

## THE LEGAL IMPLICATION OF HUMAN TRAFFICKING IN NIGERIA\*

### Abstract

*The issue of human trafficking is gradually taking the front burner in Nigeria. From reports of Nigerians dying in the desert on their way to Libya or the stories of Nigerians prostituting rings in Italy daily confronts us daily. At the local scene the ideas of maltreatment of domestic servants highlight the existence of human trafficking in Nigeria. From the North to the South and beyond Nigeria human beings including male and females are being trafficked. In some circumstances some do not even know that they have been or are being trafficked. This work therefore reviews the definition of human trafficking in Nigeria and then evaluates albeit in a summary form the provisions of the Law as it relates to human trafficking in Nigeria. The work classified the legal implication of human trafficking into three and discusses each. The work finally came to a conclusion and made recommendations on the subject treated.*

**Keywords:** Human Trafficking, Legal Implications, Dignity, Nigeria

### 1. Conceptual Clarification

Trafficking according to the Black Law's dictionary<sup>1</sup> is defined as the act of transporting, trading or dealing especially in people or illegal goods. The same Black's Law dictionary<sup>2</sup> went further to define human trafficking as the illegal recruitment, transportation, transfer, harboring, or receipt of a person especially one from another country, with the intent to hold the person captive or exploit the person for labour, services, or body parts. Human trafficking received its first acclaimed international definition in 2000 under Article 3(a) of the Palermo Protocol<sup>3</sup> where it was defined as

the recruitment, transportation, transfer, harboring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deceptions, of 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 on its own was defined to include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs. Nigeria's principal legislation on human trafficking, the Trafficking in Persons (Prohibition) Enforcement and Administration Act (TIPEA) 2015<sup>4</sup> defines trafficking as

trafficking or traffic in persons' as the recruitment, transportation, transfer, harboring or receipt of persons by means of threat, use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or a position of vulnerability or 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.

### 2. Overview of Human Trafficking

According to Borgen Project, 'Human trafficking is a complex issue, dependent on the social, economic and cultural spheres in origin, transit and destination countries. However, there is one commonality in every case of trafficking--traffickers seek to exploit their potential victim's desire to move toward better opportunities. They use coercive measures to gain control and cooperation from the victim. These factors of human trafficking are called push and pull. They either push people out of their origin or pull them toward their destination. The Push factors are those factors that provoke travel and they include poverty, the lack of social or economic opportunity and human rights infringements. Other factors include political instability; internal armed conflict and natural disaster are also common. The pull factor on the other hand is the need for slave labor, which is obtained by

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<sup>1</sup> Bryan A Garner, *Black's Law Dictionary* (9<sup>th</sup> ed. West Publishing Co, 2009).

<sup>2</sup> Ibid.

<sup>3</sup> UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000, 2237 UNTS 343.

<sup>4</sup> TIPEA, s 82.

exploiting those in more vulnerable positions. When the origin country is devastated by war and destination countries are free of similar conflict, potential victims will be pulled toward stability. Those that desire to improve their quality of life by leaving their home countries can be deceived when trafficking offenders coerce and capture them.<sup>5</sup>

Generally therefore, the following factors readily come to mind as leading to human trafficking and they include:

1. Gender Inequality as a cause of trafficking includes a situation where societies and cultures devalue, abuse and exploit women and girls, creating perilous living conditions for these women; such women end up being trafficked in search of elusive greener pastures.<sup>6</sup>
2. Addictions in a way lead to trafficking. Addicts usually get embroiled in debts they cannot repay and when offered an opportunity that seems to lead to a possibility of repaying the debt they hastily accept not knowing it will lead to trafficking.
3. Political instability. Here, war, civil unrest, political conflict, violence, lawlessness, and natural disasters create unstable conditions in which people may live in constant fear with limited options for survival or earning a living. Children may be separated from their families and left without parents or guardians to protect and advise them. It may also lead to forced migration where people flee from their homes in search of more stable or secure communities. However, they may instead end up homeless or in temporary settlements, unemployed and possibly unwanted by their host community, and without their familiar family and social networks. Human traffickers take advantage of these desperate circumstances to strike.<sup>7</sup>
4. Poverty as a cause of trafficking creates despair. Traffickers specifically target poor and marginalized communities to offer vulnerable individuals false opportunities to improve their circumstances. Such people are more likely to take greater risks in order to provide for themselves and their families. Indigenous populations in many countries are often marginalized, which may result in their vulnerability to recruitment by traffickers.<sup>8</sup>

### **3. The Legal Implication of Human Trafficking In Nigeria**

With the persistence upsurge in human trafficking, Nigeria woke up to its realities to become the first country in the west African region to adopt national legislation in 2003 known as the 'Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003', to deal particularly with the incidence of human trafficking alongside other sector-based laws. In addition Nigeria has further signed, ratified and domesticated the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children<sup>9</sup> as well as many other international conventions that are instrumental in combating trafficking in persons and its forced labour outcomes. Nigeria also signed Memoranda of Understanding (MOU), migration policies and bilateral cooperation agreements with countries within and outside the African region.

It is predicated upon these legal instruments that human trafficking has become:

1. a crime against the state
2. a breach of the fundamental human rights of a person and
3. from an international perspective, a world crime against humanity<sup>10</sup>.

#### **Human Trafficking as a Crime against the State**

Human Trafficking as a crime against the state is a legal wrong for which the offender is punished at the instance of the state. It is a human conduct that is proscribed with penal consequences that may give rise to criminal proceedings and criminal punishment. Crime is used interchangeably with offence.<sup>11</sup> The word 'offence' has been used in both the Criminal Code and the Penal Code. Section 2 of the Criminal Code defines offence as 'an act or omission which renders the person doing the act or making the omission liable to punishment under the Code or under any Act or Law'. Section 4(2) Penal Code and the Sharia Penal Code provide that whereby any provision of any law of the state the doing of an act, or the making of any omission

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<sup>5</sup> <https://borgenproject.org/factors-that-lead-to-human-trafficking/> accessed on 11/10/22 at 2.05pm

<sup>6</sup> <https://centerforglobalimpact.org/cgi-kids/4-causes-of-human-trafficking/> accessed on 11/10/22 at 2.00pm

<sup>7</sup> <https://www2.gov.bc.ca/gov/content/justice/criminal-justice/victims-of-crime/human-trafficking/human-trafficking-training/module-1/vulnerabilities> accessed on 11/10/2022 at 1.53pm

<sup>8</sup> *ibid*

<sup>9</sup> The Protocol to Prevent, Suppress and Punish Trafficking in Persons especially women and children (ratification and enforcement) Act, 2003.

<sup>10</sup> Tim Hillier, *Source Book on International Public Law* (The Glass House, Wharton Street, London: Cavendish Publishing Limited, 1998) 86; Malcolm N Shaw, *International Law* (4<sup>th</sup> edn, Cambridge University Press, 1997) 67.

<sup>11</sup> M. Jefferson, *Criminal Law*, Pearson, Education Limited Essex(2007) 8th ed. pp. 12-13

made an offence, then such act or omission becomes crime. As a general rule, in the absence of some provisions to the contrary, any of the citizens can bring a criminal prosecution whether or not he has suffered any special harm over and above other members of the public but has an interest in the enforcement of the criminal law. In practice, the vast majority of prosecutions are conducted by the state or its agencies and these agencies do not have personal interest in the outcome of such prosecution and the victim of the offence cannot prevent the prosecution of the offender save for the compoundable offences.<sup>12</sup> This is in view of the fact that a crime affects the public and civil law affects individual. Below is a table of certain anti-human trafficking provisions, a breach of which is punishable under the law.

S/N	ANTI-HUMAN TRAFFICKING LEGISLATIONS	NOTABLE SECTIONS AND PROVISIONS
1.	Trafficking in Persons (Prohibition), Enforcement and Administration Act, (TIPPEA) 2015	<ul style="list-style-type: none"> <li>• The Act has 82 sections all of which are incidental to the fight against human trafficking.</li> <li>• In responding to the issue of slow-paced prosecution, section 37 of the TIPPEA 2015 provides that in any trial for an offence under the act, subject to the provisions of the constitution of the Federal Republic of Nigeria, an application for stay of proceedings in respect of any criminal matter brought under this act shall not be entertained.</li> <li>• The act makes an exception for illegal immigrants in so far they are victims of human trafficking. As such, section 61 protects illegal immigrants from discrimination and section 65 allows them to institute civil actions for compensation.</li> </ul>
2	Violence Against Person (Prohibition) Act (VAPPA)	<ul style="list-style-type: none"> <li>• The Act prohibits all forms of violence –physical, domestic, sexual, emotional, verbal, psychological and economic abuse– against persons in private and public life including victims of human trafficking</li> <li>• Section 46 of the Act defines trafficking as the supply, recruitment, procurement, capture, removal, transportation, transfer, harboring, sale, disposal or receiving of a person, within or across the borders of the Federal Republic of Nigeria, for use in sexual acts including sexual exploitation or pornography of any person.</li> <li>• section 12 and 13 of the Act punishes any person who causes forced financial dependence or economic abuse of another or forcefully isolates another from family and friends</li> <li>• The National Agency for the Prohibition of Trafficking in Persons and Other related Matters (NAPTIP) is the singular regulatory body expressly mandated under the Act to administer the provisions of the Act in collaboration with relevant stakeholders including faith based organizations.</li> </ul>
3.	Criminal Code Act	<ul style="list-style-type: none"> <li>• Section 223 provides that any person who procures a woman or girl for unlawful carnal connection; to become a common prostitute; or with intent that she may become an inmate of a brothel, in Nigeria or elsewhere is guilty of misdemeanour, and is liable to imprisonment for two years.</li> <li>• Section 365, the code punishes with two years' imprisonment, the unlawful deprivation of liberty of a person by confinement or detention.</li> <li>• Section 369 punishes slave dealing with imprisonment for 14 years upon conviction of the offender.</li> <li>• Section 270 prohibits forced labour, and imposes a penalty of imprisonment for a term that may extend to one year or a fine</li> </ul>
4.	Penal Code Act	<ul style="list-style-type: none"> <li>• Section 279 provides that whoever imports, exports, removes, buys, sells, disposes, traffics or deals in any person as a slave, or accepts, receives or detains against his will any person as a</li> </ul>

<sup>12</sup> J. C. Smith, *Smith and Hogan Criminal Law* (2007)10th Editions Butterworth, Bath p.4

		<p>slave, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine</p> <ul style="list-style-type: none"> <li>• Section 280 prescribes a punishment of one-year imprisonment or a fine for the offence of forced labour</li> <li>• Section 274 punishes kidnapping with a sentence of 10 years imprisonment and a fine</li> </ul>
5.	Labour Act Cap L1, LFN, 2004	<ul style="list-style-type: none"> <li>• The section 39 of the act provides that no citizen shall leave Nigeria under a foreign contract to serve as a worker outside Nigeria unless he has been -medically examined under section 8 of this Act and passed fit to perform the work for which he was engaged; and brought before an authorized labour officer and certified by that officer as duly recruited in accordance with this Part of this Act.</li> </ul>
6.	Immigration Act 2015	<ul style="list-style-type: none"> <li>• Section 57(4) provides that if a person presents to immigration officer, forged travel documents in cases of human trafficking for the purpose of prostitution and child labour and abuse commits an offence and is liable to imprisonment for a term of ten years or a fine of two million naira.</li> <li>• Section 38 of the act provides that where a person in Nigeria is desirous of employing a person who is a national of any other country, he is expected to make such application to relevant authorities as required under the act</li> </ul>
7.	Childs Right Act 2003	<ul style="list-style-type: none"> <li>• With respect to children, the law creates the following offences: Sections 21-23 of the Act prohibit child marriage and prescribe the penalties. Section 21 of the Act specifically provides that no person under the age of 18 years is capable of contracting a valid marriage and accordingly a marriage so contracted is null and void and of no effect whatsoever. While Section 23 provides that, the penalty for such an offence on conviction, is a fine of N500,000 or imprisonment for a term of five years or to both such fine and imprisonment.</li> </ul>

### Human Trafficking as a Breach of the Fundamental Human Rights of Citizens

The Nigerian constitution by its express provisions directly lends credence to the fight against human trafficking. It provides for the right to dignity of human person and accordingly, no person shall be subjected to torture or inhuman treatment, held in slavery or required to perform force or compulsory labour; section 35 provides for the right to personal liberty except in certain cases; section 41 entitles every citizen of Nigeria to move freely throughout Nigeria; section 42 protects citizens of Nigeria from discrimination on the basis of ethnic group, place of origin, sex, religion or political opinion or by reason of birth. Chapter II of the CFRN 1999 also provides for certain rights of citizens. By its very nature, the nefarious activities of human trafficking run in sharp contrast to the provisions of the fundamental human rights as enshrined under the relevant sections of chapter IV<sup>13</sup> of the constitution. The implication of the forgoing is that an action can be lawfully sustained in court in case of any breach thereto in the course of human trafficking.<sup>14</sup> In *Omonyahuy & ors v. IGP & ors*<sup>15</sup> the court held that the fact that there is possibility of prosecution for a case of murder does not deny an aggrieved applicant the constitutionally guaranteed right to enforce his right. Any infringement of the Fundamental Right of an applicant ignites his right to enforce same by virtue of section 46 and it is without prejudice to whatever further action the authorities of the state may want to take against such offender. It is a constitutionally guaranteed right and must at all times be seen and respected as such, if the wheel of the rule of law is to be allowed to grind properly.<sup>16</sup> However, while the fundamental human rights are justiciable, the socio-economic rights contained under the chapter II of the constitution are not. In *Archbishop Anthony Olubunmi Okogie (Trustee of the Roman Catholic Church) & ors v Attorney General of Lagos State*<sup>17</sup> it was held that the directive principles of state policy in chapter II of the constitution is non-justiciable and must conform to and run

<sup>13</sup> Constitution of the Federal Republic of Nigeria 1999, ss 33-45.

<sup>14</sup> *Ibid* s 46(1).

<sup>15</sup> (2015) LPELR-25581 (CA)

<sup>16</sup> *Okafor v Lagos State Government & anor* (2016)LPELR- 41066 (CA); *FRN v Ifegwu* (2003) 15NWLR (pt 842) 113.

<sup>17</sup> (1981) 1 NCLR 218

subsidiary to the fundamental rights and that chapter II is subject to legislative powers conferred on the state. The issue of this justiciability of the contents of Chapter II of the Constitution is a source of concern. There have been various calls to make those provisions justiciable since they contain the core principles and policy thrusts of every good government. Despite the call, as at today, those provisions are non-justiciable. However, one can where possible tweak the provisions of Chapter II to fit into Chapter IV for purposes of enforceability. These fundamental human rights are inalienable and take precedence above every other law in Nigeria.<sup>18</sup> In *AG Lagos State v. AG Federation &ors*<sup>19</sup> the court held that the Constitution is the barometer on which the constitutionality or otherwise of a statute is measured. Where a statute is inconsistent or in conflict with any provision of the Constitution, the provision of the statute will be null and void<sup>20</sup>. In *Aqua Ltd v. Ondo State Sports Council*<sup>21</sup> the court held that it is an elementary and fundamental proposition that a right conferred by the constitution cannot be taken away. Any law made so will be inconsistent with the constitutional provisions and void. To further underscore the non-negotiability of the incidence of dignity of human person, while the constitution permits for derogation from these fundamental rights in self-defence, sustenance of public policy or declaration of public emergency;<sup>22</sup> the constitution does not provide for any derogation from sections 34, 36, 42, 43 and 44 of the constitution, which makes provisions respectively, on the right to dignity of human person, fair hearing, freedom from discrimination, acquisition of property and compensation thereto for compulsory acquisition. One can definitely comment on the propriety or otherwise of the said Section 33 especially the derogations contained therein. However since this work is not specifically on the said Section, we can leave same for another day. Nevertheless, a seeming problem with the relevant provisions of sections 41 and 42 of the constitution on the right to freedom of movement and freedom from discrimination is the limitation of its benefits to only citizens of Nigeria. The implication is that persons in Nigeria who are not citizens of Nigeria are not entitled to the inalienability of such right under the constitution. This is against the spirit of international best practices on the universality of the fundamental human right.

#### **Human Trafficking as Crime against Humanity**

Tolar,<sup>23</sup> referring to the UNODC stated that the trafficking of human beings, like the trafficking of drugs has grown into an extensive international criminal industry. To him, the UNODC reports that the epidemic of international human trafficking has come to affect almost every country in the world to some degree<sup>24</sup>. It has been submitted that trafficking of human beings most times involve trafficking individuals outside their states of origin where they were originally abducted from<sup>25</sup>. This challenge of trafficking outside the state of origin gives rise to issues of jurisdiction between the two states involved. According to UNODC, Human trafficking is a global crime that trades in people and exploits them for profit. People of all genders, ages and backgrounds can become victims of this crime, which occurs in every region of the world. Traffickers use violence, fraudulent employment agencies, and fake promises of education and job opportunities to trick, coerce and deceive their victims. The organized networks or individuals behind this lucrative crime take advantage of people who are vulnerable, desperate or simply seeking a better life.<sup>26</sup> It is further stated that no industry or economic sector is immune to human trafficking. There are high-risk sectors, in which victims are most frequently found, such as agriculture or horticulture, construction, the garment and textile industries, catering and restaurants, domestic work, entertainment and the sex industry. The criminals who engage in trafficking range from organized criminal groups to individuals operating on their own or in small groups on an opportunistic basis. The more organized groups are commonly involved in other serious crimes, such as trafficking in drugs, arms and other illicit commodities, as well as corruption and the bribery of officials. When organized criminal groups are involved, many more victims are trafficked, often for longer periods, across wider distances and with more violence<sup>27</sup>. Since human trafficking involves more than one state, it has therefore assumed the status of an international crime especially when engaged in by highly organized criminal gangs that operate within various sovereign states.

<sup>18</sup> CFRN, s 1(3)

<sup>19</sup> (2003) LPELR-620 (SC).

<sup>20</sup> Section 1(3) of the Constitution

<sup>21</sup> 1988 LPELR-527 (SC)

<sup>22</sup> CFRN, s 45.

<sup>23</sup> Autumn D. Tolar, 'Human Trafficking Analyzed as a Crime against Humanity', *ICLR*, 2020, Vol. 20, No. 1, 127. Published by Palacký University Olomouc, Czech Republic, 2019.

<sup>24</sup> *Ibid*

<sup>25</sup> OBOKATA, Tom, 'Trafficking of Human Beings as a Crime against Humanity: Some Implications for the International Legal System', *The International and Comparative Law Quarterly* 2005, vol. 54, no. 2, pp. 445–457

<sup>26</sup> <https://www.unodc.org/unodc/en/human-trafficking/faqs.html> accessed on 11/10/22 at 2:23pm

<sup>27</sup> *Ibid*. Paragraph lifted from the UNODC Faqs page.

#### **4. Conclusion and Recommendation**

It is now clear that human trafficking is a deadly virus capable of destroying the human race; it has become imperative that it should be fought to a standstill. Nigeria is a part of the global world and accordingly human trafficking affects it the same way. It is therefore necessary that the Country should wake up and fight human trafficking to a stop. Unfortunately, the lack of effective implementation of some of these laws and policies have made them ineffective and reduced their impact on the incidence of human trafficking and forced labour. Therefore, there is need to strengthen the criminal justice response to trafficking in human beings through legislative reforms. These we can do by creating adequate awareness as regards human trafficking. Further, there is the need for the Courts to engage in speedy dispensation of justice. The notion of justice delay being justice denied has found a permanent fixture in Nigeria. Importantly, the corruption level in Nigeria has left so many speechless and created rooms for non-implementation of the written words of the enactments to the fullest. It is believed that a reduction in the level of corruption may also improve the effectiveness of these legislations.