

Abstract

Trafficking of women and children has become a cause of serious concern to the world and the crime is perpetuated by some very powerful syndicates. The study evaluates the international and Nigeria's legal framework to fight the menace. The aim of the study was to examine trafficking of women and children and what the law can do to protect them. The research methodology was doctrinal approach, using expository and analytical research design. The main sources of data collection were various legal literatures, both from the physical library and the e-library. It was observed that the laws have not been able to adequately stem the tides of the crime, considering its rising profile in recent times. It was recommended among others that Nigerian governments are to cooperate with international community to protect victims of trafficking.

Keywords: Children, Perpetrators, Traffickers and Women.

1. Introduction

Human trafficking is a global problem affecting people of all ages especially women and children. It is estimated that 1,000,000 people are trafficked each year globally.¹ The United Nations divides human trafficking into three categories; sex trafficking, labour trafficking and removal of organs.² Despite the fact that Nigeria has signed and rectified the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, trafficking still rears its ugly head in Nigeria. However domestic legislation and legal practice in the area of trafficking remains erratic.³ The aim of this paper is to evaluate international and Nigeria's efforts towards combating trafficking of women and children using the instrumentality of the law; interrogate the effectiveness or otherwise of the national and international legal framework for women and child protection. The most prevalent form of human trafficking that results in servitude, is the recruitment and transport of women and children into the international sex industry. Victims of sexual slavery are often manipulated into believing⁴ that they are being relocated to work in legitimate forms of employment. Forced labour is another form of modern involuntary servitude. Debt bondage (also called peonage) and domestic servitude are the enslavement of people for unpaid debts. The victims are required to work for excessive periods of time under extremely hazardous working conditions and for little or no wages. Another recent and highly controversial occurrence involving human trafficking is the abduction or deception that results in the involuntary removal of bodily organs for transplant. For years, there have been reports from China that human organs were harvested from executed prisoners without consent of family members and sold to transplant recipients⁵ in various countries. One hospital in Durban South Africa pleaded guilty to 109 counts of illegal organ transplant.⁶ What can the law do to combat this menace?

2. National Legal Framework for Combating Trafficking of Women and Children in Nigeria.

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

The Nigerian Constitution

Trafficking of women and children involve the violation of fundamental human rights. Many women and girls that are trafficked lost their lives. 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 are prohibited by the constitutions; right to life⁷, right to the dignity of the human person⁸, right to personal liberty⁹ right to private and family life¹⁰ right to movement¹¹ and 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.¹² These rights are fundamental rights that are enforceable in the Nigerian Courts.¹³ Nigeria is a signatory to many treaties and conventions 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 prevents enforcement of all treaties ratified but not domesticated¹⁴ and also the enforcement of chapter two of the constitution is also prohibited.¹⁵

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¹ Alese C. Wooditch and Leonard A. Steverson, 'Human Trafficking' <<https://www.britannica.com> Accessed on 1st August 2022.

² Ibid

³ Htt Inews BBC, Co UK in/Programmes

⁴ Child labour and Armed Conflict', <<http://www.ilo.org/ipec/areas/armedconflict>> Accessed 1 August 2022

⁵ D Kigour and E Gutmann and D Mata, 'Blood Harvest / This Slaughter: An Update', (2016) <<https://endtransplantabuse.org>> Accessed 1 August 2022.

⁶ The State v Netcare Kwa-Zulu (Proprietary) Limited, Commercial Crime Court, Regional Court of Kwa-Zulu Natal, Durban South Africa. Case No. 41/1804/2010. Accessed 15 July 2020 as was cited in Ngozi Judith Maduechesi, 'A Comparative Analysis of The Fight on Human Trafficking in Nigeria and South Africa' (LL.M) Dissertation, Chukwuemeka Odumegwu Ojukwu University 2022)

⁷ Constitution of Federal Republic of Nigeria 1999 (As Amended) (CFRN) s 33

⁸ CFRN s 34

⁹ Ibid s 35

¹⁰ Ibid s 37

¹¹ Ibid s 41

¹² SC Ifemeje and AG Arowolo, 'The Legal Battle against Trafficking in Women and Children in Nigeria: Problems and Prospects (2009) 168-178, *Benin Journal of Public Law* Vols 5-7

¹³ CFRN s 46

¹⁴ Ibid s 12

¹⁵ Ibid s 6(6)c

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

The Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015 (hereinafter referred to as the NAPTIP Act) is specific to trafficking. Evidently, the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children Supplementing the United Nations Convention Against Transnational Organized Crime (2000) (Palermo Protocol) influenced the drafting of the NAPTIP Act and as can be seen from Section 81 that incorporates the universally accepted definition contained in Article 3 of the Palermo Protocol with some slight changes. The Act defined 'trafficking' as follows:

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

The Act criminalizes 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.¹⁶ The 2015 Act expressly prohibits all acts of human trafficking within and outside Nigeria¹⁷. The offence of human trafficking is committed when a person abuses the position of another person's vulnerability in order to exploit such victim.¹⁸ Section 13 (1) prohibits all acts of human trafficking in Nigeria, the penalty is 2 years imprisonment or fine of N250,000¹⁹. Consent of the victim of the crime is not a vitiating factor at all. The Act criminalizes importation and exportation of person to/from Nigeria with intent that such a person would be coerced into prostitution or other forms of sexual exploitation. The penalty is 5 years imprisonment and fine of N1,000,000.²⁰ Furthermore, procuring any person below the age of 18 years for debt bondage, or an illicit sexual intercourse the penalty is 5 years imprisonment and a fine of N500,000.²¹ In the case of a child the law is strict. Accordingly, the 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 or where the minor would be forced into prostitution. The penalty is 7 years imprisonment and a fine of N1,000,000.²² Moreover, where a minor has been procured and harboured in a brothel in order to engage in a pornographic activities, the perpetrator is liable to 7 years imprisonment and a fine not less than N1,000,000.²³ 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.²⁴ Organizing foreign travels to promote prostitution attracts 7 years and fine not less than N1,000,000.²⁵ Heavier monetary fines are imposed in cases of procuring any person for armed conflict, the penalty is 7 years imprisonment and a fine of N1,000,000.²⁶ All persons involved in the entire transaction of organ removal would also be charged with the crime. The penalty in each case is 7 years imprisonment and a fine of N5,000,000.²⁷ 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.²⁸ Subjecting a child to hazardous work is criminalized by the Act.²⁹ Many young children are subjected to all forms of inhuman treatments as house helps.³⁰ A guardian, who reneges in this obligation, is liable to 2 years imprisonment.³¹ In cases where the child has been abused sexually or suffers grievous bodily harm, the punishment is a jail term of 3 years.³² Other acts that are criminalized by the Act are conspiracy, escape or aiding and abetting escape is liable on conviction to a jail term of 5 years.³³ The Act criminalized attempt to commit an offence under the Act,³⁴ this makes it easier to prosecute offenders without having completed the transaction.³⁵ 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.³⁶ A breach of this provision attracts a fine of N10,000,000.³⁷ Any Nigerian, who has been convicted under the Act, would forfeit his international passport³⁸ and all his assets and property,³⁹ 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.

¹⁶ *Attorney General of the Federation v MA*, Charge No. B/13C/2004

¹⁷ NAPTIP Act 2015, s13(1) (3)

¹⁸ *Ibid* s 13 (1)

¹⁹ *Ibid* 13 (2) a-c and (3)

²⁰ NAPTIP Act 2015 s 14 (a) and (b)

²¹ *Ibid* s 15 (a) and (b)

²² NAPTIP Act 2015 s 16 (1) and (2)

²³ *Ibid* s 17(1) (a) and (b)

²⁴ *Ibid* s 17 (2)

²⁵ *Ibid* s 18

²⁶ *Ibid* s 19

²⁷ *Ibid* s 20 (1), (2) and (3)

²⁸ *Ibid* s 23

²⁹ *Ibid* 23 (2)

³⁰ *Gifti Nonye Ukatu v FRN* (2021) 19 NWLR (pt 1785) 519

³¹ NAPTIP Act 2015 s 23 (2) (a)

³² *Ibid* s 23 (2) (b)

³³ *Ibid* s 28

³⁴ *Ibid* s 29 and s 30 (1)

³⁵ *Attorney General of the Federation v Sarah Okoya*, Charge No. B/15C/2004

³⁶ NAPTIP Act 2015 s 35

³⁷ *Ibid* s 35 (4)

³⁸ *Ibid* s 48

³⁹ *Ibid* s 49

Child's Rights Act 2003 (CRA)

Section 277⁴⁰ of the CRA defines a child as a person below the age of eighteen years. Section 14⁴¹ of the CRA prohibits separation of a child from his or her parents against their will, except for the best interest of the child⁴² Section 28 of CRA which is replica of Section 59 of the Labour Act prohibits exploitative and forced labour of children and the penalty is 5 years imprisonment or N50,000 fine.⁴³ Section 30 of the CRA hazardous work and the penalty is ten years imprisonment.⁴⁴ Sections 31 and 32 of the CRA prohibit unlawful sexual intercourse with a child, other forms of sexual abuse and exploitation and the sanction is 14 years or life imprisonment as the case may be.⁴⁵ 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 whose parents were killed was drugged and forced to join armed conflict.⁴⁶ Recently in Nigeria, immigration officials arrested a security man at the Banki border who was trying to traffic young secondary school boys into Chad to join the Chadian rebel army.⁴⁷ 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: Except with a license, any person that permits a child to be given to a person outside the state in which the adoption order was made⁴⁸ is liable to a fine of thirty thousand naira or one year imprisonment or both.⁴⁹ A person who permits a child to be given to any person outside the State⁵⁰ or Nigeria⁵¹ in which fostering order was made is liable to ten⁵² or fifteen⁵³ year's imprisonment respectively.

3. International Legal Framework for Combating Trafficking of Women and Children in Nigeria

Convention on the Rights of the Child

The 1989 Convention was the first legally binding International Convention to protect the rights of children.⁵⁴ The convention recognizes children's rights affected by armed conflict, child labour, sexual exploitation and other human rights violations⁵⁵ This convention consists of 54 Articles but Articles 1,3,11,21,32,33,34,35,36,37 and 38 which deals with trafficking of children will be deliberated upon. Article 1⁵⁶ defines a child to mean every human being below the age of 18 years, unless majority is attained earlier.⁵⁷ Article 3 of CRC⁵⁸ provides that in all actions concerning children, the best interests of the child shall be a primary consideration. Whatever decision that is taken must be for the child's best interest.⁵⁹ Article 11 of CRC⁶⁰ provides measures to combat the illicit transfer and non-return of children abroad. Article 21 of CRC⁶¹ links to Article 3 which permits the best system of adoption for the child. Moreover, CRC protects the child from hazardous work⁶² illicit use of narcotic drugs and psychotropic substances⁶³ sexual exploitation⁶⁴, sale of children⁶⁵ other forms of exploitation prejudicial to the child's welfare.⁶⁶ torture⁶⁷ Article 38 of CRC⁶⁸ require state parties to respect the international humanitarian law applicable to children 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'.⁶⁹ All feasible measures must be taken to ensure the protection and care of children who are affected by an armed conflict.⁷⁰

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

It is one of the eight ILO Fundamental Conventions.⁷¹ The Convention comprises of 16 articles but Articles 1 to 7 will be reviewed. Article 1⁷² prohibits and eliminates worst forms of child labour.. It prohibits the use of children in armed conflicts, prostitution and

⁴⁰ Child's Rights Act 2003

⁴¹ Ibid s14

⁴² Ibid s1

⁴³ Ibid s28

⁴⁴ Ibid s 30 (1) and (3)

⁴⁵ Ibid s 31 and s 32

⁴⁶ US Department of State Report 2003 on Abolishing Modern Day Slavery: Facts, Faces and Freedom Produced by Office to Monitor and Combat Trafficking in Persons.

⁴⁷ Interview with Ogbole-Elijah and MD Mohammed of the Immigration Anti-Trafficking Unit on 22 February 2005.

⁴⁸ Child's Rights Act s144(1)

⁴⁹ Ibid s 144(3)

⁵⁰ Ibid s 144(2)a

⁵¹ Ibid s 144(2)b

⁵² Ibid s 144(4)a

⁵³ Ibid s 144(4)b

⁵⁴ <https://un.org/story/2015/9>

⁵⁵ D Band and others, 'Working Papers in Early Childhood', (August 2006) 32-33 A Summary Review, Vol 39(Amsterdam: Bern and Van Leer Foundation)

⁵⁶ Convention on the Rights of the Child (CRC) 1989.

⁵⁷ Ibid Art 1

⁵⁸ Ibid Art 3

⁵⁹ Prince v Massachusetts 321 US 158 (1944) Judgment of January 31st 1944

⁶⁰ Ibid Art 11 (1) and (2)

⁶¹ Ibid Art 21 (a) – (e)

⁶² Ibid Art 32 (1) and (2) (a)–(c)

⁶³ Ibid Art 33

⁶⁴ Ibid Art 34 (a)(b)(c)

⁶⁵ Ibid Art 35

⁶⁶ Ibid Art 36

⁶⁷ Ibid Art 37

⁶⁸ Ibid Art 38

⁶⁹ Okojie and others, 'Report of Field Survey in Nigeria in Measures to Combat Trafficking in Human Beings where Trafficked Children were used as Labourers, Exploited and Denied Payment of their Wages'

⁷⁰ Ibid Art 38 (1)

⁷¹ 'Conventions and Ratification', International Labour Organization. 27 May 2011.

⁷² Worst Forms of Child Labour Convention, 1999 (No. 182) Article 1

pornography, drug trafficking and dangerous work.⁷³ 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.⁷⁴ Convention No.182 has become the fastest ratified agreement in the United Nations history.⁷⁵ Article 2⁷⁶ provides that a child a person under the age of 18 years. Article 3⁷⁷ provides that the worst forms of child labour comprises of all forms of slavery, debt bondage, forced labour, prostitution, pornography, drug trafficking and dangerous work. Article 4⁷⁸ provides that the type of work referred to under Article 3 (d) shall be determined by National Laws or competent authority. The ILO also adopted the Worst Forms of Child Labour Recommendation No. 190 in 1999 which defined worst forms of hazards faced by children at works,⁷⁹ such as sexual abuse, underground work, dangerous machinery, unhealthy environment, hazardous substances and working for long hours.⁸⁰ Article 5⁸¹ enjoins member states to monitor the implementation of the provisions and eliminate worst forms of child labour⁸² by applying penal sanctions⁸³ and recognizing the importance of education⁸⁴, and must provide free basic education and vocational training for children which will remove the worst forms of child labour.⁸⁵

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Convention against Trans-national Organized Crime (2000) (Palermo Protocol)

Article 1 of the Protocol deals with the general provisions and it provides that, this protocol supplements the United Nations Convention against Transnational Organized Crime.⁸⁶ The provision of the Convention shall apply *mutatis mutandis*, to this protocol unless otherwise provided herein.⁸⁷ The purposes of the protocol as set out in Article 2 are;⁸⁸ to prevent and combat trafficking especially women and children, assist victims and encourage cooperation among states. The convention deals with the following; definition of trafficking⁸⁹, assistance to victims of trafficking⁹⁰ voluntary repatriation,⁹¹ interest and welfare of children should be of paramount consideration.⁹² Nigeria is one of the first countries in Sub-Saharan Africa to ratify and domesticate Palermo Protocol, which shows their political will to combat trafficking in person especially women and children. The definition in the Protocol within the ambit of trafficking included parents or guardians who give out their children.⁹³ A child shall mean any person under 18 years of age.⁹⁴ The Palermo Protocol provides for the recovery of properties of the trafficker.⁹⁵

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.⁹⁶ Article 1 prohibits sale of children, child prostitution and child pornography.⁹⁷ Article 2 gives the definition of the concept of sale of child, child prostitution and child pornography.⁹⁸ Article 3 paragraph 1, requires state parties to incorporate these laws under its Criminal or Penal Law.⁹⁹ Paragraph (2) prohibits an attempt to commit the crime, Paragraph (3) provides for penalty for offences stated in Article 3(1). 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 adoption of a child is in conformity with applicable international legal instruments.¹⁰⁰ Under Article 4(1), State Parties are required to establish jurisdiction over the offender referred to in Article 3 paragraph 1¹⁰¹ Article 5 subsections (1) to (5) of this convention deals with extradition of offences. Articles 5, 6 and 7 provide for offences, seizure and confiscation of goods, assets and other instruments used to commit the offences stipulated¹⁰² Article 9 requires State Parties to adopt laws to prevent the above offences. Under Article 10(1) to (4) the protocol supports the Millennium Development

⁷³ <<https://en.wikipedia.org/wiki/worst-forms-of-child-labour-convention>

⁷⁴ 'Convention on the Worst Forms of Child Labour receives universal ratification'. UN News 4 August 2020.

⁷⁵ Ibid

⁷⁶ Worst Forms of Child Labour Convention, 1999 (No. 182) Article 2

⁷⁷ Ibid Article 3 (a) – (d)

⁷⁸ Ibid Art 4

⁷⁹ R 190-Worst Forms of Child Labour Recommendation 1999 (No.190) International Labour Organization 17 June 1999

⁸⁰ Worst Forms of Child Labour (IPEC)', www.ilo.org. Accessed 7 August 2022

⁸¹ Worst Forms of Child Labour Convention, 1999 (No. 182) Article 5

⁸² Ibid Art 6

⁸³ Ibid Art 7

⁸⁴ Ibid Art 7 (2)

⁸⁵ Ibid Art 7 (2)(a)-(e)

⁸⁶ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the Convention against Trans-national Organized Crime, Adopted by G.A. Res. 25, annex 11.C.N. GAOR, 55th Sess. No 49, at 60 UNDOC A/45/46, (vol.1)(2001) entered into force September 9, 2003.

⁸⁷ Ibid Art 1 (2)

⁸⁸ Ibid Art 2

⁸⁹ Ibid Art 3

⁹⁰ Ibid Art 6(2), Art 2(1)

⁹¹ Ibid Art 8(2)

⁹² Ibid Art 6(4)

⁹³ Palermo Protocol Art 3(c)

⁹⁴ Ibid Art 3(d)

⁹⁵ Ibid Art 6(6) which replicated s 27 Of the NAPTIP Act 2015

⁹⁶ 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.

⁹⁷ Ibid Art 1

⁹⁸ Ibid Art 2

⁹⁹ Ibid Art 3

¹⁰⁰ 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.

¹⁰¹ Ibid Art 4(1) - (4)

¹⁰² Ibid Art 10(1)

Goal 8, that support International Cooperation to prevent, investigate, prosecute and punish offenders of child pornography and sale, child prostitution and sex tourists. The promotion of International cooperation shall be within state authorities together with the national and international non-governmental organization.¹⁰³ It also promotes international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation¹⁰⁴, and also addresses the root causes of trafficking like poverty and underdevelopment.¹⁰⁵ 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 and other support.¹⁰⁶ 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.

4. Conclusion

One of the biggest issues preventing effective development of many nations today is trafficking of women and children. However women and children made up the majority of victims that NAPTIP recovered in 2019, 44% of the rescued people were women whereas 6% were men, nearly 75% of the youths who were rescued were girls. Human Trafficking laws need continuous amendment to have stiffer sanctions to meet with the ever changing strategies of traffickers. There is need to amend the anti-trafficking laws to remove sentencing provisions that allow fines in lieu of imprisonment for sex trafficking crimes. There is need to assist survivors by encouraging their reintegration into their community. The government should adopt or strengthen legislative, educational, social, cultural and penal legislation including through bilateral and multi-lateral cooperation to discourage all forms of exploitation of persons especially women and children which may lead to trafficking. There should be public sensitization and awareness of the public

¹⁰³ Art 10 (1)

¹⁰⁴ Art 10 (2)

¹⁰⁵ Art 10 (3)

¹⁰⁶ Art 10 (4)