup>88</sup> Ibid Art 1

prostitution and child pornography.<sup>89</sup> Article 3 paragraph 1, requires state parties to ensure that the following acts and activities are fully covered under its Criminal or Penal Law whether such offences are committed domestically or transnationally or on individually or organized basis; offering, delivering or accepting of children for purposes of sexual exploitation, organ transfer and engagement of child in forced labour, improperly inducing consent for adoption of a child in violation of applicable international legal instruments on adoption, or offering, obtaining, procuring or providing a child for prostitution or for purposes of child pornography.<sup>90</sup> Paragraph (2) provides that, an attempt to commit is prohibited. Paragraph (3) provides for penalty for the commission of such offences as stated in Article 3(1) appropriate penalties should be awarded. Paragraph (4) provides for the States Parties obligation to establish the liability of legal persons for offences established in paragraph (1) while Article 3 Paragraph (5) urges State Parties to ensure that persons involved in the act of adoption of a child is in conformity with applicable international legal instruments.<sup>91</sup> Under Article 4(1), State Parties are required to take necessary measures to establish jurisdiction over the offender referred to in Article 3 paragraph 1, when the offences are committed in its own territory or on board a ship or aircraft registered in the state especially where the offender is a national of that state or person who has his habitual residence in its territory and does not extradite her in another State Party. Furthermore, the Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.<sup>92</sup> Article 5 subsections (1) to (5) of the convention deals with extradition of offences as contained in the present articles. Articles 5, 6 and 7 provide for offences, measures for seizure and confiscation of goods, assets and other instruments used to commit offences under the protocol.<sup>93</sup> Article 9 requires State Parties to adopt, strengthen, implement and disseminate laws, administrative measures, social policies and programs to prevent the above offences. Also promote awareness in public places aimed at effective prohibition of the production and dissemination of material, advertising the offences described in the present protocol. Under Article 10(1) to (4) the protocol supports the Millennium Development Goal 8, that support International Cooperation to prevent, investigate, prosecute and punish offenders of child pornography and sale, child prostitution and sex tourists.<sup>94</sup> It also promotes international cooperation to assists child victims in their physical and psychological recovery, social reintegration and repatriation.<sup>95</sup> It equally strengthens the international cooperation to address the root causes of trafficking like poverty and underdevelopment.<sup>96</sup> These factors contribute to the vulnerability of these children to be sold and used for child prostitution, pornography and as sex tourist. Also State Parties are required to provide financial, technical and other support through existing multilateral, regional, bilateral or other program.<sup>97</sup> The major loophole of this protocol is that it did not use the word ‘child trafficking’ in all its provision and did not define trafficking rather, it defined sale of children, child prostitution and child pornography. They mean different things and cannot be seen as connoting the word trafficking.

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<sup>89</sup> Ibid Art 2

<sup>90</sup> Ibid Art 3

<sup>91</sup> Ibid Art 3; there is a lacuna in art. 3(3) where the drafters of the instrument used the phrase ‘*take into account their grave nature*’. The sentence is ambiguous and not specific. The drafters of the article should have specifically stated in clear terms the punishment.

<sup>92</sup> Ibid Art 4(1) - (4)

<sup>93</sup> Ibid Art 10(1)

<sup>94</sup> Art 10 (1)

<sup>95</sup> Art 10 (2)

<sup>96</sup> Art 10 (3)

<sup>97</sup> Art 10 (4)

#### **4 Conclusion**

Regularly, women and children are victims of commercial sexual exploitation, sex trafficking and domestic servitude. Efforts to prevent, identify and respond to these crimes by international and national laws are largely inadequate, under supported, inefficient, uncoordinated and unevaluated. Trafficking of women and children is a crime with low risk and high profits and violates the basic human rights of victims. It is a complex, sophisticated and difficult issue to tackle. Despite all the laws, the crime remains on the increase. Many factors have encouraged this. Poverty, illiteracy, political insurgencies, porous borders, corrupt law enforcement agencies, gender disparity, non-enforcement of our laws and marginalization and discrimination of the female gender are some of the pushing and pulling factors contributing to this trafficking of women and children. Human trafficking laws need continuous amendment with stiffer sanctions and there is strong need to implement existing laws so that the perpetrators will be punished accordingly. There is need to assist the survivors by encouraging their reintegration into their community and sensitization of women and children to understand the sophisticated nature of this crime in order not to be deceived by the agents of these powerful syndicates that perpetuate the heinous crimes. The paper recommends increased awareness and strengthening of the laws, strengthening of research to advance understanding and to support the development of prevention and intervention strategies, support for multi sector interagency collaboration and creation of a digital information sharing platform.

