

AN APPRAISAL OF EXISTING LEGAL FRAMEWORK AIMED AT COMBATING HUMAN TRAFFICKING IN NIGERIA*

Abstract

Human trafficking is the recruitment, transportation, harboring or receipt of persons by means of threat or use of force or other forms of coercion, abduction, deception, or the abuse of power of a position, receiving of payment or benefits to achieve the consent of persons, for the purpose of exploitation. This paper dissects the existing legal frame works that provide for the prevention and protection of human trafficking. The paper observes that human trafficking is a global phenomenon that violates the right of the victims. Due, to globalization every continent of the world is involved in human trafficking, including a country as small as Iceland. The work further observes that 80% of those that are trafficked are women while over 50% are children. Apart from women and children research shows that pregnant mothers are trafficking for their new born. The work further reveals that trafficking is one of the fastest growing organized crime with an estimated 1.2 million victims. The study shows that human trafficking not only involves sex and labour, but people are also trafficked for organ harvesting. Furthermore, the paper discovers that apart from transporting their victims outside the border that human trafficking exist internally in Nigeria. Hence, children are transmitted from the rural areas to commercial cities like Lagos, Port Harcourt, Abuja etcetera for domestic services and sexual exploitation. Furthermore, the work observes that human trafficking has serious health implications such as sexual transmitted diseases like HIV, psychological trauma, suicidal tendencies and death. Hence, despite international, regional and domestic, framework, human trafficking still thrive in Nigeria due to so many factors such as lapses in our laws, corruption ,poverty, lack of education et cetera. The work recommends that, legislations that provides for the protection against human trafficking should be reviewed particularly Chapter (11) 1999 Constitution (as amended) should be shifted to Chapter (iv) so that the girl child can enjoy the rights to education and health without inhibition. The government should beef up monitoring structures at the boarder and sack officials that aid in human trafficking. Also, every traditional and cultural practice that fuel trafficking should be jettisoned.

Keywords: *Human Trafficking, Legal Framework, Nigeria, Appraisal*

1. Introduction

The Federal Republic of Nigeria in fulfilment of international obligations under the Protocol to Prevent, Suppress and Punish Trafficking in Person, especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime (Palermo Convention), enacted the Trafficking in Persons (Prohibition) Law Enforcement Administration Act, 2003 (amended in 2005), and established the National Agency for Prohibition of Trafficking in Persons (NAPTIP) in 2003. The Law seeks to address trafficking in person with its associated problems by creating a specific multi-disciplinary crime- fighting agency to address them¹. Hence evidence shows that the drafting of the NAPTIP Act has created awareness on the issue of human trafficking but we must not rest on our oars as this menace thrive in Nigeria. This ugly situation continues in spite of the effort by law enforcement agencies, international, national and Governmental authority. The Anti-Human Trafficking Piracy Special Investigation Unit of The FCT Police Command has so far rescued one hundred and five 105 teenagers between the ages of five to thirteen years from human trafficking in different places in Abuja. The children were trafficked from different parts of Nigeria to be used as sex slaves and child labourers within the motor parks markets and restaurants in Abuja.²In fact, Nigeria has more cases of trafficking of women to Europe and Middle East than any other African country³.Hence, the issue of human trafficking can never be over emphasized because it is enslaving our women and destroying our children that are the future of this country. Thus, the this work is geared towards eliminating factors that execrate human trafficking in Nigeria.

2. Definition of Terms

Trafficking in persons is a process, where people are recruited in the country of origin, transferred through transit regions and then exported to country of destination.⁴It involves the recruitment, transportation, transfer, harboring

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¹ Trafficking in persons (Prohibition) Law Enforcement and Administration Act, 2003 S.I.

² Ahmed Mohammed, Daily Trust 3 Feb 2008.

³*Ibid.*

⁴ The Council of Europe Convention Against Trafficking in Human Being May 16 2005, CET IW.197 and the United Nations Protocol to Prevent Suppress and Punish Trafficking in persons, Especially Women and Children,

or receipt of persons by means of threat or use of force or other forms of coercion, abduction, deception, or the abuse of power of a position, receiving of payments or benefits to achieve the consent of persons, for the purpose of exploitation. Exploitation shall include, at a minimum the exploitation of the prostitutions, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.⁵ Thus, for an act to amount to trafficking in person there must be evidence of an act, means and purpose. Accordingly, Article 3 of the Palermo Protocol, three elements must be present to establish trafficking:

- (1) The act: This includes the thing that is done (recruitment, transportation, transfer, harboring and receipt)
- (2) The means: This includes how the act is done and carried out (threat, force, coercion, abduction, deception, fraud or vulnerability, abuse of power giving or receiving payment and benefit, to get the consent of the person.)
- (3) The purpose: This is the motive for doing it (prostitution and other sexual dealing, forced labour, slavery, and other similar offences as well as organ removal).

While, the Forced Labour Convention recognizes, child trafficking as one of the worst forms of trafficking and describes it as all forms of slavery, practices similar to slavery, such as the sale and trafficking of children, debt bondage, serfdom, forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.⁶ Hence, anyone that deceives and uses another for labour, domestic services, sexual exploitation is guilty of this of human trafficking.

3. Legal Framework for Combating Human Trafficking

Many legal frameworks have been put in place to curb human trafficking at the international, regional and national level and they include the following. International Instruments on Trafficking include the following: 1979 Convention on the Elimination of All forms of Discrimination Against Women (CEDAW); 1990 African Charter on the Right and Welfare of the Child; 1966 International Covenant on Civil and Political Rights (ICCPR); 1991 International Labour Organization (ILO); 2000 The Libreville Common Platform for Action; 2000 Optional Protocol to the CRC on the sale of Children, Child Prostitution and Child Pornography; 2000 UN Convention Against Transnational Organized Crime; 1966 International Covenant of Economic, Social and Cultural Rights; 1948 Universal Declaration of Human Rights; and 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Regional legal framework include African Charter on the Rights and Welfare of the Child (ACRWC) 1990; African Charter on Human and People's Right; The Protocol to the African Charter on Human and Peoples Right on the Rights of women in Nigeria; African Charter on Human and Peoples Right (1981) and it's protocol relating to the Rights of women in Africa (2003); and The ECOWAS Declaration and a Plan of Action Against Trafficking in Person. Nigerian laws on trafficking include the Nigerian Constitution; Criminal Code (applicable in the southern and eastern Nigeria); Penal Code (applicable only in Northern Nigeria); Immigration Act; Labour Act; Edo State Law on Trafficking in persons; Trafficking in Persons (Prohibition) Law Enforcement and Administration Act.

3.1 Domestic Laws

Nigerian Constitution

The Constitution of the Federal Republic of Nigeria guarantees the civil and political rights of citizens in chapter four of the constitution. It provides for the respect and dignity of human person particularly in its section 34 and provides that every individual is entitled to respect for the dignity of his person, hence, no person shall be subjected to torture or to inhuman treatments or to degrading treatments. Further, no person shall be held in slavery; and no person shall be required to perform forced or compulsory labour.⁷ Section 33 (1) of 1999 Constitution guarantees right to life and provides inter alia: (I) 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. Further, section 35 provides for right to personal liberty and states that every person shall be entitled to his respect, liberty and no person shall be deprived of such liberty. However all these rights are violated by human traffickers, who enslave their victims and many have died in the process. It is pertinent to note that, these rights are fundamental rights that are enforceable in the Nigerian Courts and no one has a right to deprive another. Violation of fundamental human rights provisions contained in chapter 4 of the 1999 Constitution can be

Supplementing the United Nations Convention against Transnational Organizes Crime, G.A Resolution 55/25, Annex 11, Un DOC A/55/383 (Nov. 25, 2000).

⁵Yinka Olomjobi, Human Right on Gender, Sex and the Law in Nigeria 2015 pg. 117.

⁶International Labour Organization (ILO) Convention No.182, Worst Forms of Child Labour Convention 1999, article 3.

⁷Constitution of Federal Republic of Nigeria, 1999 (as amended).

challenged in a High Court in the State where the violation occurs. From the provision of the Nigerian Constitution, which is the supreme law of the land forbids trafficking of persons in its entirety, protecting its citizens against dehumanization that accompanies trafficking in person's, such as torture, conditions of slavery, forced labour, unlawful incarceration.⁸ Pending payment of inflated bills or rendering of cheap labour, denial of the freedom of movement⁹, and other inhuman treatment. The clandestine nature of trafficking in person enables its perpetuation even in the face of the provisions of the constitution of Nigeria set out above to molest their victims and violate their fundamental human rights with impunity. It is therefore suggested, that Chapter (II) of the Constitution should be made justiciable so that the girl child will enjoy her right to education. This is cardinal because lack of education has put many female children to precarious situation and has made them susceptible to human trafficking.

Trafficking in Persons (Prohibition) Law Enforcement and Administration Act¹⁰

Apart from the Constitution, the Federal Republic of Nigeria in fulfilment of its international obligations under the Protocol to Prevent, Suppress and Punish Trafficking in Person, especially women and children supplementing the United Nations Convention against Transnational Organized Crime (Palermo Convention), enacted the Trafficking in Persons (Prohibition) Law Enforcement Administration Act, and established the National Agency for Prohibition of Trafficking in Persons (NAPTIP) in 2003. This law seeks to address trafficking in persons with its associated problems by creating a specific multi-disciplinary crime- fighting agency to address them¹¹. Evidently the drafting of the NAPTIP Act was influenced by the Palermo Protocol. This is obvious from the provision of Section 50 of the Act, which incorporates the universally accepted definition of trafficking in person contained in Article 3 of the Palermo Protocol with few edits. The Act defined trafficking as follows:

Trafficking include all acts and attempted acts involved in the recruitment, transportation within or across Nigerian borders, purchase, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion or debt bondage for the purpose of placing or holding the person, whether for or not in involuntary servitude (domestic, sexual or reproductive), in forced or bonded labour, or in slavery-like conditions¹².

This definition goes beyond the Palermo Protocol definition in some aspects. The inclusion of the phrase ...attempted acts... makes it easier to prosecute offenders who are caught in the act of trafficking without having completed the transaction¹³. Another milestone achievement of section 29 of Trafficking in persons Act is criminalizing of commercial carriers who transport potential trafficked victims with knowledge of the trafficking transaction. Although, the element of guilt due to Knowledge may be difficult to prove in order to obtain conviction of a commercial carrier. In addition, the definition unlike other laws dealing with offences of trafficking in persons before the enactment of this Act includes trafficking transaction involving ...transportation within and across the Nigerian Borders.... Thereby recognizing internal trafficking as well¹⁴. This Act has really combated human trafficking in Nigeria but more effort should be made in area of implementation, so that women and children will be free from every form of violence.

Criminal Code Act¹⁵

The Criminal Code was one of the laws that govern trafficking related offenses, before the promulgation of the trafficking on Person Act in 2003¹⁶. The Criminal Code is applicable in the Southern part of Nigeria. The Criminal Code does not define trafficking in person; however it contains provisions that criminalize offences which may constitute external trafficking in person. Section 223 (2) of the criminal code provides for the arrest of any person or persons, who procures a woman or girl to become a prostitute, either in Nigeria, or elsewhere. Similar to section 34 of the constitution, is the provision of section 365 of the Criminal Code which deals with unlawful deprivation of liberty of a person by confinement or detention and punishes the offender with imprisonment for two years. Furthermore, section 366 enumerates conducts usually employed by traffickers to subdue their victims and is punishable upon conviction by one year imprisonment, and section 369 of the criminal code prohibits slave dealing, making it punishable by a long fourteen years jail term. The penalties for offences that constitute human

⁸ *Ibid*, S. 46.

⁹ *Ibid*, S. 35.

¹⁰ Trafficking in persons (Prohibition) Law Enforcement and Administration Act, 2003 S.I.

¹¹ *Ibid*.

¹² Trafficking in persons (Prohibition) Law Enforcement and Administration Act, *op cit*, S. 50.

¹³ V.I. Nwogu, *op cit*, p. 148.

¹⁴ Trafficking in person (Prohibition) Law Enforcement and Administration Act, *op cit*, S.I.

¹⁵ CAP C 38 Laws of the Federation of Nigeria (LFN) 2004.

¹⁶ Trafficking in Persons Act 2003 *op cit*.

trafficking as contained in the Criminal Code provisions seem surprisingly lenient.¹⁷ The penalties seem to regard such heinous offences as mere misdemeanors (rather than felonies), and penalties range from caning, to fines and imprisonment of two to seven years, which seem unlikely to deter traffickers. It is therefore recommended that the Government should beef up the punishment to be commensurate with the offence.

Penal Code¹⁸

The Penal Code was promulgated on 30th of September 1960 and applicable in the Northern part of Nigeria. Trafficking in women has been recognized as an offence in the Penal Code with special provisions according to the age of the victim. In general, there are stronger provisions against human trafficking related offences in the Penal Code than the Criminal Code, and while the Criminal Code treats some of these offences as mere misdemeanors, the Penal Code categorizes them as felonies and provides more stringent punishments. Thus, section 271-281 of the Penal Code of Northern Nigeria stipulates the prosecution of individual involved in activities that might be described as kidnapping and abduction respectively in Sections 271 and 272. It states that whoever entices a minor, male below 14 years and female below 16 years, or conveys him/her outside the jurisdiction of North, or compels, deceives or induces any person to go from any place is liable to imprisonment for a maximum of 10 years and a fine.¹⁹ However efforts of the penal code as a veritable instrument for curtailing trafficking has been hampered because of the disparity in age between male and female. This disparity is an affront to the constitutional provisions on discrimination against person.²⁰ This, it is submitted that there should be an over hauling of this section to amend the age disparity and improve on the rights of the child.

Immigration Act²¹

Section 18 (1) (g-h) of the Immigration Act discourages brothel keepers and others who might permit the defilement of young girls on their premises. It also makes it an offence to allow the seduction or prostitution of girls younger than thirteen years of age to trade in prostitution or act as a procurer. An immigrant found to be in violation of these provisions is liable to be declared a prohibited immigrant and deported.

Labour Act

The Nigerian Labour Act²² contains general provisions as to protection of wages, contracts of employment and terms, age of employment and conditions of employment. The labour Act in line with section 31 of 1999 Constitution unequivocally prohibits forced labour. As provided in section 73 (1) any person who requires any other person, or permits any other person to be required, to perform forced labour shall be guilty of an offence and on conviction shall be liable to a fine not exceeding N1,000 or to imprisonment for a period not exceeding two years, or to both. This provision is contrary to provision of the NAPTIP Act on penalty of imprisonment for 5 years or a fine of N100, 000 or both²³. The issue of conflict between both laws arises here and the penalties provided by both are largely inadequate to deter trafficking in persons for forced labour.²⁴ Discriminatory conditions of work against women render them vulnerable and make them prone to trafficking, and as a result, they become vulnerable to forced labour, and servitude because they lack access to better job opportunities compared to men and are thus compelled to look for job opportunities elsewhere.

3.2 International Laws

Apart from domestic laws on the prohibition and protection of persons from trafficking, there are legion of laws that provides for same at international level and they include the following:

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979): This legislation obliges State Parties to take all appropriate measures including legislation, to suppress all forms of trafficking in women for prostitution²⁵. This instrument amongst other provisions, enjoins state parties to take appropriate steps to eliminate discrimination against women in every sphere particularly in areas of education and

¹⁷ *Ibid.*

¹⁸ CAP 89, Laws of Northern Nigeria, 1963.

¹⁹ Penal Code *op cit* S. 271.

²⁰ Constitution of the Federal Republic of Nigeria 1999 (as amended) *op cit*, S.44.

²¹ Laws of the Federation of Nigeria 1990, CAP 171.

²² CAP 198 Laws of the Federation of Nigeria 1990.

²³ Trafficking in person (Prohibition) law Enforcement and Administration Act (NAPTIP Act) 2003 S.22.

²⁴ B. Olateru-Olagbegi *et al*, *op cit*, p.31.

²⁵ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, article 6.

decision making processes in order to ensure that women and men enjoy equal rights.²⁶ Nothing hinders the progress of the girl child as lack of education, trafficked women and girls are more often used as sex machines and are shackled forever until they redeem their freedom. However, even when they regain their freedom, after paying their huge debt, they become useless to the society because the time they would have gained education were used for frivolities.

Vienna Declaration and Programme of Action

This instrument addresses the issue of trafficking as a form of gender based violence and calls for its elimination through national legislation.²⁷ Luckily, Nigeria has signed and ratified most international and regional human right documents. However, domestication of these already ratified human rights documents will give women and children a better footing for assertion of their right to freedom from all forms of exploitation involved in human trafficking.

UN Convention on the Rights of the Child (CRC)²⁸

This convention is the most important instrument granting comprehensive rights to the child. The convention provides that, state parties shall take all befitting measures, together with legislative, administrative, social and educational measures to protect children from illicit use of narcotic drugs and psychotropic relevant international treaties and to avert the use of children in the illegitimate production and trafficking of such substance.²⁹ It also urges State Parties to take all appropriate national, bilateral, and multilateral measures to prevent the abduction, sale of or traffic in children for any purpose or in any form while article 32 protects the right of the child to be protected from economic exploitation.³⁰ Article 24 also recognizes the right of the child to the enjoyment of the highest attainable standard of health, treatment of illness and rehabilitation of health. State parties shall by article 28, recognize the child's right to education with a view of progressive achievement of this right on the basis of equal opportunity. Against this background, the Child's Rights Act, of 2003 was enacted. Prior to the enactment of the Child's Right Act Nigerian child protection was within the domain of the Children and Young People's Act (CYPA), a law relating primarily to juvenile justice. The law has had little true effect on child's right across Nigeria, due to lack of implementation. There is actually no provision of national force that truly protects children against abusive conditions such as trafficking, and in many states of Nigeria, child protection activities are still in the purview of NGOS.³¹

International Covenant on Civil and Political Rights (ICCPR) 1966

This instrument emphatically prohibits slavery, slave trade, forced or compulsory labour and servitude in Article 8 (1) (3). With a barrage of fundamental right provisions, the ICCPR also prohibits torture, cruel, inhuman or degrading treatment.

International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966

The covenant makes copious provisions on the right to education of everyone. State parties agree that education shall be directed to the full development of human personality and sense of its dignity and shall strengthen the respect for human rights and fundamental freedom. It further agrees that education shall enable all people to participate freely effectively in a free society, promote understanding, tolerance and friendship among all national and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.³² State parties, who do not have the structure to achieve the provisions of Article 13, at the time of becoming a party undertaken to work out and adopt a plan of action for progressive implementation of the said provisions within two years as stated in article 14 ICESCR. Human right are indivisible, for women to be protected from the abuse of trafficking their economic, social and cultural right must be protected.

Universal Declaration of Human Rights (UDHR) 19489

The UDHR in article 22 recognizes the right of everybody to social security, realization of economic, social and cultural rights indispensable for his dignity and free development of his personality. Furthermore, in article 25, it provides for the right of everyone to a standard of living adequate for the health and well-being of himself and of

²⁶ Article 10 (a-h) and Article 12 CEDAW.

²⁷ Vienna Declaration and Program of Action 1993, article 38.

²⁸ United Nations Convention on the Rights of the Child (CRC) (1989) ratified by Nigeria on 16th April 1991

²⁹ Article 3 of CRC.

³⁰ Convention on the Rights of the Child November 20, 1989, Article 35.

³¹ Convention on the Rights of the Child *op cit*, article 2.

³² Article 13 International Covenant on Economic, Social and Cultural Right (ICESCR)

his family. Right to life, liberty and security, freedom from torture, cruel, inhuman or degrading treatment and equality before the law are provided by article 3, 5 and 7 respectively. Therefor state parties should wake up to make these provisions reality for the citizens.

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1965 Article 5 of the ICERD recognizes the right of everyone to enjoy equal treatment before the tribunal and other organs administering justice, the right to security of person and protection by the State against violence or bodily harm, Political rights, right to freedom of movement, marriage and choice of spouse, own property, economic social and cultural rights, free choice of work, public health and education.³³ Thus, trafficking is a gross violation of women's and children's right of dignity.

UN Convention against Transnational Organized Crime 2000 and supplementing trafficking Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

This Convention aims at improving capacity of state parties to combat transactional organized crime and to promote the implementation of the provisions of the convention.³⁴ Nigerian Government has demonstrated the political will to combat trafficking in persons by ratifying the protocol, and adopting its provisions to apply in Nigeria, thus the enactment of the Trafficking in Persons (Prohibition) Law enforcement and Administration Act, 2003³⁵.

International Labour Organization (ILO) 1991

The ILO as founded in 1991 with a mandate to develop international labour standards and promote their ratification and implementation.³⁶ The ILO has been concerned with forced labour from its earliest years. Amid growth condemnation of the use of forced labor for public works by colonial governments, the ILO Governing Body appointed a Committee of Experts on Native Labour in 1930 and entered into force in 1932.³⁷ Article 3 (a) of the convention declares that for the purpose of this convention, the term the Worst Forms of Child Labour Comprises.

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

3.3. Regional Legal Framework

African Charter on the Rights and Welfare of the Child (ACRWC) (1990)

This Charter ensures that states should take all appropriate measure to ensure that in inter-country adoption, the placement does not result in trafficking or improper financial gain for those who try to adopt a child. Furthermore Article 29 (a) provides that state parties to the present charter shall take appropriate measures to prevent the abduction, the sale of, or traffic in children for any form, by any person including parents or legal guardians of the child. However, in Nigeria pregnant mothers sell their children and this trend has become very rampant. The ACRWC and the CRC are the only international and regional human rights treaties that cover the whole spectrum of civil, political, economic, social and cultural rights of children. It calls, for the creation of an African Committee of Experts on the Rights and Welfare of the Child (Committee of Experts)³⁸. Its mission is to promote and protect the rights established by the ACRWA, to promote the application of these rights, and to interpret the disposition of the ACRWC as recognized by AU or by a member states. It recognizes the child's unique and privileged place in African society and that African Children need protection, special care and all actions concerning the child must be

³³ Article 5 (d) (i-e) and (e) (i-f) of International on the Elimination of All Forms of Racial Discrimination (ICERD) 1965.

³⁴ Optional Protocol to the Convention on the Right of the Child (2000), article 3 (1)-(5).

³⁵ Un Convention Against Transnational Organized Crime (2000), article 32.

³⁶ R. Plant, 'Forced Labour and Human Trafficking; Casebook of Court decision; (Geneva; ILO, 2009), p..

³⁷ Ibid.

³⁸ African Charter on the Rights and Welfare of the Child (ACRWC) (1990).

in the child's best interest.³⁹ It also acknowledges that children are entitled to the enjoyment of freedom of expression, association, peaceful assembly, thought, religion, and conscience.⁴⁰ Articles 11, 14,-16 contain provisions aimed at protecting the private life of the child, safeguarding the child against all forms of economic exploitation and against work that is hazardous, interferes with the child's education, or compromises his or her health or physical, social, mental, spiritual, and moral development. Article 29 (a) and (b) urges all state signatory to take appropriate measures to prevent abduction, protection against abuse and bad treatment, negative social and cultural practices, all forms of exploitation or sexual abuse, including commercial sexual exploitation, and illegal drug use. The ACRWC however contain ambiguous provisions, a misinterpretation of which may cause great harm to a child. This provision can be construed as supporting physical punishment by parents as it is unclear regarding the meaning of domestic discipline. There is also some confusion regarding Article 31 that deals with children's responsibilities. Children are required to respect parents, superiors and elders at all times, which could conflict with the child's right to participate in decisions that affect them. Parents or guardians may hide under misinterpretation of these provisions to perpetrate trafficking on children.

African Charter on Human and People's Right⁴¹

Article 5 clearly states that 'Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and 'treatment shall be prohibited'.

Protocol to the African Charter on Human and People's Right on the Rights of Women in Africa 2003

The Maputo in protocol urges states to prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect these women most at risk⁴². ECOWAS initiated plan of Action against Trafficking in persons (2002-2003). This plan of Action is the main network of collaboration for West African Countries. This Plan calls for countries to ratify and implement decisive international instruments of ECOWAS and the United Nations that strengthen laws against human trafficking and protect young girls and women from being trafficked. For instance, Article 4 provides that states shall adopt laws criminalizing trafficking in human beings in line with the United Nations Convention against transnational organized crime and the protocol to prevent, suppress, and punish trafficking in persons, especially women and children thereto. The plan of Action also provides for the rehabilitation of trafficked victims. Further, Article 6 provides that state shall adopt legal provisions for the protection of victims of trafficking, and ensure that their domestic legal system contain measures that offer victims of trafficking in persons the possibility of obtaining compensation of damage suffered. It is therefore, submitted that Nigeria Government should mount structures to monitor activities of traffickers and provide measures to help victims to be rehabilitated.

Libreville Common Platform of Action (2000): This Platform of Action developed as a result of a sub-regional consultation to develop strategies to fight child trafficking in West and Central Africa organized by UNICEF and ILO. The Platform of Action is seven strategies developed at its consultative meeting by different institutions to curb human trafficking.

Optional Protocol to the Convention on the Right of the Child 2000

This Act criminalizes any act that offers, delivers, or accepts, by whatever means, a child for the purpose of sexual exploitation, transfer of organs of the child for profit, or engagement of the child in forced labour.⁴³ This legal document prohibits trafficking in children and other manifestations of trafficking in person, including forced labour and abuse.

African Charter on Human and People's Rights (1981) and its Protocol relating to the Rights of Women in Africa 2003

The Draft Protocol in Article 2 (b) states that State Parties shall adopt all measures to prohibit any form of exploitation and degradation of women. Article 23 entitles everyone right to work, free choice of employment, just and favourable conditions of work and remuneration. This is cardinal because discrimination in work places makes

³⁹ Convention on the Rights of the Child *op cit* article 4 and 5.

⁴⁰ *Ibid*, article 7, 8 and 9.

⁴¹ (1982) (ratified) by Nigerian on 22 June 1982 sec article 5.

⁴² The Protocol to the African Charter on Human and People's Right on the Rights of Women in Africa 2003.

⁴³ Optional Protocol to the Convention on the Right of The Child (2000).

women vulnerable. It also urges State Parties to protect girls and women against rape and all other forms of violence, including trafficking of girls and women.⁴⁴

ECOWAS Declaration and a Plan of Action against Trafficking in Person

This was adopted in Dakar in December 2001. It calls for a ratification of the Trafficking Protocol by all state Parties. Member States, have committed themselves to criminalize trafficking in person, protect and support trafficked person, promote awareness raising activities and establish cooperation for law enforcement officials at the border, share data amongst ECOWAS countries and the UN, with hope that Declaration and Plan of Actions would lead to regional cooperation on trafficking.

Ouagadougou Action plan to Combat Trafficking in Persons, Especially Women and Children

This plan was adopted by the European Union and African States on November 23, 2006. It provides actionable measures and legal protection of women and children and mechanisms for the protection and prevention of sexual exploitation of women and children. The plan of Action also seeks the prevention and creating awareness on trafficking by promoting and training of the police authorities in African countries, and capacity building to fight trafficking in human beings. In addition the plan prompts states to take measures to eliminate harmful customary and traditional practice and counter cultural stereotype, which can lead to trafficking in human being.

In order to combat the scourge of trafficking of women and girls, in 2005, a memorandum of understanding (MOU) was signed by the Government of Benin and Nigeria. This MOU compels the two government to work out efficient collaboration on human trafficking to identify, examine and prosecute middle men/women and traffickers and protect the trafficked woman/child and return them without delay to their countries of origin. Trafficking is the worst form of slavery that imprisons its victim by depriving them liberty, freedom of movement, association and interaction and tries to control every aspect of their lives. Hence, the (Amendment) Act, 2005 provides for the enforcement and the investigation of prosecution of human traffickers and seizure of properties belonging to traffickers. The Amended Act also seeks to ensure the practicability of enforcing the Act. The National Agency for Prohibition of Trafficking in Persons and other Related Matters' (NAPTIP) is empowered to prosecute offenders under the Act. Trafficking in person is defined under the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003 (as amended), Section 64 is defined as: All acts and attempted acts involved in the recruitment, transportation within or across Nigerian borders, purchase, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion or debt bondage for the purpose of placing or holding the person whether for or not in involuntary servitude (domestic, sexual, or reproductive or forced or bonded labour, or in slave-like conditions). It is important to note that Section 4 of the Act empowers the NAPTIP to oversee all legislation in respect of trafficking in persons. Furthermore, Section 4 Act seeks to address trafficking in persons by preventing the act, protecting vulnerable people; prosecuting offenders and working in partnership with other agencies and state governments.

4. Factors that Exacerbate Trafficking

Factors that Exacerbate Trafficking includes the following:

Extended Family System: One of the problems that encourage trafficking in Nigeria is our foster system. Human traffickers hide under the cloak of extended family relations to deceive and traffic women and children outside Nigeria. Family relations are satanic conduit for propagation of trafficking because under normal circumstances, no one will believe that his relation will subject him to servitude.

Quest for Illicit Wealth: Nigerians are admired for their ability to create wealth. However, their unsearchable desire to make wealth has contributed immensely to human trafficking. Many traffic their relations just to make wealth. What we have is blanket data that are not credible. This attitude, has led to increase in human trafficking because of lack of proper record keeping and lack of statistics or data on human trafficking in Nigeria.

Poverty: One of the major factors or causes of human trafficking is poverty. The interplay of supply and demand plays a significant role in the trafficking of women, as women opt to leave their country for cheap labor to become

⁴⁴African Charter on Human and People's Rights (1981) and its Protocol relating to the Rights of Women in Africa (2003).

victims of second tier form of slavery. Nigeria is an economy that is regarded by the World Bank⁴⁵ as laden with poverty especially in the rural areas.

Lack of Education: Apart from poverty some women opt for trafficking because they have little or no education. Education is the greatest empowerment that enhances the financial muscle of an individual and when an individual is denied adequate education he or she becomes very vulnerable. Hence; our 1999 constitution in its chapter II provides for the right to education, however that right elude many because it is not justiciable. The court in the case of *Archbishop Olubunmi Okogie v the Lagos State*⁴⁶ clearly established that fundamental objective and directive principles of state policies are not justiciable when the Court of Appeal made its pronouncement thus:

The fundamental objective identifies the ultimate objectives of the national and the directive principles identifying the policies which are expected to be pursued in the efforts of the nation to realize the national ideals. While section 13 of the constitution makes it a duty and responsibility of the judiciary among other organs of government to conform, and to apply the provisions of chapter II, section 6 (6) of the same Constitution makes it clear that no court has jurisdiction to pronounce any decision as to whether any organ of government has acted or is acting in conformity with the fundamental objectives and directive principles of states policies, it is clear therefore section 13 has not made chapter II of the constitution Justiciable.

The reluctance on the part of the states in Nigeria to conform to the provisions of (chapter II) is very tangible and there are urgent calls for the activist judiciary to compel the Government into enforcing certain aspects of the fundamental objective and directive principles of state policies reminiscent of what obtains in India, where there was need as it is now in Nigeria, to resort to affirmative actions (temporary special measures aimed to achievement of a level playing ground), to promote economic social and political rights. Let us hear the India jurist...⁴⁷ Opines as follows;

These three categories of human right depend fundamentally on the right to life and personal liberty which is a core human right. The right to life is now confined, merely to physical existence, but it includes also the right to live with basic human dignity with the basic necessities of life such as food, health, education and shelter. These human rights fall within the category of social and economic rights and they can be realized only after affirmative action on the part of the state and if the state fails to carry out its constitutional functions, legal obligations in enforcement of these human rights, it may have to be compelled to do so by an activists judiciary. We in India have done so, by compelling affirmative state action in cases where the state was under a constitutional or legal obligation to do so.⁴⁸

In order to jump the hurdles created in enforcement of directive principles of state policies, South Africa specifically made their socio-economic right to be justiciable witnessed in the case of *Government of the Republic of South Africa v. Grootboom*⁴⁹. The court pronounced thus:

Our constitution entrenches both civil and political rights, and socio-economic rights. All the rights in our Bill of Rights are inter-related and naturally supporting. There can be no doubt that human dignity, freedom and equality, the foundation values of our society, are denied those who have no food, clothing or shelter. Affording socio-economic rights to all people therefore enabling them to enjoy the other rights in chapter two.

The realization of these rights is also to the advancement of race and gender equality and the evolution of a society in which men and women are equally able to achieve their full potentials. The rights of access to adequate housing cannot be seen in isolation. There are other close relationship between it and the other socio-economic rights. Socio-economic rights must all be read together in the setting of the constitution as a whole. The state is obliged to take positive actions to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing. Their interconnectedness needs to be taken into account in interpreting the socio-economic rights, and in particular in determining whether the state has met its obligations in terms them⁵⁰.

⁴⁵ Ibid

⁴⁶ (1981), 2 NCLR, 1337.

⁴⁷ C. Arinze-Umobi, *Domestic Violence Against women in Nigeria: A Legal Anatomy*, Nigeria, 2008 p. 32.

⁴⁸ Justice P.NBehaghwatti, former Chief Judge of India and convener of The judicial colloquium in Bangalore *Developing Human Rights*JurisprudenceLondon: Common wealth, secretariat publication, 1988....XXII-XXIII.

⁴⁹ (2001) 36 WRN 137.

⁵⁰ Arinze-Umobi, *Domestic Violence Against women in Nigeria: A Legal Anatomy*, Nigeria, 2008 p. 32.

From the foregoing, it is evident that human rights are related and interconnected; one cannot be sacrificed for another and denial of one will affect others. Many women and children have sold themselves out to modern day slavery because of lack education which has led to misery and poverty. Thus, to eradicate trafficking, the importance of education which is basic fundamental human rights must not be over emphasized.

Corruption: Another factor that encourages human trafficking is corruption. Nigerian society is noted for decadence in every sphere. It has been observed that at times police, immigration officials including those who work at border posts and air ports allegedly accept bribes to overlook trafficking crimes. For instance National Agency for the Prohibition of Trafficking in Persons (NAPTIP) dismissed two staff members from public service who were found to have diverted victim's funds and they were made to refund the money back.⁵¹

5. Conclusion and Recommendation

In fact, for the future of the next generation to be secured, human trafficking must be totally eradicated and every practice that encourages human trafficking should be discouraged. Moreover, a common snag in all the legal documents discussed so far is the trivialization of the trafficking in person's offence, by accompanying punishments with options of fine at the instance of a presiding judge. This may constitute a lee way for traffickers, thereby defeating the deterrent purpose the punishments are meant to serve. The work further reveals that there are many laws on trafficking but lack of implementation has been major stumbling block in wiping out this menace. For instance section 36 and 37 of Trafficking Persons (Prohibition) Law enforcement and Administration (Amendment) 2005 provides inter alia section 36 All properties of a person convicted of an offences of trafficking under this Act and shall be subject to an interim order and shall be forfeited to the victims of Trafficking Trust Fund. Also section 37 (1) provides that:

Where, it is established that any convicted person has assets or properties in a foreign country acquired as a result of such criminal activity, such assets or properties subject to any treaty or arrangement with such foreign country, shall be forfeited to the victims of Trafficking Trust Fund.

(2) The Agency shall, through the office of the Attorney-General of the Federation ensure that the forfeited assets or properties are effectively transferred and vested in the victims of Trafficking Trust Fund.

The foregoing stipulates lofty laws made to protect and prevent trafficking but they are hardly implemented.

Creating Awareness: For us to totally eradicate drug and human trafficking there is need to create awareness especially from the grass root, explaining to people particularly women and children living in the rural areas the risk they might face working illegally overseas.

Intergovernmental Collaboration: There is need for intergovernmental collaboration that would allow the criminal records of penalized traffickers to be available to the Nigeria authorities to facilitate prosecution.

Reformation and Implementation of Laws that Regulate Drug and Human Trafficking: Most of the laws in Nigeria are obsolete and do not apply to the changing needs of our society. There is a dire need for new laws and stiffer penalties for disobedience. There is also need to make laws that will regulate standards for migration and provision of justifiable work for immigrants in the western countries.

Ratification of International Instruments: The major cause of trafficking of women and children across borders is the legitimating of prostitution and its promotion as an employment option. Furthermore, the ratification of international legal instruments aimed at protecting human rights and combating human trafficking, including the convention on the protection of the Rights of All Migrant Workers and members of their families, the optional protocol to the CRC on the sale of children and child prostitution and child for pornography is desirable.

Harmonization of Regional Laws: Harmonizing laws against trafficking at the regional level, especially between English and French speaking countries is very cardinal. Also encouraging all the countries in the region to enact laws to fight trafficking in persons where they have not done so. Furthermore there is an urgent need for the adoption and implementation of the Child Right Act (2003) in all thirty-six states of Nigeria.

⁵¹www.unicef.org/nigeria.children accessed on 17/9/2015.

Encouraging Poverty Alleviation Program and Setting up Policies for Job Creation: Giving a human face to the poverty alleviation program, with active participation, especially to women at the lowest level of the economic strata and setting up policies to create jobs for young graduates and school drop-outs in Nigeria is desirable. The skill acquisition program of the government should be designed to meet the need of ordinary Nigerian.

Review and Strengthening of our Laws: The International Narcotics control Board has urged Africa Countries to review and strengthen their laws on drug use and trafficking in order to bring them in conformity with international norms to improve the fight against drug trafficking and use on the continent.

Continuous Training: Adequate training of immigration officers, the police and officers working at the port borders and airports is very imperative. This will enable them to easily detect crime and traffickers.

The following are equally important: (a) Advocacy and awareness raising efforts to reinforce social regulation mechanisms within communities; (b) Establishment of an appropriate legal and institutional framework on trafficking; (c) Enhanced knowledge about, and monitoring of, child trafficking through decentralized and flexible mechanisms; (d) Strengthening of cooperation between governments of different countries; (e) Strengthening of cooperation between government ministries, and (f) Ensuring implementation and follow up.

The Libreville Platform of Action also recommended improved border patrols and the repatriation, rehabilitation and re-integration of trafficked children. Consequently, there is need to create awareness among women especially in their states of origin explaining to them the likely risk that they might face working illegally overseas. Furthermore, corruption is a major factor confronting Nigeria. It has greatly affected trafficking prevention because it permeates the immigration and border sectors. There is need for intergovernmental collaboration that would allow the criminal records of penalized traffickers to be available to the Nigerian authorities. Furthermore, there is need for ratification of international legal instruments aimed at protecting human rights and combating human trafficking, including the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990); the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (2000) is desirable.

Harmonizing laws against trafficking at the regional level, especially between English and French speaking countries, and encourage all the countries in the region to enact laws to fight trafficking in persons where they have not done so. Furthermore, there is the urgent need for the adoption and implementation of the Child Rights Act (2003) in all 36 State of Nigeria. Also giving a human face to the poverty alleviation program, with active participation, especially to woman at the lowest level of the economic strata and setting up polices to create jobs for young graduates and school drop-outs in Nigeria is desirable. The skill acquisition program of the government should be designed to meet the needs of the ordinary Nigerian. The Federal Government should provide adequate training for police officers to enlighten them about trafficking, its causes of trafficking and providing mechanisms on how to investigate incidences of trafficking.