

**“TRAFFICKING IN PERSONS AND IRREGULAR DOMESTIC
AND CROSS BORDER MIGRATION IN NIGERIA”**

BY

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Abstract

Trafficking in persons is a serious menace in Nigeria. Similarly, the problem of irregular migration whether domestic or cross border is a threat to Nigerian economy, national security as well as peace in the country. More often than not, the trafficked persons are transferred beyond the territory of Nigeria for sexual exploitation and for other reasons including forced labour or bonded labour.

Introduction:

Let me state here without mincing words that the organizers of this conference made a wise and good decision to have chosen this vexing topic as one of the areas and issues of discourse in this annual conference. I say so because, the issue of trafficking in persons visa viz irregular domestic and cross border migration in our country have become issues of concern and has attained the level in which the government of Nigeria should declare the twin “menaces” as matters of urgent national emergency. In saying this, I must state that the choice of this topic has enhanced research and has broadened the knowledge and innovations in this area not just in our existence as legal practitioners but also in the overall expression and survival of our country Nigeria as a territorial entity.

In adopting the aims and objectives of this paper as can be clearly inferred from the topic itself, I wish to discuss the paper based on the following subheads or highlights:

- (a) Concepts and their Explanations
- (b) Legal Instruments Applicable and Relating to trafficking in persons irregular domestic and cross border migration in Nigeria at Regional and at International Level.
- (c) Prosecuting Offenders for Acts of Human Trafficking, Irregular Domestic and Cross Border Migration in Nigeria-Effects, Impacts and Challenges.
- (d) Findings, Conclusions and Recommendations.

A. Concepts and Their Explanations:

Briefly, the following concepts are explained for a comprehensive understanding of the paper,

- i. Trafficking on Persons
- ii. Irregular Domestic Migration
- iii. Irregular Cross Border Migration

(i) Trafficking in Persons (Human Trafficking):

Trafficking in persons is an act which in our humble view is prohibited by law. Persons trafficked who are usually children, women and sometimes men are either forced to be taken to a destination or are persuaded and enticed or promised of bounties and goodies that awaits them in the expected destination or transit point. The concept of trafficking in persons or human trafficking will be deeply appreciated if some definitions given by selected dictionaries are highlighted. Blacks’ Law Dictionary defined the word trafficking to mean an act of:

“Carrying on of an illegal commercial activity such as selling drugs or substances that are banned”.¹

The definition given by Black’s Law dictionary somehow appears restrictive as it tends to relate trafficking only to selling of drugs and substances without any contemplation of

possibility that the “things” trafficked might or may include human beings. Nonetheless, the dictionary reviewed recognized the act as an illegal one and refers to it as a commercial activity which is banned or prohibited by law. By this, it is evident that although the Black’s Law Dictionary is silent as to whether or not human beings are involved, the act can by implication be inferred and extended to them as the activity even though prohibited but is carried on by many based on its profitable nature. A review of Black’s Law Dictionary therefore suggest which we believe is true that trafficking as an act whether “on persons” or on “substances” or “drugs” is ipso facto by law illegal.

A look at Cambridge Dictionary show clearly that trafficking in persons is defined thus:

*“The crime of buying and selling people or making money from them from work they are forced to do such as sex work”.*²

It is instructive from the definition above that trafficking in person not only amount to a crime but it involves the act of buying and selling or trading on human beings than ordinary commodity and include making profit in terms of money which comes as proceeds or benefits to the traffickers for forcing those trafficked to work “against their will” like sex work. It means that the act in itself means a commercial behavior accompanied by element of force on victims who become voluntarily indisposed and not opportuned or allowed to elect whether or not to do the work. The person is either coerced to move for the work or he is lured by promise of reward in the work to accept to take the work and move to the destination country.

In addition to the definitions given above by the two dictionaries, Oxford Dictionary defines human trafficking as:

*“The crime of illegally transporting people across international border especially for sex trade or other forms of forced labour”.*³ *It is also defined as people smuggling”.*⁴

From the above, human trafficking involves unapproved movement of people from a particular territory across internationally recognized borders mainly for sex trade or other forms of involuntary labour or forced labour. The offence of crime of trafficking of persons involves “smuggling of persons” i.e. the forced movement of persons in a very secret and clandestine manner and in a manner not acceptable by law from a particular place within a particular state and transporting of the victims beyond and across international borders. A combined reading of the definitions given above by Black’s Law Dictionary, Cambridge Dictionary and Oxford Dictionary gives us a balanced definition which can be adopted as our working definition of trafficking in persons to mean:

“A crime which involves unlawful movement or transportation of persons or

people within and across international borders forcefully against their wish either by threat or by promise of benefits for purposes of being used for sex trade, forced or involuntary labour or all manner of commercial activity which is detrimental to the victim but beneficial to the person or persons doing the act”.⁵

¹ Black's Law Dictionary, Current Edition, online.com accessed 1/8/2019

² Cambridge Dictionary.com online accessed 1/8/2019

³ Oxford Dictionary.comonline.org (accessed 1/8/2019)

⁴ Ibid

⁵ A. U. Abonyi Ph.D, "Comments and Reflections on Definition of Trafficking on Persons" 2019 NBA Conference, Lagos, 28th August, 2019

It is therefore instructive to observe that trafficking on persons is not just a crime; it is in our humble opinion among the internationally organized crimes and ranks neck to neck with other international crimes like drug running and money laundering.⁶ This view is also strengthened by the definition of the concept as enunciated by Merian Webster Dictionary to the effect that:

"Human trafficking is an organized criminal activity in which human beings are treated as possession to be controlled and exploited (as being forced into prostitution or involuntary labour)".⁷

It means from the foregoing that the act of human trafficking is committed by more than one or even two persons operating as a syndicate and usually the victims are treated and controlled as possessions in the hands of the offenders and exploited either for sexual commercial activity or trade or for other forms or kinds of involuntary labour. This act or crime not only offends the law or laws of the state, it is also seen as dehumanizing and detrimental to the integrity, dignity and respect of the victim as a human being and a citizen of his state. No doubt it offends all human rights norms and principles or best practices and hence becomes a national, regional or international question or issue.

Looking at the definition given by the NAPTIP Act i.e. the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003 (Section 50).

"trafficking means all acts and attempted acts involved in the recruitment, transportation within and across Nigerian borders, purchase, sale, transfer, receipt or harboring 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 involuntary servitude (domestic, sexual or reproductive) in forced or bonded labour or in slavery like condition".⁸

The definition of this crime under the NAPTIP Act is no doubt wide and covers both the act itself and attempt to do the acts prohibited under the Act. The important point to be observed from the Act is that it involves:

- (a) acts or attempted acts to
 - (i) recruit, transport within and across the borders of Nigerian of person or persons.
 - (ii) purchase, sale, transfer, receive or harbor a person.
 - (iii) by use of deception, coercion or debt bondage.
 - (iv) for the purposes of placing or holding the person whether for or not in involuntary servitude (domestic, sexual or reproductive) in forced or bonded labour or in a slavery like condition.

Our candid view is that from the definition given to the crime of trafficking in persons by the NAPTIP Act, it is quite evident to conclude that the act of trafficking is very complicated in nature and can only be successfully committed through a well coordinated syndicated action. This is because it takes place in form of a “chain process”. There are those who recruit, there are others that transport, other sell and others purchase and others receive while others transfer to the final destination point.

The victim is deceived, threatened or coerced or is bonded and remain silenced and offering services under conditions of servitude and slavery meaning they work but are in pains and has no choice but to remain in the condition the person finds himself.

⁶ Ibid

⁷ Merian Webster Dictuionaryonline.com (accessed 1/8/2019)

⁸ Section 50 of Trafficking in Persons (prohibition) Law Enforcement and Administration Act 2003

Although, the Act is one of the leading instruments in this subject in Sub-Saharan Africa and initiated by “WOTCLEF” a pet foundation by her Excellency, Mrs. Titi Abubakar (Wife of the former Vice President of Nigeria) and Presidential Candidate of PDP in 2019 General Elections, Alhaji Atiku Abubakar, it was influenced by the Palermo Protocol and adopted by incorporation. The universally accepted definition of trafficking in persons as provided under Article 3 of the Protocol but the Act went further and beyond the Palermo Protocol when it included the phrase “attempted act” which makes it easier to prosecute offenders caught in the act of trafficking without having completed the action or transaction.⁹ The act also takes an innovative step in criminalizing commercial carriers who transport potential trafficked victims with knowledge of the trafficking transaction.¹⁰ This is also laudable in the sense that it expanded the horizon of the crime not only to restrict it to acts done across international borders but also acts of transportation of persons within and across the Nigerian borders” thus reorganizing internal trafficking from one part of Nigeria to another part as well. The issue of having knowledge in our view may not help the victims, it may create escape route for the carriers even if they knew.

There is a particular aspect of the crime of trafficking which is rampant in Nigeria but was inadvertently missing and omitted in the NAPTIP Act of 2003 which is the act of transportation of persons for the “removal of body organs” which act is provided for and contained in the UN protocol. This in our view is a serious omission in the definition of trafficking under the Act bearing in mind that the cases of Nigerians who are transported or transferred or even sold without their knowing to syndicates abroad in the name of “oversea work” and are eventually killed and vital body organs removed are at its increasingly proportionate level. The untold stories of Nigerians trafficked to Malaysia, Libya and even Spain for the perceived mission for greener economic advancement has been a source of national concern as many of them lose their lives in the hands of the traffickers, most often than not, their mutilated and decomposing dead bodies are found with sensitive and vital body organs removed and missing. Whereas this is unfortunate, it is also a wakeup call to our innocent brothers and sisters who “owing to greed” are tricked and trafficked outside Nigeria never to see their lovely family members again.

It will be interesting to draw the curtain on the issue of definition of trafficking of persons by adding that the ILO Convention No 182 on the Elimination of Worst Forms of Child Labour has widened the scope of definition of trafficking to include recruitment and transportation of children for the purpose of sexual or labour exploitation or slavery. This indeed is regarded as a human rights tragedy estimated to involve thousands of children in Africa and Nigeria is not exempted.¹² The ILO has noted that the worst forms of child labour upon being trafficked as defined under Article 3 of ILO Convention 182 comprise:

- (a) all forms of slavery or practices such as sale or trafficking of children, debt bondage, forced labour and use in armed conflict.
- (b) procuring or offering a child for prostitution for production of pornography or pornographic performances.
- (c) procuring and offering a child for illicit activities for production and trafficking in drugs.
- (d) work which by its nature is capable or likely to endanger or harm the health, safety and morals of the child.¹³

⁹ Bisi Olateru Olagbegi and Anne Ikpeme “Review of Legislation and Policies in Nigeria on Human Trafficking and Forced Labour” ILO action Programme against Trafficking and Forced Labour West Africa

¹⁰ Ibid

¹¹ Ibid

¹² Ibid

¹³ Ibid

Records available from UNICEF shows that the estimates of about 8 million Nigerian children are engaged in exploitative child labour and such labour include domestic servitude, prostitution, begging, farm labour work in illegal mining work sites and quarries. Recent reports show that about 6,000 Nigerian children are slaves in different countries in

West Africa, between 6-13 years are used in farmlands and domestic servants, and these children are mostly trafficked from the riverine areas of Edo, Calabar, others are from the Eastern heartlands of Imo, Anambra, Abia and Ebonyi States. This indeed is pathetic.

(ii) **Migration:**

The Cambridge dictionary defined migration as a movement from one region to another and often back again especially according to the season of the year.¹⁴ The definition of migration above no doubt relates to the concept of geography and when interpreted in its ordinary meaning and sense signifies the movement of one or more persons from an area of their habitual residence to another place either to be there temporarily or permanently as case may be. Such movement can be as a result of some “pushing factors” including relocation or transfer based on service or employment rules and procedure, education “quest for educational qualification, experience and training or acquisition of skill, or still owing to some natural incidents or contingencies like “famine”, “drought” disease outbreak. Migration can also be as a result of political elevation or appointment. In our humble view, whenever any of the above occurs, there will be inevitable tendency that the person directly affected shall move from one place to another. The same dictionary also defined migration with reference to economics thus:¹⁵ “In economics, migration is a process of a people or person travelling to a new place or country usually in order to find work and live there temporarily or permanently”.

From the above, the only rationale for migration is mainly to find work. This is too narrow and too restrictive as finding work is not the only reason for migration. The Oxford Dictionary defined migration as the movement of large number of people, birds or animals from one place to the other. It is our firm view that the definition of migration as contained in Oxford Dictionary more or less relates to the ordinary meaning of the word “migration and no more” and is likened to movement of “birds” and other “animals” and not necessarily man alone.

For our purpose, migration is beyond and above the ordinary meaning of the word “migration” and involves the movement of persons within and outside the borders of a state or states. As a result of this, we have what is called “domestic and cross border migration” and further regular and irregular domestic and cross border migration. It is our considered opinion that it is the regularity or irregularity of the movement within and outside the international borders that brings to bear the criminality or otherwise in the movement. This aspect is of national concern and international importance.

(iii) **Irregular Migration:**

Where migration is regular, our reasoned thinking is that such movement legally has complied with the procedure laid down by the authority within the country of departure, the transit country and the country of destination. It also means that the migrant or

migrants observed the relevant rules and guidelines for such movement and has no liability to suffer or pain. However, when movement or migration is irregular, our firm view is that such movement runs foul of the process or procedure laid down. It means that the movement is also faulty illegal, improper and no doubt questionable.

¹⁴ Cambridge Dictionaryonline.com.org (accessed 2/8/2019)

¹⁵ Ibid

The International Organization for Migration known popularly as “IOM” defined irregular migration as: “movement that takes place outside the regulatory norms of sending, transit and receiving countries”.¹⁶

Looking at the definition of irregular migration (IM) given above by IOM, two points are fundamental and needed to be observed. They are:

- (1) The movement of the migrant or migrants concerned is outside the regulatory norms i.e. it is illegal and contrary to the procedure laid down by the law.
- (2) The regulatory norms violated by the migrant or migrants in his or their movement is not only in respect of the country of departure (i.e. the sending country), but it also violated the procedure of norms in the transit country as well as the receiving country or destination points. What it means is that in its totality or entirety considering the regulatory environment in the sending, transit and receiving country, the movement cannot stand any test of legal validity.

As have been observed, migration can be within state recognized borders and may also be across such borders. Whereas for the former, the movement does not go beyond the identified territory of a state, the later involves more than one country. Thus, in domestic migration which is movement from one part of country to another, the regulatory norms guiding such movement must be observed and if not it becomes irregular domestic migration and if it is across border, it becomes irregular when the legal norms of the three concerned countries are flaunted. Thus, when a person or persons are forcefully moved, transported or transferred for which ever reason contrary to the applicable migration norms, such movement, transfer or transportation is illegal and irregular.

From the above, and from the review of the definition of irregular migration, an important question comes to mind which is under what situation or circumstances can a migration or movement of person or persons be deemed or recognized as irregular within the national jurisdiction and at the level of international legal jurisprudence?

- (1) In Nigerian parlance, if the movement of a person or persons offends Section 50 of NAPTIP Act, such movement amounts to a crime recognized nationally and internationally as trafficking in persons.

- (2) In addition, if the person or persons migrating or who have migrated did not have the relevant papers before leaving the “sending country” and is accosted at the transit country without such relevant papers or gets to the destination point without such relevant papers or took off from sending country with genuine papers, passed the transit country and arrived the receiving but by passage of time his so called genuine papers has elapsed, in all the above situations, the migrant becomes an irregular migrant.¹⁷
- (3) The migration will also be irregular where it offends the Palermo convention as well as the ILO Convention by mainly being a movement

“Involving the transfer, transportation, sale, purchase of persons for purpose of using them for commercial activity including sex trade, bonding, forced or involuntary labour or subjecting such a person especially a child to the worst form of condition of treatment like putting such a child in a slave like conditions as well as transferring them to the receiving countries for what has come to be known under international law as organ harvesting “removal of vital organs”.

¹⁶IOM Review 2011 iomonline.com.org (accessed 2/8/2019)

¹⁷Divel, Irregularity in Law and Policy of migration 2006 (Divelonline.com)

In all the above situations the migration whether domestic or cross border is in our view not only improper, illegal but irregular. Irregular migration legally speaking occur in two forms

- (a) Irregular immigration and (b) Irregular emigration

Whereas the former deals with those who come into Nigeria through unofficial sources or came in through official sources but have either over stayed or their documents are discovered to be fake or obtained from unofficial or unauthorized sources while the later deals with those migrants that live the shores of Nigeria to destination countries through unofficial sources or arrived through official source but have overstayed their visa permitted period or were discovered to have entered the destination points with invalid papers or papers obtained from unofficial or unauthorized sources.¹⁸ With the above conceptual explanations, it is instructive that migration both within the country and across the borders has a deep connectivity and link with the crime of trafficking in persons which has not only been recognized as one of the worst form of internationally organized crimes but has also become a crime dominating the scene and attention in the Nigerian criminal jurisprudence and as result, a discourse of this nature on the subject of irregular migration visa viz the crime of human trafficking becomes absolutely inevitable.

B. Legal Instruments Applicable in Respect of Human Trafficking, Irregular Domestic and Cross Border Migration in Nigeria, Regional and International Level.

In our firm view, irregular migration whether domestic or cross border is the foundation of the crime of trafficking in persons. No matter how we may look at irregular migration and trafficking in persons, both are crimes simpliciter and one facilitates the other and raise human rights issues which makes states, the regional groups and the international community to be interested and the need for legal regulation and control.

i. **Trafficking in Persons: The Law and Policy:**

It is no longer in doubt as to the meaning of trafficking in persons. What should ring in our minds all the time is that the act is a crime. Apart from being a crime, it amounts to violation of fundamental rights of the victim concerned. In his responses and reactions to the dangers of human trafficking, Navi Pillay, United Nations High Commissioner on Human Rights stated inter alia:

“A human rights approach to trafficking requires an acknowledgement that trafficking is first and foremost a violation of human rights..... (it) means that all those involved in anti-trafficking efforts should integrate human rights into their analysis of the problems and into their responses. This approach requires us to consider, at each and every stage, the impact that a law policy and practice or measure may have persons who have been trafficked and persons who are vulnerable to being trafficked. It means rejecting responses that compromise rights and freedoms.”¹⁸

From the above reactions, human trafficking looking at the ways and manners the crime is committed, the excruciating effects on the victims and their immediate families, is a heinous crime and hence law cannot close its eyes but see it as a human rights issue and concern. It is evident the victims are either used for forced labour and other involuntary employment, and for sex trade or commercial sex exploitation, or activity, others are bounded owing to debt or other considerations while a lot more are transferred or transported without knowing they will be tortured and eventually killed and vital parts of their body removed, a lot more are subjected to slave like conditions. All the above cases are extreme human rights abuse or violation.

¹⁸ 10m, EU, African capacity building foundation publications, on “migration in Nigeria, a country profile 2009

¹⁹ Navi Pillay, “Forward to the Commentary on the Recommended Principles and Guidelines on Human Rights and human Trafficking, Human Rights Committee Publication, CH, 1211, Geneva 10, Switzerland

According to the international labour organization (ILO) 2012 global estimates, 20.9 million people are victims of forced labour (after being trafficked), this also include those sexually exploited globally²⁰ amongst those who fall victims in this estimates are women and girls with about the highest population of 11.4 million after adults men and boys (9.5 million) adults (male and female (15.4 million) children 5.5million), sexual exploitation 98% female, 21% children and 79% adults while labour exploitation takes the remaining

population with 40% females, 60% males and 27% children ²⁰ in terms of regional estimates, the ILO estimates show that the Central and South Eastern Europe got 4.2 million, Africa 4.0 million, Middle East 3.4 million, Latin America and the Caribbean 3.1 million whereas the developed economics and the E.U 1.5 million. With the above estimates, it is not in doubt that the menace of human trafficking does not only demand urgent and quick regional and international response but should be treated as a national emergency in countries where its ugly head has been noticed including Nigeria. Being a human rights issue, it has to be approached based on a healthy human rights culture and norms.

In the Nigerian context, the crime of human trafficking has been addressed to a reasonable extent through legislation and policy measures initiated by the government taking a look extant provisions of our law, and perusing the 1999 Constitution of Federal Republic of Nigeria as amended in 2010, it is evident that reference has to be made to provisions relating to fundamental human rights of citizens of Nigeria as the rights are guaranteed by the constitution. Precisely, Chapter IV of the Constitution outlines the fundamental rights whereas Chapter II spells out the fundamental objectives and directives principles of state policy. ²¹ thus, with the provisions above, the construction not only guaranteed these rights but also improved the state to imitate and take up polices capable of ensuring the realization of the rights by making sure that the goals and aspirations of the state is achieved for her citizens. Section 34 of the constitution being reviewed guarantees the right to dignity of human person and prohibits the subjection of any person to slavery or servitude.²² The section categorically provided that every individual is entitled

- (a) to respect for the dignity of the person and accordingly no person shall be subjected to torture or to inhuman or degrading treatment nor shall
- (b) any person be held in slavery or servitude let alone
- (c) being required to perform forced or compulsory labor. The above rights under the section are fundamental rights enforceable in Nigerian courts.²³ The enforcement of these rights is reinforced by Section 46 of the same constitution as well as Order II of the Fundamental Rights (Enforcement Procedure) Rules 2009 which authorizes such a victim or victims to bring application for enforcement of the rights before a high court in the state where such alleged infraction may have taken place with the inclusion of the phrase “within” and outside the state borders under Section 50 of NAPTIPACT, it means that since trafficking in persons is no longer restricted to acts across the borders, such acts done internally can be challenged including transportation, transfer, purchase or sale of persons either for sex trade or exploitation, forced or involuntary labour, debt bondage, bounded labour or even subjecting the person to slave like conditions or servitude. Other relevant provisions of the constitution safeguarding the rights of citizens including persons trafficked in Nigeria are Section 41 protecting right to movement by such individual to any part of the court according to her or his wishes and not against his or her will or

conscience, Section 35 deals with personal liberty of the individual. All these provisions are enshrined in the constitution to protect the citizens of Nigeria from being subjected to the treatment listed above which no doubt affects them as human beings.

²⁰ ILO Documents on Global trafficking Estimates, 2012 ILO documents trafficking.com.orgonline (accessed 3/8/2019)

²¹ Chapter IV and II of 1999 CFRN

²² Section 34 of 1999 CFRN as amended in 2010

²³ Section 46 of 1999 CFRN and Order II of Fundamental Rights Rules 2009

Thus, clearly, it is imperative to reiterate that the crime or offence of human trafficking of any form in Nigeria is an affront to the constitution of Nigeria. The constitution of Nigeria is supreme and above every person, government or agencies of government including private persons, principalities and powers²⁴ and as a result must be obeyed to the letters by all. In addition to the constitution of Nigeria, there are other legislations enacted locally which made provisions relating to human trafficking directly or indirectly. They include

- (a) The Criminal Code
- (b) The Penal Code
- (c) Edo State Law Against Human Trafficking, 2000
- (d) Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 (also called NAPTIP Act).
- (e) The Child's Right Act
- (f) Labour Act
- (g) Immigration Act
- (h) NAPTIP ACT 2015

It is on record that before the NAPTIP Act came on board in 2003, provisions relating to human trafficking and forced labour could be found scattered in the criminal and penal codes which may constitute external trafficking for prostitution and slavery.²⁵ The criminal code precisely makes it an offence to procure women and girls for prostitution in or outside Nigeria under Section 223 CC which is punishable upon conviction for a term of two years imprisonment. From the section of the criminal code, the procurement of such women or girls must either be to make them become an inmate of a brothel elsewhere or make to leave her or their place of abode in Nigeria with intent that she may for purposes of prostitution become an inmate of a brothel in Nigeria or elsewhere.

As contented by Bisi Olateru Olagbeji and Anne Ikpeme in "Review of Legislation and Policies in Nigeria on Human Trafficking and Forced Labour", human trafficking is regarded as modern day slavery and the criminal code made elaborate provisions under Section 369 where "slave dealing is punished with imprisonment for 14 years of any offender or offenders. The code under the section reviewed prohibits as offence the act of dealing in

persons by way of “trading” in “purchasing”, selling or transfer, taking of any slave or holding or treating any such persons as a slave or receiving such a person in servitude as a pledge or security for a future (discharge) of debt or go outside Nigeria to enable the person to be possessed, dealt with or traded in or purchased or held in servitude or making the person to enter into contract or agreement with or without consideration for doing any of the conditions in the contract. In addition to the above sections of the code, the criminal code went further under Sections 365 to criminalize unlawful deprivation of liberty by confinement or detention with punishment for two years upon conviction and also made useful provisions under Section 224 where it punished a person who by threat, intimidation or false pretences procures a woman or a girl or administers stupefying or over powering drugs to facilitates his transfer outside Nigeria with 2 years imprisonment upon conviction. The code also punished with two years imprisonment upon conviction of a man who lives on the earning of a prostitute under its section 225 (a) while under subsection (4) of section 225, if the offender is a woman who aids or influence or controlled the movement of a prostitute for her gain, her punishment generally will be a jail term of two years upon conviction without additional punishment of whipping for subsequent act of such nature committed by her as is for men.

²⁴ Section 1 (3) of 1999 CFRN

²⁵ Section 223 of CC

Our humble and considered view which is in accord with the position of Olateru and Ikpeme is that the criminal code made progressive provisions against the act of human trafficking in and outside Nigeria but failed to prescribe adequate penalties sufficient enough to serve as deterrent for the traffickers and seen also to be commensurate with the devastating effects of the crime of trafficking in persons.

The Nigerian Penal Code which applies in the North also made provisions relating to Human Trafficking. The Penal Code fashioned after the Sudan Criminal Code was based on the Indian Penal Law with Sharia Law as its root. The code takes much and special interest on the age of the victim of the act and could be said to have stronger and stiffer provisions on human trafficking related offences than the Criminal Code. By the combined reading of Section 275 and 276 of the Penal Code, trafficking in person (women and children) or importation of a girl under the age of 21 years into Northern Nigeria attracts a maximum term of 10 years imprisonment or a fine in addition. However, there is no minimum jail term provided thereby giving the Judge or court wide discretion to determine what is “minimum jail term”. This in our view is unusual and indeed a pitfall in the code as possibility exist that the court or Judge may impose a jail term “as a minimum” which may be small or little compared to the grave nature of the crime.

Another embarrassing provision under the Penal Code is its provision under Section 270 which though criminalized forced labour but merely provided a penalty of one year imprisonment or option of a fine to be determined or imposed by the court. The trafficker knowing how lucrative the offence of trafficking is will be prepared to commit the crime and wait for a possible fine he or she will pay. The deterrent value of the punishment no doubt will be lost. The traffickers will be ready to pay and be paying the fine and continue with the “business so called”. A look at Section 271 and 279 of the Penal Code will show that the code prohibited act of enticement and deceit and inducement of children of 14 years and slavery respectively by a term of 10 years and fourteen years or a fine which means also that the offender will surely be ready to do the act knowing that he may well pay fine and go. With the weak judicial system that we have in the country where some Judges and magistrates and some members of the Bar have thrown integrity to the dust and chosen corrupt practices, it is no doubt expected that such trafficker with a lot of money to dole out can easily compromise the court and get an order of little or no fine as an option for the jail term.

Kidnapping is another act prohibited by the Penal Code under Section 274. The punishment for it under the code upon condition is 10 years or a fine. Kidnapping is a serious crime and transportation or transfer of persons either for sex trade or forced labour or for slavery can be facilitated by the person being kidnapped first, harbored or held hostage or confined and subsequently moved to the point of destination. It is our firm view that the penalty of 10 years is inconsistent with some other legislations in Nigeria especially some state laws which has made kidnapping a death penalty offence. The issue is worsened where the offender is also given option of fine, so what is the relevance of the prohibition in the first place. It is true that the law on covering the field between State and Federal Law has not changed but without mincing words, it is laughable to see an offender who kidnaps the victim and transports the person overseas and is paid millions and is convicted thereafter and made to pay a fine.

Edo State no doubt is a common name in any discussion about human trafficking in Nigeria. It is as a result that the reason behind the Edo State Law Against Human Trafficking of 2000 cannot be farfetched. The Law which more or less amended the existing criminal Code expanded the limits by widening the scope of those who can be regarded as accomplice to the offence of human trafficking to include “family members”, religious leaders, and anyone who facilitates the trafficking of women and children. A very pertinent issue and provision under the Edo State Human Trafficking Law which seem to be peculiar to it and not found in any Federal enactments of trafficking including the codes reviewed is the criminalization of prostitution as an act meaning that the traffickers who transport the women and children for prostitution are penalized on one hand while the victims who are

transported even sometimes unknowingly or are induced or deceived are also caught in the web for engaging in prostitution and are penalized too. Thus, by making prostitution a crime, the victim of trafficking becomes an offender herself. This has led to concerns being expressed by legal minds and civil society groups and calls made for the amendment of the law to decriminalize prostitution. The amendments of the criminal code law of the state by the state law on human trafficking was with particular reference to Sections 222 (a), 223 and 225 (a) and by the amendments, those who aid and abet oversea travel for potential prostitutes and the prostitutes themselves commits offence and punished accordingly.

Sincerely speaking, although we believe that Edo State Government came up with the state law under review because of increasing rate of trafficking of “girls” and “women” from the state to different countries including Malaysia, Italy and others which has become a national, regional and international concern, the provisions of the law on the penalty or punishment for the offence including the terms of imprisonment and the kind of fine imposed and the discretion given to Judge or court makes the whole essence of law laughable. This is because apart from the fact that there is no provisions for fine above N500,000, the court has discretion to impose lesser or little fine such that the trafficker who gets “unquantifiable gains or bounties from a single” act of trafficking is made to pay N10,000 or even less. In addition to the above, the Edo State Law strictly speaking only makes provisions as it relates to sexual exploitation notwithstanding that there are other forms of criminal acts involved when women, children and men are transported or transferred including forced or involuntary labour, bonding for debt or conveying a person, selling or purchase for use in a slave-like conditions. Our humble view is that the NAPTIP Act is a more progressive legislation and made salient provisions which introduced innovations towards addressing the infamous crime of human trafficking in Nigeria. It has however its shortfalls and milestones which have been noted including the provision making trafficking in persons not just a cross border crime but also an internal unlawful act that is capable of taking place within Nigeria.

The Nigerian Child’s Right Act 2003 is another local legislation which has piously promoted the fight against human trafficking in Nigeria with particular reference to the child. Nigeria ratified the United Nations Convention on Rights of the Child and ILO Convention 182 on the Elimination of the Worst Forms of Child Labour and this has been progressively domesticated by the enactment of the Child’s Rights Act of 2003 and subsequent enactment of versions of the Act by some states in Nigeria. We have it on a strong authority that states like Lagos has their Child’s rights Law, Anambra State has her own, Enugu State has its own and so on and so forth. The Child’s Rights Act of 2003 makes comprehensive provisions on protection of the child especially on the ones prohibiting separation of the child from his/her parents except in situations where it is in the best of the child and trafficking of the child without the consent of the parents is a clear violation of the child’s right to parental

care, protection and maintenance. Section 14 of the Act is instructive in this direction. The issue of parental consent has been criticized in the sense that many traffickers have raised this as a defence even though the consent may or may not have been obtained and where obtained may have been compromised and obtained by the traffickers by extending material gains or benefits or proposals to the parent concerned which he or she may not be disposed to say no.

The labour Act also made salient provisions which in our view check the acts related or included in the definition of human trafficking particularly on the issue of forced labour. The act which applies to all workers or employees does not affect members of the armed forces, the police, the prisons and some other security agencies. Essentially, the Act prohibits forced labour by virtue of its Section 73 which is also reinforced by Section 31 (1) (c) of the 1999 CFRN which prohibits forced or compulsory labour unless as may be permitted by the constitution. Sincerely speaking, the Act provided little or no penalty at all and an option of fine which is not only too small but imposed in such a manner that the private persons and public officers have differentials in their type of fine they pay if convicted. The penalty and fine provided by the Act remains too infinitesimal such that the deterrent value of the punishment is lost. The provisions under the Act are contrary to the high and more serious penalties under the NAPTIP Act of 2003.

Another lapses in the Act which if not checked can also enhance the commission of the crime of human trafficking is the provisions under Section 25 which provides that the minister (i.e. Minister for Labour) may license fit and proper persons to recruit citizens of Nigeria for purpose of employment within and outside Nigeria which tends to limit the application of Section 23 prohibiting recruitment by intermediaries. This is because where license is granted by the minister without close monitoring and regulation at least by “an authority”, there will be abuse and once this happens, there is tendency to be foul play and with such situation, there is bound to be trafficking and indeed irregular movement of persons within and across the borders of Nigeria. Practically speaking, in the present day Nigeria, there are many employment recruitment outfits and their agents scattered in the country including official and unofficial one through which workers are recruited and packaged and thereafter trafficked overseas. The question of abuse on the part of Licensed Private Employment Recruitment Agencies (PESAs) is certain owing to the issue of corruption which has ravaged all sectors in our country's economy. As a result of these abuses facilitated by corrupt practices in the process, many innocent children are trafficked as well as women.

As for Immigration Act, save for Section 18 of the Act which prohibits prostitution, or trading in prostitution, or procuring of prostitutes and brothel keeper and punish same as illegal migration with liability for deportation, there is no other provision n the Act

criminalizing the act or acts involving prostitution, forced labour or other acts relating to trafficking. At best, the act merely entitled the victim i.e. person trafficked to bring a civil suit claiming damages against offenders convicted under the NAPTIP Act in the form of compensation and claim for recovery of lost wages. Trafficked persons of other countries are seen in Nigeria as illegal migrants and are merely deported without further inquiry of the circumstances through which they saw themselves in Nigeria. The situation thus does not favour the victim at all. Having reviewed the Nigerian legislations as it relates to human trafficking and migration, it will be necessary to briefly highlight some international instruments related to the crime of human trafficking.

The increasing spate of number of persons introduced in the modern day market of slavery popularly called human trafficking has become so alarming and this has made the international community to be awake and standing on the measure and efforts to address the dilemma. The issue is worrisome as 50% of victims of human trafficking are mainly women and children with half of them being less than 18 years old.²⁶ Indeed, the history and evolution of International Action against human trafficking is old and can be seen with the 1904 International Agreement for the Suppression of White Slave Traffic.²⁷

²⁶ Ferderico Lenzenini, Trafficking of human beings in Human Rights Court of rights and Dignity of the Persons, in the Age of Globalization, 1924, 1296, (M. P.....2007)

²⁷ Ibid

The agreement which was signed in Paris was aimed at establishing an international authority to coordinate information relating to procuring of women and girls for immoral purposes abroad and to check the possible routes like railway stations, ports and other places where women and girls destined for transportation for immoral life. Subsequently, there were the convention of 1910 and amended convention of 1949 all intended to fight against trafficking on women and girls and enhance coordination and co-operation among states towards checking human trafficking.²⁸

The international response towards addressing human trafficking has been progressive and the law has continued to develop and grow from strength to strength.²⁹ The regime of international instruments on trafficking continued to increase ranging from the 1921 International Convention for the suppression of the traffic in women and children, the 1951 Convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others (with special provisions under its Article 17 which prohibited trafficking on women and children for purposes of prostitution)³⁰, 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) with special provisions under Article 6 (which concerns trafficking of women and imposes obligation on state parties to the convention to take appropriate measures to suppress all forms of traffic in women and exploitation for prostitution of women.³¹ Similar provision was also made under Article 35 of International Convention for the Rights of the Child and prohibits the

sale, traffic and purchase of children for exploitation for purposes of prostitution and others.

In addition to the above instruments, the International Labour Organization (ILO) in 1999 adopted during the General Conference the Worst Form of Child Labour Convention (No 182). This convention was inspired by the reasoning that it is absolutely necessary to eradicate all forms of child labour which are incompatible with the dignity and the physical, psychological and social development of the child.³² In so far as all the instruments above have made laudable provisions as it relates to crime of human trafficking, in 2000, a new international instrument of universal character addressing specifically the scourge of human trafficking was finally adopted which is the "Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography". The protocol not only defined sale of children as transfer of such children by a person or persons to other persons for remuneration or any other consideration but also criminalized the act as offence, the acts of "offering, delivering or accepting by whatever means a child for purpose of sexual exploitation of the child, transfer of organs of the child for profit or engagement of the child for forced labour or inducement for improper adoption of the child against international legal instruments on adoption."³³ The protocol protects the child and encourages his or her reintegration in the society as provided under Article 8.

It is no doubt instructive that the protection afforded the child under the protocol is comprehensive as the instrument sees the child as most vulnerable and hence this special protection. However, the protocol did not like some local legislations in Nigeria (example the Edo Law on Human Trafficking) make the victim of trafficking for prostitution to be an offender herself for engaging in prostitution whether forcefully or otherwise after being trafficked. So, the victim under the protocol is not penalized for prostitution. A similar sensibility on the victims' protection and rehabilitation is shown by the protocol to prevent, suppress and punish trafficking in person especially women and children thereby supplement the United Nations Convention Against Transnational Organized Crime

²⁸ Ibid

²⁹ Ibid (International Human Rights Law Review, Vol. 4. Supra)

³⁰ Article 17 of 1951 Convention Against Trafficking on Persons and of Exploitation of Others for Prostitution

³¹ Article 6 of CEDAN Convention, 1979

³² Ibid

³³ Article 2 (a) of Addition on Convention on Rights of the Child

(called Polemo Protocol) which was adopted in 2000. As noted before, Article 3 of the protocol gave a vivid explanation and account as to what the crime of human trafficking is all about.

Finally, there is also the United Nations Protocol Against the Smuggling of Migrants by Land, Sea and Air which was adopted between 2003-2004. This protocol also supported and enhanced the international effort against human trafficking and illegal domestic and cross border migration. It will be noted that at the international level, the Rome Statue Establishing the International Criminal Court (ICC) prohibited trafficking recognizing same as crime against humanity just as ILO Convention did. Precisely, Article 7 of the statue defined enslavement as a crime against humanity and by the nature of the crime, it imputes ownership of a person by another and this is part and parcel of the offence of trafficking. At the regional level, there seems to be only three noticeable instruments dealing with human trafficking including Inter-American Convention on International Traffic in Minors adopted in Mexico in 1994 and mainly protects minors for their own interests, there is the South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002 and by its Article II promote cooperation among member states to combat trafficking. The convention is also called the SAARC convention. In addition, the 2000 Charter of Fundamental Rights of the European Union by its Article prohibited human trafficking.

(ii) **Irregular Domestic and Cross Border Migration:**

Irregular Cross Border Migration is an old phenomenon and by its nature, it is complicated, uncertain and presents a problematic situation for host countries exposing the migrants to danger and helplessness.³⁴ Managing irregular migration by both developed and undeveloped countries has been unproductive owing to absence of techniques to tackle irregular border migration. Not all irregular migrants are tagged criminals hence many United nations Conventions, resolutions and protocols protects some migrants in this category.³⁵ Therefore, the existence of many contradictions contributes to the complexity of the subject of irregular migration.

But it will be interesting to highlight or list some of the reasons behind irregular cross border migration and we humbly adopt the reasons advanced by Mohammad Imran Rohaida Nordin which include:

1. **Lack of Equalities:** This occur due to lack of equalities on social, environmental and political scale which make concerned citizens to migrate from their native places, countries to other places or countries. This is the first reason which the IOM (International Organization for Migration) recognized as “Socio Economic Reasons”.

This reason is anchored by global socio-economic inequalities in terms of wages, labour, market opportunities and lifestyle. Some people migrate because they look at their families and other families within a particular country and other countries and they see a real and clear existence of wide gap in terms of income, standard of living, and other considerations like comfort and at other times the desire for family reunification.

(2) **War and Political Maltreatment:** This is another formidable reason for irregular migration within and across border. Many leave to get out of trouble and to be free from ill-treatment. During the many years of military dictatorship in Nigeria, many Nigerians left at least to be free in the hands of the juntas. The Abacha era is a good example and the story still deteriorated even with the present democratic climate in Nigeria. There is bad, corrupt and inept leadership in Nigeria at present and impunity and reckless disregard of the rule of law has become stock in trade of our leaders.

³⁴ Muhammad Imran et al, "Irregular Cross Border migration, Emigrants Issues and State Security" International Journal of Law, Government and Communication Vol. 3 Issue 9 (June 2018)

³⁵ Ibid

(3) **Natural Catastrophe (Disaster):** Many migrate to escape from natural disaster such as drought, flood, earthquake, and even generalized violence which lead to displacement as is the present situation in the Northeast owing to the Boko Haram insurgency, the activities of other dreaded groups in the country cannot be overlooked. Overpopulation, poverty, and unemployment force people to migrate.

Our humble view is that human trafficking and irregular migration has a connection in the sense that as the citizens are faced with the reasons above which makes it inevitable for movement, they can or may fall into the hands of traffickers who come with many gimmicks and either deceive the migrant by making false promises of opportunities of good employment with stable wages only to be transported, conveyed or transferred to destination points to be faced with forced or compulsory or involuntary labour, sex trade, sexual exploitation for prostitution, bonding and even being subjected to slavery and servitude.

Writing recently on the scourge of trafficking and irregular or illegal migration, Tola Emmanuel in Nations Newspaper Mail Bag of 7th August 2019, Pg 18 reasoned which we completely agree with the view that the irregular migration portfolio of Nigeria has bloated. According to Tola, about 602,000 Nigerians migrated to Europe in 2016 through the desert and the Mediterranean of which 27,000 died. Also, Nigerians according to useful sources is at the receiving end of the global migration crisis. The ongoing security challenges in the country revealed the army of undocumented immigrants who have come to find solace in the country.³⁶ Victims of trafficking often become irregular migrants as they are illegally taken to different parts of the world with their identity, passports and documents taken away from them by the traffickers.

The victims suffer a lot including gross misuse and abuse, trauma, unknown and unfriendly terrain, inhuman treatments as well as social rejection and disdain.³⁷ There are push and pull factors of illegal migration and human trafficking ranging from quest for education,

employment and improved standard of living, better remuneration and quest for greener pastures and improved lifestyle. In Nigeria in particular, many citizens are leaving the shores of the country either to acquire or attain educational qualification abroad. Many perceive our educational system as weak and suffering from decay and there is no confidence in the institution.

Nigerian migrants in search of education in countries like Ghana and other African States, Europe and even in American States have contributed positively to the increased “GDP” of these countries there by being a major revenue earner to their host countries and as a result boost those economies. No foreigner wants to come to Nigeria either for education or employment. Our institutions are weak, there is no security of employment, most Nigerian elites and professionals are overseas nurses and doctors, Scientists-engineers, chemists, lawyers thereby increasing the percentage of brain drain in the country, some of these professionals, do not think of coming back to Nigeria, thereby contribute to the economy of host countries whereas our country remain static. It is difficult to fight irregular migration and human trafficking as result of the following:

(a) **Lack of Government Will to Fight Irregular Migration:** The hurdle of combating irregular migration is tough but countries should see it as a responsibility and should not for any reasons withdraw and hence commitment is expected but many government lack the will. One particular state cannot completely and comprehensively control irregular cross border migration,

³⁶Tola Emmanuel, “Stemming the tide of Human Trafficking and Illegal Migration” Nations Newspaper, 7/8/2019 Pg 18

³⁷Ibid

therefore, there must be coordination and collaborative effort between countries of emergence i.e. Countries of departure where the irregular migrants take off, the transit countries (i.e. countries through its territories the migrants use as pass for temporary stay and host countries (targeted countries that receive the migrants i.e. destination point). Government’s determination to address the issue of irregular migration must be total and by this government must look at security issues capable of leading to crisis, tension or generalized violence that may make people to leave the borders of the state irregularly in a bid to protect themselves. It means that government must not take decisions or initiate policies that may cause disaffection among the citizens. Recently, the governments of Nigeria for whatever reason decided to create cattle colonies, grazing routes and at present Rural Grazing Areas “RUGA” in all the states of Nigeria. First, the policy of open grazing was opposed by many states like Benue and others that also enacted their state laws against Open Grazing. The fact remains that whereas Nigerians are of the view that cattle rearing is a private business, the Federal Government is making it a Federal issue which should not be. There are other people engaged in piggery, poultry and others, they are not asking

Federal Government for land to run their business. Our view is that it is wrong for Federal Government to make the issue a federal matter and it is also wrong to hear that part of the federal budget has been earmarked for the project. Ranching is practiced over the globe; America breeds the highest cows and cattles and adopted ranching as state policy. "RUGA" is one policy too many and will if unchecked and stopped cause crisis and tension that will threaten security of the country and may no doubt contribute to movement of Nigerians. This is our view and states in the South are advised to enact law on ranching and go into breeding of cows and before the expiration of 3 years, there will be no need to depend on movement of cows from North or any place for cow meat. This is practicable if vigor is added. As it appears now, some states are deeply interested in breeding of cows by ranching method.

(b) Deregulation and Flexibility:

Most countries have liberalized policy on migration. The countries are more or less highly industrialized and more often than not the market demand for semi-skilled and sometimes unskilled workers to take up some casual and menial jobs in factories becomes high such that unless there is a loose and flexible regulation on migration, the much needed workers in the market cannot readily be seen.

(c) State Security and Rights of Migrants:

Another problem challenging successful fight against irregular migration is the question of state security and the rights of the migrants. Whereas countries raise issue of national sovereignty for which the state has responsibility to protect, the other side of the coin is the fact that the migrants have their rights which they make claim for and some either raise issue of "asylum" or issue of refugee status. Thus, they may raise arguments that they are asylum seekers or they are refugees frustrated from their place of habitual residence either by armed conflict or generalized violence and these people need to be protected. The issue of state security is a challenge, NGOs and civil society groups are better positioned because the irregular migrants believe and trust them than government because they see them as non-governmental.

(d) Lack of Statistics/Data:

Problems related to lack of or insufficient statistics and data about number of irregular migrants exist more often than not, it is difficult to get the data and statistics on the number of emigrants involved in this kind of migration and without such statistics, there is bound to be mistakes in the choice of strategies to be adopted. The figure given by global enforcement agencies connected with fighting irregular migration is not usually accurate as can be seen in the case of Afghanistan, Bangladesh, Indians, Iranians, Pakistanis, Syrians, Greece, Hungary, Germany, and France. Irregular migrants are apprehended and arrested as it relates to the countries and sometimes accurate data seem not to exist.³⁸ It is pertinent

to know that even the combined estimates of International Organization for Migration, the national Office for Statistics and the United Nations Commission for Refugees could not provide “effective data” that can be recognized to be free from any blemish and hence the problem of inadequate statistical record of irregular migrants still persist.

All in all, the issue of irregular migration is not an issue one state can take up alone. It needs global mobilization, collaboration and synergy and the international community must work as a family of nations with one focus which is to eradicate the menace of irregular migration by adopting multi-faceted approaches and strategies. Holistic comparism of strategies from states will help to put a universal and global strategy that will serve as a model and applied in all situations in all countries. Thus, harmonization is relevant by looking at strategy in Australia which has recorded success through strengthening of immigration policies and its unique geography then for Pakistan, its strategy is driven mainly by her deportation and reparation programs in Africa including Nigeria. It has been a combination of deportation programs and sometimes prosecution where the irregular immigrants have been linked with any crime provided by the criminal code law or penal code or other criminal legislation in the country.

The Nigerian government has signed convention and other international protocols on migration related matters. A prominent example is the 1979 ECOWAS Protocol Relating to Free Movement of Persons, Residence and Establishment. The countries support for the ECOWAS efforts in migration matters led the government to consider having comprehensive policy framework that will guide all stakeholders in migration management and governance in Nigeria.³⁹ The factors of increasing volume of emigration in particular professionals in some fields leaving the country and the desperate and dangerous manner of emigration of irregular migrants and the sowering rate of smuggling and trafficking in persons contributes to the reason why government must work for a policy. Regrettably whereas the number of emigrants among professionals and the irregular emigrants engaged in criminality “smuggling and trafficking” are on the increase, the number of immigrants whether professionals or otherwise are on the decrease.

Our citizens with highest qualifications in their areas are manipulating their ways out of the country for better economic depositions and benefits while those with little or no education are desperate to make money either from the illicit drug trade or the secret selling, purchase and trading of trafficking in persons, killing of persons transferred or transported irregularly and removing of their vital organs for sale in what is now known as “Organ Harvesting” which is rampant within and outside Nigeria.

Nigerian Government through the office of Special Assistant to the President on Migration and humanitarian Affairs had solicited for support of International Organization for Migration in developing a National Migration Policy, and in 2006 with funds from the “IOM 1035 facility” and co-funding from government, an inert ministerial committee comprising

relevant ministries and agencies, departments was established to work towards a credible National Migration Policy.⁴⁰ Subsequently in 2007, there was a Stakeholders Conference on Migration to finalize efforts on the policy framework, but nothing has so far been done owing to the transition and change of government.⁴¹ The government has also taken some other programmes capable of checking irregular migration including the issue of National State/Local Government Employment Development Strategy (NEEDS) (SEEDS) LEEDS) respectively, the Small and Medium Enterprises Development Agency of

³⁸ Imrah and Rohaida Nordin (Supra)

³⁹ Migration in Nigeria, Country profile 2009 Pg 69

⁴⁰ Ibid

⁴¹ Ibid

Nigeria, the State Counterpart Agencies, the Directorate of Employment Programmes, the EN-POWER Programme, the SURE-P Programme under Goodluck Jonathan administration and others are efforts to provide a platform or base to those who seem frustrated for lack of employment and believe the only option is to leave the country in whichever manner. There is also the Joint Migration and Development Initiative (JMIDI) implemented in Nigeria by the United Nations Development Programme (UNDP) with overall objective of supporting civil society organizations and local authorities in harnessing the benefits of migration for development involving sharing of information so that instead of migration being associated only with all forms of criminality, it can be positively harnessed for the development of the country and the international community.

Our firm view is that migration whether domestic or across border is a complicated process and issue and hence all institutional actors must be above board and work as a team. The cooperation of the following actors in Nigeria is therefore inevitable for a sound migration governance including national Commission for refugees, Ministry of Labour and Productivity, Justice, National Planning Commission, Bureau of Statistics, Population Commission, National Agency for Prohibition of Trafficking in Persons and other Related Matters, Central Bank of Nigeria, Nigerian Diaspora Organization and Nigerian National Volunteer Service, Ministry of Health and that of youths as well as NGO's and Civil Society groups.⁴²

(c) Prosecution for human trafficking and Irregular Migration, Effects, Impacts and Challenges:

i. Prosecution and Challenges:

Obviously, prosecution is an intricate exercise. In our firm view, it is not only complicated, but it is frustrating and most challenging. As lawyers, it is a notorious fact that we can find ourselves in any of the two sides of any criminal proceedings at any given time. We can therefore prosecute today and tomorrow we are on the side of the defence. However, for lawyers employed in the ministry of justice, they have always chosen one and only side out of the two which is the side of prosecution. It is settled that whether the offence is a simple

offence of misdemeanor or one of the grievous offences of armed robbery, kidnapping, murder or even transnational crime like human trafficking, smuggling of persons and trading in narcotics and drugs, prosecuting the offender or offenders in each of the above situations are not usually a child's play. Primarily, the prosecutor is faced with the hurdles placed or to be placed by the defence attorney especially those that thrive in technicality as well as the gimmicks of the judge or the magistrate particularly with respect to my lords and worships who are not only naive and ignorant of the law and its principles but are also among those who are unrepentantly corrupt and would go to any length to frustrate the prosecution so as to justify what she or he may have received from the defendant.

Besides the issue of the lawyer and the bench, another problem the prosecution will face and which is devastating too is the provisions of the law for which the defendant is tried coupled with what has transpired during the investigation by the law enforcement institution. Prosecuting trafficking in persons and irregular migration faces the same problem and challenges and even more. Trafficking in persons spans all demographics and trafficked persons most often comes from position of vulnerability.⁴³ The vulnerabilities is usually as a result of policies and practices leading to marginalization.⁴⁴ Traffickers operate as an extensive criminal network.⁴⁵ It include gang members, family members, pimps, business owners and smugglers.⁴⁶ Access to justice by victims is difficult as investigation and prosecution is tedious and most unreliable.⁴⁷

⁴² PCI Documents on Challenges in Fight Against Human Trafficking (DCIonline.com accessed 8/8/2019)

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ Olateru Olagbegi and Ikpeme (Supra) Pg 21

a. Challenges in Respect to Provisions of law and rules of Evidence:

As has been highlighted, in Nigeria, there are legislations enacted which made salient provisions against human trafficking as well as irregular migration. Of importance among the laws are NAPTIP Act of 2003, the Criminal Code and Penal Code, the immigration Act and the Edo State Law Against Human Trafficking. We also highlighted some international instruments and protocols in place at the international level and other regional conventions or charter.

A look at the provisions of the Criminal Code and the Penal Code shows that the two laws provided little or no penalties for trafficking in persons and related acts like slavery and notwithstanding the seeming little sanctions, the codes provided for imposition of fines by the court as alternative to the jail term upon conviction. Apart from giving the judge or court the powers to impose fine, the judge is further given wide discretionary powers to determine the fine imposed. This makes nonsense of the punishment as the deterrent

value is lost. Trafficking is “lucrative business” and this lacuna or seeming loose provisions of the law makes them to repeat and continue repeating the crime. This is also painful in the present day Nigeria where judicial corruption is on the front burner of national and international discourse. A trafficker may well place some dollar notes on the face of a magistrate or judge and the table is already rolling in his favour especially for those in this evil game.

A crucial point to be noted is the fact that the NAPTIP Act 2003 crystallized and synthesized all other Anti-Trafficking Legislations like the Criminal Code and the Penal Code restating some of the offences in the codes with stiffer penalties but the question still remains that the three laws exist alongside and are equally applicable.⁴⁸ There is no decision or provision yet by any court or in any law declaring the supremacy of any of these laws above the other or how the court should resolve differences between them.

This clearly in our view creates difficulties as it relates to enforcement and creates loopholes in prosecution making for escape of offenders with little, small or no penalty. However the NAPTIP ACT of 2015 has taken care of these lacunas in 2003 Act by not only addressing the issue of the wide discretion given to court but also increased the fine to N5m in cases of acts of trafficking.

Although, the NAPTIP Act 2003 made trafficking an internal crime and an international offence, the Act specifically failed to prescribe any sanction for the whole acts like exportation and importation of persons, harbouring, transportation, etc.⁴⁹ The sanctions for the various acts vary from five, ten or fourteen years with or without the option of fine and even life imprisonment. The Act is therefore innovatively oriented to prosecution of trafficking than prevention of the act and assistance of victims and this can be seen in its prohibition of attempted “transportation or transfer” of persons which implies that persons may be prosecuted after being caught before the transaction of trafficking is completed. However convicting or securing conviction for trafficking may be hindered especially where the issue of ‘knowledge of the carrier” conveying the victims is raised as the Act provided for the phrase “if the carrier of the victims has knowledge about the trafficking transaction. Of course, this is a good defence which can be readily exploited. Thus, the element of guilt due to knowledge may be difficult to prove. Additionally, the issue of “consent of the parents” or “guardians” of those trafficked is another serious hurdle for the prosecution as most traffickers raise the “consent issue” in their defence and always claim that consent was obtained and that the transportation or transfer of the victims is voluntary. This they achieve by inducement of the parents or guardians as well as the victims and this has paved for escape of many traffickers.

⁴⁸Ibid

⁴⁹Ibid

Seriously too, the NAPTIP Act of 2003 emphasize traffic in persons for sexual exploitation and prostitution whereas there are other purposes in which traffickers transport and transfer persons like for forced labour, for slavery and for removal of body organs of the victims. The omission of trafficking for removal of body organs means that the offender for such acts will escape prosecution. Prosecuting such offenders becomes difficult in Nigeria since Nigeria has not domesticated some international instruments prohibiting trafficking for such purpose like UN Protocols including the Palermo Protocol. Although, the problem of domestication is a serious question. Another challenge is that even if domesticated, most of the international instruments does not impose mandatory obligation on states to carry out the provisions of the instruments as can be seen under Article 14 (5) of the protocol which provided that each state party to convention shall consider taking measures “...towards preventing and prosecuting human trafficking. This provisions gives the states unnecessary discretion to decide whether or not they will take any measure in fighting human trafficking. Hence, even if the convention or protocol is domesticated, there is still a problem. Nonetheless the repeal of NAPTIP ACT of 2003 by NAPTIP ACT of 2015 has addressed some of the pitfalls as can be seen under sections 14-35 which provided for offences under the Act. Precisely section 20 sub section A and B provided for removal of human organs and buying and selling of the organs respectively.

b. Identification of victims and Assistance to them in Prosecution of Offenders of Trafficking:

It is not usually easy to identify the victims, victims are usually kept in isolation. The hidden issue of the crime is a problem to law enforcement agencies including the NAPTIP, Police, Immigration and others associated agencies. There is also lack of trust on the enforcement agencies and fear exist in the victims that they may be compromised, also there is no assistance to victims to sustain the prosecution in providing needed services like social, medical, transportation, interpreters and legal services, most of the victims are at different and far places.

c. There is also lack of coordination among the enforcement agencies:

Absence of conducive environment for investigation of human trafficking, inadequate funding of anti-trafficking activities, lack of border control, equipment and technology and other facilities for trapping or tracking traffickers are all serious challenges.

d. Lack of Victims Cooperation:

In the trial of a trafficker, the victim is a vital witness, getting the witness to testify is a serious challenge and conviction is based on evidence not speculations; the victim does not

want to be exposed to the glare of the public court room, nor does he or she want to be before the awesome judge. The crime is surrounded in secrecy and loyalty and the victim is intimidated not to go against the rule.

v. **Ineffective Communication and Inability to express their Traumatic Expression:**

Some victims lack the communication skill to express their experience before the court. As a result of this, the court may not have the opportunity of knowing all that it is expected to know.

vi. **Adopting International Mechanism:**

In addition to the above challenge to prosecuting human trafficking in Nigeria, assuming we are to rely on international mechanism as part of our national effort to fighting the crime, applying international law to a person who resides in another state is a costly and complex endeavor, not many victims can afford same. Also, building a case against traffickers can take a deal of time, resources and energy. In countries where resources are unavailable, this will hinder enforcement of anti-trafficking laws.

vii. **Rules of Evidence:**

Rules of Evidence present another challenge to successful and progressive prosecution of traffickers in Nigeria. While it is agreed that NAPTIP has prosecuted a lot many cases involving trafficking in Nigeria and irregular migration, the rules of evidence no doubt has been a hurdle. Notably, Evidence Act is the operational legal framework in this connection and it applies all over Nigeria in all courts (South and North). Women and children are most susceptible to trafficking, but there are aspects of provisions of the Act which are discriminatory to the women and girls especially as it related to sexual relates offences and the burden of proving such offences under the Act prevent women from getting justice and also prevent successful prosecution of offence of trafficking having connection to sexual acts. By the Criminal Code and Penal Code, evidence of crime of this nature must be corroborated and in the absence of corroboration, the case collapses like pack of cards. Such offences include defilement of girls less than 13 years (Section 218), defilement of girls between 13 and 16 years (Section 221), procurement of girls less than 18 years, to have carnal knowledge (Section 223) procurement and defilement of women and girls by threats or fraud or administering drugs (Section 224) (all under the Criminal Code, Procurement of Minor (Section 275, and having sexual intercourse with a girl less than 14 years Section 282 (1) (e) all of Penal Code. It will appear correct that all the above crime or offences need corroboration. This must be addressed if the victim must get justice.

ii. **Effects and Impacts of Trafficking in Persons:**

The effects and impacts in trafficking in persons and irregular migration on the victims and migrants and on the state or economy are in our view colossal. However, as Fraida M. Comarck reasoned,⁵⁰ it is difficult to measure the effect and impact of trafficking because of its clandestine nature and hidden economies in which the victims and migrants work.

Absence of legislation and inadequate national definition, lack of political will, inexperienced dealing with the issue, corruption and victims inability to cooperate determines the scale and the impact. While trafficking is too covert to accurately measure, the number involved in Nigeria and globally is significant. Estimates shows and suggest that 400,000 illegal migrants reach Europe each while 850,000 arrive United States yearly and this figures include those that paid smugglers and those that are victims.⁵¹

Trafficking therefore impacts on a state in the following ways:

1. Economically in the form of lost opportunity locally i.e. loss of human resources and future productivity.⁵²
2. **Social Impacts:** There are negative impacts on the community and respective families whose members have been trafficked or have migrated irregularly. Nothing is remitted back in form of human capital and earnings.⁵³
3. **Health Impacts:** The victims and migrants are subjected to health risk while on transit and even on arrival at destination points due to shortage of food and water which increase spread of contagious diseases like HIV/AIDS and other STDs especially for those trafficked for sex trade and others on forced labour but live in overcrowded camps and designated settlement homes.
4. **Gender Equity and Human Rights:** Women and girls are often the worst hit. Trafficked victims are stripped of their human rights and women are accorded secondary status.

⁵⁰Freida M. Comarck, "Research reports" helpcheck at freida@gsdrc.org (accessed 3/8/2019)

⁵¹Ibid

⁵²US Department Report 2011

⁵³US Department Report 2004

5. **Security and Rule of Law:** Human trafficking and irregular migration is seen as the highest international criminal enterprise and those that are involved work as a syndicate, they are close to government, and by this, the issue becomes complex and threatens security of many countries. Due to corruption, traffickers influence policy makers and even the judiciary.⁵⁴
6. **Impact on Destination Countries:** The effect and impacts on countries of destination is much. The cost of funding anti-trafficking measures and providing assistance to victims by destination countries is much. In United States, the Victims of Trafficking and Violence Act of 2000 imposes obligation on the country to combat

trafficking in persons and assist the victims, support them and prosecute traffickers. The United States government earmarks a big chunk of their annual budget in support of victims. This is a serious issue and indeed not a child's play. Not many countries can do this successfully without groaning.

Trafficking and irregular migration are transnational crimes on the rise due to globalization and economic development. The push factors and pull factors including "money phenomenon", "quest for better employment opportunities", "greed" and pressure on the innocent by "harsh and discriminatory policies of some states which lead to violence, confusion, crisis, insecurity and at the end leave the people with no option but to move officially or unofficially or surrender or submit to be moved or transported by the traffickers. Trafficking and irregular migration therefore are products of a decayed and decaying society where poverty and pestilence is prevalent and the government looks another side and leave the citizen to groan. This indeed in our view is the situation of Nigeria now with every respect to our leaders and all Nigerians.

(D) Findings, Conclusions and Recommendations:

D (i) Findings:

From the available data and updated sources on human trafficking and irregular migration (domestic and across the border), the following findings exist as it relates to the subject in Nigeria.

- (a) Trafficking in persons and irregular migration are transnational crimes which also occur within the shores of Nigeria. The two phenomenons are as old as the name Nigeria and they are not new. The two crimes are interconnected or interrelated and trafficking remain the third largest crime in Nigeria after economic fraud and the drug trade.⁵⁵
- (b) Decades of Military Regimes in Nigeria led to the institutionalized violation of human rights and severe political, social and economic crises. These negatively impacted and still impacts the development of community participation especially of women and children despite international institutions designed to advance their causes. Oil boom created opportunities for migration both inside and outside the country, this created avenues for exploitation, for international trafficking in women and children for forced labour and for prostitution.⁵⁶ The successive governments in Nigeria has not improved the situation during the military era and our democracy is still operated as a "semi military government" in civilian uniform. More oppressive

policies and decisions are still being taken which on one hand creates confusion, tension leading to crisis and generalized violence and on the other hand perpetuates poverty failing to addressing unemployment and other socio-economic issues affecting the citizens.

⁵⁴ Ibid

⁵⁵ Osimen Goddy Uwa, Okor, Daudu and Adeniran, "The Socio-Economic Effects of Trafficking in Nigeria". Journal of Social Sciences and Humanities Research, Vol. 3, Issue 8, August 2018

⁵⁶ Ibid

- (c) Poverty still exists in the land, Nigeria has failed to address it, a hungry man is an angry man and he can do anything under that condition. The failure to address this has earned the country the reputation of being one of the leading African countries in human trafficking with cross border and internal trafficking. Bad, corrupt and inept leadership still triumph in the country making Nigeria country of origin, transit and destination for human trafficking. Destinations for trafficked Nigerians include neighboring West African countries (Italy, Belgium, Spain, the Netherlands, Germany and United Kingdom), North Africa (Libya, Algeria and Morocco) and the Middle East countries (Saudi Arabia, and recently South America particularly Venezuela has become a veritable destination point for trafficked Nigerians.⁵⁷ Poverty is the principal driving force behind the trade propelling vulnerable persons into the hands of traffickers.
- (d) Primarily, women, girls and boys are trafficked in Nigeria for purposes of sexual exploitation, forced labour and for organ harvesting. There are many laws in Nigeria prohibiting trafficking in persons and irregular migration including NAPTIP Act (which appears to be the principal Act that has harmonized other laws), the Criminal Code, the Penal Code, the Immigration Act, the Edo State Law against Trafficking in Persons and Prohibition of Prostitution, regional and international instruments, there are challenges to effective use of the law to fight crime. First, whereas organ harvesting has become the most lucrative purpose of trafficking in Nigeria, "removal of body organs" of trafficked persons for sale, neither the NAPTIP Act of 2003 nor the Codes made provisions for that, reliance on Palermo Convention which provided for it or other international instruments may not be of assistance in the sense that they are not domesticated yet and where domestic does not impose mandatory obligation on the state. The Edo State Law prohibited both transportation of persons and prostitution too, thus both the offender and the victim are penalized. Nonetheless relief came over act of removal of human bodies and their sell under section 20 of 2015 Act

- (e) There is still no policy framework or direction initiated by the Federal Government of Nigeria on the best innovative strategy to fight trafficking and irregular migration in the country. This no doubt remains a challenge both to the issue of prosecution of offenders and assistance to the victims.

D (ii) Conclusions:

In summary, we submit that trafficking in persons by history has taken many forms and indeed in the context of globalization has acquired shocking dimensions.⁵⁸ The issue of trafficking is a complicated process and involves many stakeholders at institutional or commercial level. It is a demand driven global business secretly carried out in a syndicated network pattern with a huge market for cheap labour and commercial sex confronting most often insufficient policy arrangements or personnel to prevent it.

In Nigeria, the push factors for trafficking in persons and irregular migration are similar and related and indeed involves poverty, unemployment, generalized violence resulting from bad, corrupt and inept leadership as well as deepening human rights violations. Under the situation we find ourselves, the government has failed to fight the menace, the pretence of government that trafficking and irregular migration is being addressed and the damning revelations of increasing number of trafficked persons and irregular migrants to destination countries and the rising number of Nigerians dying in such countries in the business of organ harvesting has dwarfed such claims of governments and exposed the claims as a farce and indeed deceptive.

⁵⁷ Ibid

⁵⁸ Ibid

Many Nigerians are trafficked on daily basis and many leave the country unofficially or through unapproved procedure because there is decay in the land. There is no gain repeating the fact that the reason why trafficking still thrive in Nigeria is that our leaders have become unrepentantly corrupt, wicked and selfish. None of them is interested in the common good of the masses but only their interest and that of their families and they have created dynasties to perpetuate their satanic tendencies of controlling the common heritage of all Nigerians and handing same over to their children and descendants. Collectively, Nigerians must come together to fight such leadership as doing so will dislodge poverty which is the evil that propels trafficking and irregular migration.

D (iii) Recommendations:

A combination of estimates and reports as well as facts from National Agency Against Trafficking in Persons (NAPTIP), UN report and United States Aid Agency Report shows that the profits and benefits from trafficking in persons is the third largest after business of dealing in arms and drugs.⁵⁹ As a result of the above, there is bound to be a rush into the business and no doubt, by the situation in our country, this will be a booming business. The

push factors of the crime has been identified, the governments claimed efforts at fighting the crime has also been assessed and seen to be unreliable as there is no policy framework nor policy direction. The impact of the crime on the victims and on the state is most devastating, the law exists but has little or no utilitarian value. Recourse to international legal protection is also faced with hurdles and hence we are in a dilemma. This necessitates for the following recommendations:

- (a) Government of Nigeria must be above board and fight the menaces of poverty, unemployment and corruption. Corruption stems from bad policies and weak institutions. The effect of poverty among the citizens and widening inequality and lack of jobs is that People would want to live and you cannot live without food and other necessities of life. When there is no prospect coming from government, there is the tendency that people will be willing to be trafficked or may be trafficked or even by themselves find a way to leave the country officially or unofficially. Policies that will ensure employment, engagement and employment are necessary to stem the tide of trafficking and illegal migration.
- (b) Bad and inept leadership leads to introduction of harsh policies which creates security problems, lead to agitations and tensions, the response by government leads to generalized violence and human rights violations. As a result, people are forced to leave and others trafficked. Government must have a reorientation and pursue programmes and policies that are people driven and promote common good. Policy makers must revisit existing legal frameworks on human rights abuses such as trafficking to provide assistance to victims and illegal migrants. Licensing of private employment recruitment outfits must be closely regulated and monitored to check abuse.
- (c) Strengthening and promoting all institutions that will promote the core value of rule of law like independence of the judiciary, Judicial Autonomy, obedience to the law and putting up a strong war and campaign against judicial corruption have to be encouraged.
- (d) There is need to streamline or harmonize the provisions of NAPTIP Act 2003 and other laws on trafficking in persons and irregular migration so that there will be a position on what step or action should be taken by court faced with deciding the fate of an accused person charged for trafficking who is both looking at provisions of the codes in application (Penal and Criminal) state laws and the Act. More often than not, it becomes difficult which provisions that should be followed especially where the laws are all federal laws.

⁵⁹ Ibid

For instance, is it the NAPTIP Act that should be applied with its stiffer penalties or the codes with less penalties and its orientation to impose fine to the extent deemed as minimum by the court.

- (e) The government of Nigeria must attach much seriousness to the fight against human trafficking and declare the crime as a matter of urgent national importance which should be tackled with all sense of seriousness and dexterity. The citizenry must work with the government and all stakeholders and collaborating agencies together with international bodies and NGOs and civil society groups hand in hand and create a synergy in the fight against trafficking.
- (f) The National Agency against Trafficking must work with National Orientation Agency, the Media and indeed NGOs and Human Rights Bodies towards creating awareness, public education and consciousness through seminars, workshops and summits over the dangers of trafficking in persons on the economy and reputation of Nigeria, on the citizens (our women and children). The Nigerian Bar Association must lead other professional organizations dedicated towards promoting human rights of citizens and access to justice and ensure realization of rights of victims of these offences.
- (g) Prosecuting trafficking in Nigeria is one faced with challenges. The challenges can be institutional (weak institutions and corruption), it can also be the challenge of the law itself. There are laws on trafficking in Nigeria, the NAPTIP has prosecuted many cases, the question is how many convictions have been made owing to intricacies in the law as it concerns prosecutions. The Evidence Act provides the rule of Evidence, in most acts involving trafficking like sexual related offences like defilement and having carnal knowledge of minor, infants and idiots. Section 179 of the Act requires “corroboration” of victims’ evidence to secure conviction. More often, such evidence of corroboration does not come because the crime somehow is secretive. The Act must be amended in our firm view removing issue of corroboration and placing reliance on how strong the evidence of the victim is against the denial by the offender. This we believe is progressive.
- h. Federal Government must sustain the implementation of NAPTIP ACT of 2015 the NAPTIP ACT of 2003 is bereaved of many pitfalls but some of the problems has been addressed under the NAPTIP ACT of 2015 that replaced the 2003 act. The 2015 Act under section 20 (2) (a) (b) prohibits acts of removal of human organs and / or buying and selling of them respectively while the Act also removed and made irrelevant the issue of victims “consent” of being trafficked for sexual exploitation. The Act also recognized all acts of transportation or harboring of children by

whatever means. Even if such means is outside the means listed under the Act as trafficking once it is for purpose of sexual exploitation.

Finally, though it is evident that the 2015 act is most progressive for fighting trafficking in Nigeria, in our view the use of the phrase “knowing or having reason to know” that the victim will be induced into prostitution under section 14 (a) provide a probable or possible escape route for the offender who may raise issue of knowledge as a defence. In totality, the witting down of issue of discretion in sentencing upon conviction by the Administration of Criminal Justice Act, 2015 is a welcome development and hence we urge the federal government to sustain the implementation of the NAPTIP ACT of 2015 and strengthen the work and operation of NAPTIP to realize the objectives of the Act which prosecute offender and assist the victims through a well coordinated collaborative partnership and synergy.

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