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EXAMINING THE ADEQUACY OF PROVISION OF HUMAN TRAFFICKING LAWS IN NIGERIA

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Abstract

The study examines the adequacy of the provision of Human Trafficking laws in Nigeria. The delay in investigating and prosecuting trafficking in person cases has become worrisome and undermines the fight towards eradicating the menace. The main objective of this paper is to examine the adequacy of the provision of Human Trafficking Laws protecting citizens in Nigeria. Other specific objectives includes; to assess the significance of prosecution of Human Trafficking cases in Nigeria; to determine the significance of the rehabilitation of Human Trafficking victims in Nigeria; to assess the adequacy of Criminal and Penal Codes provision in the fight against Human Trafficking in Nigeria. The study adopts Secondary sources of data collection and employed qualitative method in comparing the data collected. Human trafficking is a major global challenge confronting the world today. This ugly development pervades nearly all African countries including Nigeria. The study was anchored on Rational Choice Theory which explains that criminals, like traffickers, choose to commit crimes. They aim to obtain the maximum rewards possible, while avoiding any legal consequences. In recognition of the fact that human trafficking is not only a violation of human rights but a crime that is against all laws, efforts have been severally made by bodies at both domestic and international levels to contend with this insolent and dehumanizing practice. Finding for this study reveals that the Human Trafficking laws are not adequate enough to contain the scourge. To this end, the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003/2005, the Child Rights Act, 2003/2005, were enacted in addition to extant laws of different states dealing with Trafficking in Persons. This work, therefore, is a modest attempt at assessing the efficacy of these various legal regimes in curbing the menace in Nigeria. To this end, the researcher have carefully x-rayed the strength and weaknesses of the various legal regimes and made suggestions on how to better tackle the scourge of human trafficking. The work ends with the recommendations on the need to overhaul the legal regimes and its enforcement mechanisms.

Keywords: Institutional Framework, Combating Human Trafficking, Nigeria.

1. Introduction

Human Trafficking is the recruitment, transfer and transportation of persons to unknown destination by way of fraud, deceit, force, against their wish. Human trafficking has affected nearly all countries around the world either as countries of origin, transit or destination. Consequently, within the last one and half decades it has become highly imperative to combat the scourge. Prior to the passage of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003, amended in December 2005 Nigeria was in a state of denial and did not recognize

trafficking in humans as a problem. Non-Governmental Organizations and human rights activist forced the Nigerian government to pay attention to the problem of trafficking of women to Europe that was fast gaining notoriety across the globe. Even at that, the Nigerian government only started responding to the problem in 2003. Consequently, there was no specific law prohibiting the trafficking of persons (properly so-called) irrespective of gender. At best, what could be regarded as anti-trafficking legislation was enacted as a part of the existing Criminal or Penal Codes rather than a separate comprehensive law. Before August 2003 when the Child Rights Act, was

enacted, Nigeria had no comprehensive special law protecting the rights of children. She had to rely on Federal Constitutions, the Criminal and Penal Codes as well as African and United Nations Conventions protecting the rights of children in matters of the health, education, religion and general welfare of children. This paper seeks to evaluate the legal framework for the prohibition and prevention of traffic in persons. Currently, the legal framework on human trafficking in Nigeria stands primarily on two main pieces of legislations that came into effect in 2003; Trafficking in Person (Prohibition) Law Enforcement and Administration Act, 2003 as amended and the Child Rights Act 2003. The Constitution of the Federal Republic of Nigeria (1999) as amended, Labor Act (1974), Criminal Code (applicable in the Southern States of Nigeria), Penal Code (applicable in the Northern States of Nigeria), Immigration Act have also been identified for discussion. International conventions against human trafficking which have been ratified by Nigeria also constitute part of our assessment in this work.

For the purpose of this study, the following research questions have been formulated:

- i. How adequate are the provision of constitutional laws on Human Trafficking in protecting citizens from force labor in Nigeria?
- ii. To what extent has the Human Trafficking in Person cases prosecuted in Nigeria?
- iii. To what extent has victims of Human Trafficking rehabilitated in Nigeria?

In line with the above research questions, the main objective of this work is to determine the adequacy of provision of Human Trafficking Laws in Nigeria. Other specific objectives include;

- i. To assess the adequacy of Constitutional Laws on Human Trafficking in protecting citizens in Nigeria.
- ii. To determine the significance of Prosecution of Human Trafficking cases in Nigeria.
- iii. To assess the extent to which Human Trafficking victims are rehabilitated in Nigeria.

2. Literature Review

2.1 Conceptual Issues

Conceptual Issues

Scholars, researchers, governmental organizations, and international agencies from a variety of or different perspectives have examined the phenomenon of human trafficking variedly: the criminological perspective, legal perspective, sociological perspective, human right perspective and Gender perspective.

The first internationally agreed upon definition of trafficking is embodied in the UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime (2010), as follows: The recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs. The consent of a victim of trafficking in persons to the intended exploitation...shall be irrelevant where any of the [fore-mentioned] means...have been used. The recruitment, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons,' even if it does not involve ...[any of the above listed means]. "Child" shall mean any person less than eighteen years of age (Art. 3).

The phenomenon has been defined as "the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, or fraud, of deception, of the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation". (Organization for Security and Co-operation in Europe

(OSCE), (2009;United Nations (Protocol) 2010; Appa, 2011, Aghatise 2012, Luda 2013,Troung 2016; Nagle 2017; Scarpa, 2008; Wheaton, Schauer, and Galli, 2010). From the definition above, human trafficking entail: crime against humanity, marked by the intent to deceive and exploit; Expands the range of actions considered part of the trafficking process including recruitment, transportation, transfer, harboring, and receipt of persons in end-institutions; addresses a wide range of means used, from blatant force to subtle inducements that capitalize on vulnerability, to achieve 'consent'; makes consent to the intended exploitation irrelevant, where any of the means outlined in the definition are used; Acknowledges men are also trafficked, though it emphasizes trafficking in women and children; recognizes a range of purposes of trafficking, in addition to sexual exploitation; contains rights-based and protective social, economic, political and legal measures to prevent trafficking, protect, assist, return and reintegrate trafficked persons, and to penalize trafficking and related conduct; calls for international cooperation to prevent and combat trafficking (Chandran, 2011).

To underscore the Nigerian government resolve to stem the tide of trafficking in persons, the Federal Government took a bold step in July 2003 when it passed the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (Trafficking Act). This law established the National Agency for the Prohibition of Traffic in Person (NAPTIP). The organization took over the functions of the special taskforce in human trafficking and was vested with the responsibilities to enforce laws against traffic in persons, and to take charge and coordinate the rehabilitation and counseling of trafficked persons; and other related matters. This law was amended in December 2005 by the Trafficking in Persons (Prohibition) Law Enforcement and Administration (Amendment) Act. The Act as amended has a total of 65 sections and two schedules. The Act is a Federal Legislation and applies to all the 36 States including the Federal Capital Territory Abuja.

Powers, Functions and Administration To enable the agency carry out its functions effectively, the Act also establishes different departments comprising Investigation, legal, public enlightenment, counseling

and Rehabilitation, and other relevant units like technical committee and task forces, each with its specific duties. The agency is also empowered to initiate, develop or improve specific training programs for the relevant law enforcement agents and other personnel of the agency. Such programs include methods of crime detection, counter measures against techniques employed by traffickers and the routes they use, monitoring of the movement of traffickers and victims and dissemination of information on laws related to trafficking.

All the offences under the Act are all retained in the amendment Act. In addition to these offences the Act as amended now includes some new offences while some old ones are broadened to include acts which were not previously offences such as child labor, keeping a brothel etc. Section 64 of the Act defines the word "trafficking" as; all acts involved in the recruitment, transportation within or across Nigerian Borders, purchases, 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 or not in voluntary servitude (domestic, sexual or reproductive) in forced or bonded labor or in slavery like conditions. This definition of trafficking is not broad enough to cover all the means and purposes envisaged by Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000 (Trafficking Protocol) to which Nigeria is a party. While the Act recognizes the fact that a person may be recruited, bought, sold, receive, labored and transported, it failed to take into account that these actions may be achieved not only by means of deception, coercion or debt bondage, but also by means of fraud and more importantly by means of the abuse of one's power over someone else or of a victim's position of vulnerability commonly found among poverty stricken families, and those caught in the cross-fire of armed conflict. It does not also take into account the giving or receiving of payments of benefits to achieve the consent of a person having control over another person, for the purpose of exploration which is the most common method of recruitment of children for exploitation in Nigeria. The

definition in the Act does not also recognize the fact that a person may be trafficked for the purpose of the removal of organs or ritual murders that are commonplace in Nigeria even though an offence for this purpose is created under Section 20 of the Act. The definition does not impose the kind of liability the trafficking Protocol does, where a child is deemed to have been trafficked even when none of the means specified under Article 3(a) is employed in his recruitment, transportation, transfer, harboring or receipt. The definition is also silent on the element of the victims consent to intended exploitation, which the trafficking protocol considers irrelevant when any of the means identified in Article 3(a) have been used in the process. The obvious lapses in the Nigerian definition of trafficking may not be unconnected with the general societal attitude towards prostitution and the cultural practices of child placement by less privileged families with perceived more economically buoyant families elsewhere. One is tempted to think that these are silent recognition of Nigeria's traditional values on fostering and socialization and outright criminalization and condemnation of prostitution. The Act created 23 offences of human trafficking and other related offences.

In summary, Sections 11- 28 define the specific offences of attempts or the actual procurement, export and import of minors (with or without their consent) by means of threats, fraud or drugging, for purposes of consensual or forced defilement, seduction, prostitution, pornography or other activities of a sexual nature within or outside Nigeria; or for trafficking of drugs or participations in armed conflict. Other offences include operating or keeping prostituted minors in brothels, organizing foreign travels for prostitution; the detention of any person with intent to defile; kidnapping of minors for guardianship; kidnapping or abduction of persons for culpable homicide; slave-dealing, buying and selling of persons for forced labor or any other purpose. It is notable that some of these offences are not strictly trafficking offences. Keeping a brothel, organizing tours, obstructing the agency in its duties, kidnapping and abduction etc., are not on their own trafficking offences, except when they are done in furtherance of trafficking in persons. The Act creates varying degrees of punishment ranging from monetary fines;

imprisonment with or without option of fines; forfeiture of passports of convicted offenders; seizure and/or forfeiture of assets and freezing of bank accounts of suspect or convicted offenders; deportation or repatriation of alien's offenders; and liability for compensation to victims in civil proceedings. Jail terms range from 12 months (for attempts), 2 years to life imprisonment depending on the degree of seriousness of the offence while fines range from N50,000 to N200,000 for individual traffickers or managerial staff of corporate bodies. Even when the offences are committed abroad by Nigerians or aliens with Nigerian permanent residence permits, the offenders are liable to punishment and/or forfeiture of assets in Nigeria upon their repatriation or return for "bring the image of Nigeria to disrepute" whether they had served on earlier punishment for the original offence abroad. Alien offenders resident in Nigeria are punishable under the Act by imprisonment and subsequent deportation.

The above provisions notwithstanding, the Act is far from being the "standard" anti-trafficking law that it is meant to be. The rationale for restricting punishable trafficking offences mainly to those made with respect to minors – that is, victims below 18 years of age is not clear. The irresistible question is, are the law makers by any means suggesting that persons above 18 cannot be trafficked or that such persons should take full responsibility for falling victims to trafficking? The result of this age restriction in the relevant sections is that persons above 18 years, particularly women are exposed to vices and manipulations of traffickers and have no protection and rights of restriction if similar offences defined in the sections limiting victims to 18 years and below are perpetuated against them. It is interesting to note also that few sections of the Act define the offences therein contained in general terms without reference to age. Even then, the offences created are reminiscent of the old criminal code provisions relating to prostitution, abduction, kidnapping, enticement and slave dealing; the only difference being that there contain stiffer punishments. Under related matters, offences are created for commercial carriers, tour operators, travel agents and airlines (either as corporate bodies or individually as management staffs as such bodies) who knowingly aid, abet, facilitate or promote in any way

the traffic of and exploitation of persons with attendant penalties of imprisonment and fines. More remarkable is the provision of Section 31 of the Act, is to the effect that; every airline company shall promote through every possible means, public awareness of the guiding principles of this Act in in-flight magazine, tickets jackets internet units and video on long flight trafficking in persons.

Section 31 is a reiteration of the corporate responsibility expected of anybody corporate doing business in Nigeria. The provisions for compensation for victims of trafficking in the amended Act is comprehensive. Section 54(3)1 provides for the establishment of victims of Trafficking Trust Fund where all proceeds of the sale of assets and properties of traffickers are paid into. Section 36 of the Act provides that all properties of a person convicted of an offence under this Act and shown to be derived or acquired from such illegal act which are already the subject of an interim order shall be forfeited to the Victims of Trafficking Trust Fund. Section 41 of the Act gives the National Agency for the Prohibition of Traffic in Persons (NAPTIP) the power, where a person is arrested for an offence under the Act, to immediately trace and attach all the assets and properties of the person acquired as a result of such illegal act and shall thereafter cause to be obtained an interim attachment order by the court. The interesting aspect about this provision is that the victim of trafficking does not have to rely on the solvency of the trafficker for compensation. The Victims of Trafficking Trust Fund ensures that no matter the state of financial affairs of the trafficker, the victim shall not be deprived of the benefit of an order for Compensation.

2.2 Empirical Review

Ismaila and Iyore (2020) examined the Human Trafficking in Nigeria: Causes, Efforts by Nigeria Government and the Way Forward. The study explained that, Modern slavery, often known as trafficking in persons (TIP), is quite common in Nigeria. In the 1980s, the danger of TIP was brought to light in Nigeria, and by the late 1990s, it had become a focal point of national and international discussion. Nigeria is now considered a source, transit, and destination country in the Transnational Organized

Crime and Drug Trafficking Information System because of the high incidence of this crime there. Thus, this article identifies poor economic and human development and low life esteem as the results of TIP, and identifies poverty, weak leadership, corruption, and cultural customs as some of the sources of this scourge.

In contrast, it appeared that government measures to prevent this crime, such as establishing institutions to investigate, prosecute criminals, and rehabilitate victims, were fruitless. The study concluded that greater efforts should be made to educate the public and that partnerships across government agencies are crucial in the fight against TIP.

Attoh (2019) examined Women, Trafficking, and Forced Prostitution in Africa. The study explains the illicit transportation of women within Africa and their attendant forced prostitution. The argument is that a multiplicity of factors such as the collapse of primary commodities, globalization, and the emergence of numerous non-state actors such as Al-Qaeda in the Maghreb, the Tuaregs, Al-Shabaab, and the Boko Haram has impelled numerous conflicts and a refugee crisis in Sub-Saharan Africa causing a migratory wave of young persons who often move from West Africa to East, North, and Southern Africa in search of better living and with the intention of crossing into Europe if offered the opportunity. It argues that the existing asymmetry in the international political order, feminization of poverty, and bad governance create a duality even within Africa that impels poverty stricken and marginalized women to seek employment and better well-being. But unfortunately these women often fall prey to criminal syndicates who force them into commercial sex work for profit maximization. Many of these women did not set out *ab initio* to prostitute but rather went in search of pink jobs which turned out to be a mirage and were subsequently forced into prostitution. The axis of evil crosscuts the eastern, southern, and northern regions of the continent, but often the victims originate from West and East Africa. The chapter recommends bridging the imbalance in trade, mainstreaming gender, and making migration policies open to all to cut off criminal syndicates.

2.3 Theoretical Framework

Economic theory of Human Trafficking

An integrated framework was adopted to explain human trafficking of young women and girls for involuntary prostitution. Concepts from, rational choice, victim vulnerability, economic theory and constitutive theory were selected to describe the sequences of events followed during the commitment of human trafficking for involuntary prostitution. It is pointed out by Lanier and Henry, (2004:343) that when a crime is an outcome of several different causes, an integrated framework or a conceptual absorption approach is required to analyze the sequential chain of events. In this regard, Lanier and Henry (2004) explain that the purpose of integrating theories is to present an interaction of probabilities from different theoretical perspectives that could explain the factors contributing to a person committing a crime. Eventually a recommendation of an epistemological standpoint as a strategy to respond to human trafficking of women for involuntary prostitution was made.

3. Methodology

The study adopts survey research design to elicit information. Both primary and secondary sources of data collection were used. Qualitative method was adopted where it reveals in-depth information about Human Trafficking laws in Nigeria. Analysis was done using regression.

4. Analysis of Results

Prosecution

The rate of arrest and prosecution of traffickers remain low in relation to the size of the problem in Nigeria as elsewhere. The power to prosecute is a new feature of the amended Act. Section 5(c) 2 empowers the NAPTIP to prosecute persons who are involved or have committed any offence under the Act. This gives the agency independence and flexibility in initiating legal action against alleged offenders without dependence on any other authority. This is without prejudice to the power of the Attorney-General of the Federation to take over or discontinue such criminal proceedings.

To facilitate the smooth conduct of prosecution, Section 84 establishes, among other departments, the legal department. Section 95 gives the legal department the task of prosecuting offenders under the Act. In addition, the legal department shall support the investigation department with legal advice and assistance; act as secretariat to the Board; conduct proceedings where necessary in order to recover assets or properties forfeited under the Act and perform such other legal duties as the agency may refer to it from time to time. To make for a more smooth and fast means of prosecuting traffickers or perpetrators, it is the view of the researcher that cases should not only be left to be prosecuted by the agency alone, but the law should also encourage a situation where the victims are aware of the fact that they can initiate civil actions against traffickers. Such civil proceedings are more likely to be successful than criminal ones because, the burden of proof is by a preponderance of the evidence rather than beyond reasonable doubt. Civil actions also have the effect of empowering victims more, because they can be initiated by victims giving them a degree of control, whereas the decision to bring criminal prosecutions lies mainly with the state through the agency for the prohibition of traffic in persons. The court that has the exclusive jurisdiction to handle civil matters that relate to human trafficking is the National Industrial Court.

The Act confers jurisdiction to try and punish all offences created under the Act on the High Court.⁷ The High Court has power to impose the penalties provided for in this Act notwithstanding anything to the contrary in any other enactment. Section 64 of the Act defines the High Court as the Federal High Court, High Court of the Federal Capital Territory and the High Court of a State. An offender can be arraigned before any of these high courts. This has been taken care of by the Criminal Procedure Act.

Law enforcement agents are empowered to search, seize, arrest suspects and perform other relevant acts necessary for the enforcement of the provisions of the Act. The Anti-trafficking Law does not provide for the prosecution of those who use the services of trafficked persons when it amounts to exploitation of the trafficked victim and when there is full knowledge of the victim's status. In practice the establishment as a criminal offence of the use of services of a trafficked

victim means, inter alia that those employing and exploiting trafficked domestic servants, the clients of trafficked prostitutes, and the owner of the plantations. Where trafficked children are obliged to work and the recipients of organs and tissues ‘donated’ by a trafficked person should be punished. This will discourage the demand for services provided by trafficked victims.

Protection of Victims

Victims of trafficking are often seen as a threat to internal security because of their connection with criminal activities and organizations, and therefore such measures as detention and deportation are frequently taken. The Trafficking in Persons Protocol does not only recognize these challenges and the criminalization of conducts constituting trafficking in person’s offences, but also provides that the domestic law of each of the state party to the Trafficking in Persons Protocol should strive to provide for the protection, privacy and identity of victims of trafficking in persons including inter alia by making legal proceedings relating to such trafficking confidential. It further provides in the Trafficking in Persons Protocol’s statement of purpose, the need to protect and assist the victims of such trafficking with full respect for their human rights. The Nigerian anti-trafficking law, trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003 (as amended) provides for humane treatment, protection and non-discriminatory practices towards victims of trafficking by providing elaborately for the protection of the identity and persons of victims⁶ of the crime. The law also provides immunity to a victim of the crime for offences committed in consequence of being a victim. The question that readily comes to mind is, that of identification of victims of human trafficking in most cases. This is not included in the TIPLEA – if trafficking victims are not properly identified, there is no possibility on the one hand, of protecting them and, on the other, of gaining information on the traffickers to break the cycle of exploitation. The agency is by law empowered to ensure among others that the investigation, detection, gathering and interpretation of evidence in respect of trafficking in persons cases should be conducted in such a manner as to minimize intrusion into the personal history of the trafficked persons, that the identity of the trafficked person is

protected from intimidations, threats, and reprisals from traffickers and their associates including reprisals from persons in position of authority (steps should be taken to rehabilitate the trafficked person and where the circumstances so justify, trafficked persons shall not be detained, imprisoned or prosecuted for offences related to being a victim of trafficking, including possession of valid travel, false travel or other documents). The agency in pursuance of this established safe houses has put in place operational guidelines for the management of all cases with particular reference to the handling of victims of the crime. These safe houses cannot provide the needed assistance to victim of human trafficking in a country like Nigeria which has thirty-six States and the Federal Capital Territory, Abuja. The Act does not only give protection to the victim of trafficking, the protection is also extended to members of the victim’s family. This is an effort to protect the victim of trafficking so that he is relieved of threats, reprisals, intimidation and other forms of undue influence that may prevent him from giving evidence at the trial of the trafficker. In Gina’s case, an interview was conducted by Anti-Slavery International, with “Sunday” in Abuja on the 4th of March 2002.

The relevance of this interview is to show the effort of government towards protecting witnesses. This case was before the Nigerian anti-trafficking Act was enacted. The Act provides protection from intimidation, threats of reprisals and reprisals from traffickers, their associates and persons in position of authority. It states that safety and integrity of trafficked persons and witnesses must not be subordinated in the interest of prosecution before, during or after any legal proceedings. The Act sees a trafficked person as a victim of a greedy, deceitful and fraudulent trafficker who has either exploited the vulnerable condition of the victim or abused his duty of care and protection towards him. The Act has provided ways of protecting the victims of this crime, but this work contends that it can do more by making it the right of the victims to participate in the investigation and judicial processes against traffickers. The participation of victims is beneficial from a criminal justice perspective, in that testimony and evidence provided by them should expedite investigation, prosecution and punishment.

Participation by victims from a human rights perspective, allows them to have their voices heard, which has a therapeutic value. It also assists them in handling their anger and trauma in a constructive way, which can lead to the restoration of their sense of control, dignity and self-worth.

The Constitution of the Federal Republic of Nigeria 1999

The 1999 Constitution also provides constitutional protection against slavery and forced labor or compulsory labor, sexual exploitation and deprivation of personal liberty of Nigerians. Trafficking in persons violates the provisions of Sections 17, 34 and 42 of the Constitution of the Federal Republic of Nigeria 1999. Section 172 provides that: (1) the state social order is founded on ideals of freedom, equity and justice. (2) In furtherance of the social order – the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced. (3) The state shall direct its policy towards ensuring that – (f) Children, young persons and the aged are protected against any exploitation whatsoever and against moral and material neglect. Section 34:3 every individual is entitled to respect for the dignity of his person and accordingly: (a) No person shall be subjected to torture or to inhumane treatment or to degrading treatments. (b) No person shall be held in slavery; and (c) No person shall be required to perform forced or compulsory labor. Section 42(2): No citizen of Nigeria shall be subjected to any disability or deprivation merely because of the circumstances of his birth. A trafficked person can challenge the infringement of the above mentioned rights under Section 46 of the 1999 Constitution, which states as follows: Any person who alleges that his or her fundamental human rights has been or is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.

Also, the Third Alteration of the Constitution provide, that ... the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters – connected with or related to child labor, child abuse, human trafficking or any matter connected therewith or related thereto.⁵

Criminal Laws

Nigeria has two codes of criminal law; the Criminal Code covering the Southern States of Nigeria,¹ and the Penal Code applying to the North.²

Criminal Code

Under the Criminal code, there are various offences against liberty or slave dealing which could be used to prosecute trafficking in persons and prostitution. Section 223 of the Criminal Code provides that: Any person who –

1. Procures a girl or woman who is under the age of eighteen years and is not a common prostitute or of known immoral character to have unlawful carnal connection with any other person or persons, either in Nigeria or elsewhere, or
2. Procures a woman or girl to become a common prostitute, either in Nigeria, or elsewhere; or
3. Procures a woman or girl to leave Nigeria with intent that she may become an inmate of a brothel elsewhere; or
4. Procures a woman or girl to leave her usual place of abode in Nigeria, with intent that she may, for the purpose of prostitution, become an inmate of a brothel, either in Nigeria or elsewhere; is guilty of a misdemeanor, and is liable to imprisonment for two years.

Section 224 of the Criminal Code also provides that: Any person who –

- (1) by threats or intimidation of any kind procures a woman or girl to have unlawful carnal connection with a man, either in Nigeria or elsewhere, or
- (2) by any false pretense procures or girl who is not a common prostitute or of known immoral character to have unlawful carnal connection with a man, either in Nigeria or elsewhere; or
- (3) administers to a woman or girl, or causes a woman or girl to take, any drug or other thing with intent to stupefy or overpower her in order to enable any man, whether a particular man or not, to have unlawful carnal knowledge of her is guilty of misdemeanor and is liable to imprisonment for two years.

A person cannot be convicted of any of the offences defined in this section upon the uncorroborated testimony of one witness. The offender may be arrested without warrant. Section 3653 deals with unlawful confinement or detention against a person's will while Section 3664 covers compelling someone to do something by threats, surveillance or other intimidation and is punishable by one years

imprisonment. If this involves assault, the penalty increases to five years. These provision cover some of the main methods of intimidation used by traffickers in Nigeria, particularly with regards to the situation of debt-bondage in which most women who are trafficked from Nigeria for purposes of prostitution find themselves. Section 3695 regards slave dealing as purchasing, selling, dealing with or transferring persons so they may be treated or held slaves or placed in servitude as a pledge or security for debt or entering into a contract or agreement in furtherance of these purposes. This is punishable by imprisonment for up to 14 years.

Penal Code

The Penal Code which is applicable to the Northern States of Nigeria contains similar provisions of the Criminal Code on trafficking. The relevant provisions of the Penal Code are Section 275 which provides: Whoever by any means whatsoever induces a girl under the age of eighteen years to go from any place or to do an act with intent that the girl maybe or knowing, that it is likely that she will be forced or seduced to illicit intercourse with another person shall be punished with imprisonment which may extend to ten years shall be liable to a fine.

Section 2781 provides that any person who buys, sells, hires, lets to hire or otherwise obtains possession or disposes of any person below 18 years with intent that the person will be or is likely to be employed or used for prostitution or other unlawful or immoral purposes is guilty of an offence punishable with imprisonment up to ten years and liable to pay a fine in addition. Section 2792 creates the offence of slave dealing and provides that any person who exports, imports, removes, buys, sells, disposes of, traffics or deals in any person as a slave or accepts, receives or detains such person is liable to imprisonment for a maximum of 14 years and a fine. Section 2803 punishes forced labor with a fine and one year imprisonment; enticement or leading away of any woman or girl (with or without her consent); for immoral purpose with imprisonment of up to 7 years and a fine. In our view the punishment does not seem to be adequate. It is not enough to deter perpetrators. The Penal Code did not define the term traffic. The term used in the penal code is “slave” which makes the provision extremely

restrictive and not useful to prosecute traffickers. The lack of adequate provisions regarding trafficking in Nigeria’s criminal laws led the Federal Government to enact a new law on trafficking entitled the Trafficking in Person (Prohibition) Law Enforcement Act 2003.

Immigration Act 1963

The Department of Immigration is an administrative organ of a state. Its primary responsibility is the issuance of travel documents to desiring citizens for the purpose of traveling outside their country of origin. The department is also charged with the duty of regulating the entry of aliens with its territory. Officials of the department have the duty to check and ascertain that the entering immigrants are in possession of the necessary travel document while also ascertaining their purpose of entry and the duration of stay etc. Section (1) (g – h) of the Act4 frowns at brothel keepers and householder, which permit the defilement of young girls on his premises, persons, encouraging the seduction or prostitution of girls under thirteen years of age, person trading in prostitution or a procurer. If such a person is not a Nigerian, he is liable to be declared a prohibited immigrant and deported. The age provided by the Act does not provide protection for most victims of human trafficking. There is a bill in the National Assembly for the Immigration Act of 1963 to be repealed and replaced with a new Act which will be in tune with the current global trends that affect migration and issues of human trafficking.

Child Rights Act, 2003

This Act sets out the rights and responsibilities of a child in Nigeria and provides for a system of child justice administration, and the care and supervision of a child among other things. The Child Rights Act was passed in 2003 and has been adopted by 23 states including the Federal Capital Territory (FCT). The Child Rights Act was adopted with the intention of domesticating the Convention on the Rights of the Child. The legislation made a very wide provision for certain rights of children. They border on children justice and the family. It falls under the concurrent legislative list. The national assembly cannot make laws that are binding on states on those issues. Therefore, the Child Rights Act enacted by the

National Assembly is only applicable to the Federal Capital Territory and with respect to capital offences. It is the responsibility of the State Houses of Assembly in compliance with Section 12 of the Constitution to adopt and make their own state laws. It is unfortunate that the process has been very slow. With respect to trafficking, forced labor and other harmful practices to children, the law creates the following offences and relevant punishment for each. Sections 21-23 of the Act prohibit child marriage and prescribe the penalties. Section 21 of the Act specifically provides that no person under the age of 18 years is capable of contracting a valid marriage and accordingly a marriage so contracted is null and void and of no effect whatsoever. While Section 23 provides that, the penalty for such an offence on conviction, is a fine of N500,000 or imprisonment for a term of five years or to both such fine and imprisonment. One issue that had attracted both national and international attention at a time was that of Senator Ahmed Yerima's marriage to a 14 year old Egyptian girl. NAPTIP was said to have briefly arrested, detained and quizzed him. Senator Yerima in the BBC interview claimed rather ignorantly for a law maker, that as Zamfara State from where he hails had not enacted the Child Rights Act, it did not apply to him. This assertion is not correct because the marriage to this child was contracted in Abuja, where the Child Rights Act does apply and the provision of Section 21 of the Act has been breached, and nothing seems to have been done! The NAPTIP Act also applies throughout the Federation. The attention of the Director of Investigation of the National Agency for the Prohibition of Traffic in Person has been drawn to this matter once investigations are concluded and a prima facie case is established then the agency's legal department will take off from there. Our inquiry at NAPTIP Office, Abuja revealed that the case was transferred to child welfare because, the Trafficking in Persons (Prohibition) Law Enforcement and Administrative Act 2003 does not provide for the offence of early marriage. Section 25 of the Act prohibits the exposure of children to the use, production and trafficking of narcotic drugs and prescribed punishment for breach of that provision to be life imprisonment for offenders. The Child Rights Act under Section 26 prohibits the use of children in criminal activities of whatever nature. The penalty for breach is 14 years

imprisonment. Section 27 of the Act prohibits the abduction, removal and transfer of children from the lawful custody of their parents or guardians and penalizes offenders with between 10 and 20 years imprisonment depending on the gravity of the offence involved. Section 28 prescribes punishment of 5 years imprisonment or fine of between N50, 000.00 and N250, 000.00 for the exploitation of children in forced labor of any kind of hazardous or exploitative activities. Corporate bodies shall be liable on conviction to a fine of N250, 000.00. Section 30 of the Act prohibits the buying, selling, hiring or otherwise dealing in children for the purposed of hawking or begging for alms or prostitution or other similar practices and any breach is punishable with 10 years' imprisonment. All forms of sexual abuse and exploitation of children below the age of 18 years are equally prohibited by sections 31 – 32 of the Act. Sanctions for breach are life imprisonment and 14 years imprisonment respectively. Section 34 of the Act prohibits the recruitment of children into the armed forces but strangely did not make any provision for sanction for breach. Section 29 of the Child Rights Act specifically provides that the provision relating to "young persons" in sections 59–62 of the Labor Act, 2004 shall apply to children. The relevant sections of the Labor Act provide:

- i. No child or young person shall be employed in any capacity outside his family's light agricultural, domestic, or horticultural work as approved by the Ministry of Labor; or be required to lift, carry or move anything so heavy as to be likely to injure his physical development; or be employed or work in any industrial undertaking except work done in technical schools under the relevant supervisory agency; or be employed in circumstances in which it is not reasonably possible for him to return home each day; or employed to work underground, or on machines or on public holidays; or be employed in any employment which is injurious to his health, dangerous or immoral; or be required to work for a longer period than four consecutive hours and for a total of more than eight hours a day

- ii. No young person shall be employed to work at night except those above 16 years and only under special circumstances.
- iii. No young person below 15 years shall be employed in a vessel except such a vessel is a school or training vessel or that in which only his family is employed subject to a medical certificate of witness.
- iv. Every employer of young persons in an industrial setting is required to keep a register of all such persons with particulars of their employment.

As rich as the above provisions of the Child Rights Act is, it is turning out again to be one of those exercises in futility that is the bane of Nigerian laws – that is, a poor enforcement machinery and the absence of the enabling environment for the effective operation of the law. Notable, is the provision which prohibits the employment of a child as domestic help outside his own home or family environment. It is the contention of this work, that this provision of the law is the most breached aspect of labor law or Child Rights Act as nearly every, if not all privileged homes have house helps. A more pragmatic approach, therefore, would be that homes where these children are employed as domestic help must be treated as the child's family environment, subject to good care being taken of them. There are a lot of instances where these laws are flaunted, for example child beggars and child hawkers are common sights in Nigerian cities. Police stations across the country are flooded with cases of children who run away from their "employers" and are found wandering in towns and cities yet, no single conviction has been made under the Child Rights Act. If this law must achieve what it has been set out to achieve then the government must go beyond the provisions of the law and look critically at enforcement strategies.

Rational Choice Theory was adopted for this study. The theory explains that traffickers choose to commit crimes based on their self-interest to make choices that will benefit them. By way of application, human traffickers embark on the act for selfish reason to among others make money.

4.1 Discussion of Major Findings

1. The provision of Constitutional Laws to address Human Trafficking in Nigeria are not adequate to protect citizens, hence the alarming rate of recruiting and transporting of young girls and boys outside the country for prostitution and force labor.
2. There is insignificant effort in prosecuting Human Trafficking cases in Nigeria.
3. There is insignificant effort in rehabilitating Human Trafficking victims in Nigeria.

5. Conclusion and Recommendations

Human trafficking, as earlier revealed thrives both within and across the borders of Nigeria and have severe implications, particularly for women and children as well as the future of the nation. As a country of origin, transit and destination, there is usually the out flow and inflow of trafficked victims, most especially through Nigeria's porous borders, which facilitates easy access for traffickers to operate without being caught by the law enforcement agents. The Federal Government has responded to promote the eradication of human trafficking from Nigerian society. Nigeria became the first and only country in the West African Sub-region to sign, ratify and domesticate the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons especially, Women and Children as well as the Convention on the Rights of the Child. The Federal Government in July 2003 also passed the Child Rights Act as a legal basis for ensuring that children are protected from any form of exploitation. There are provisions in the Constitution of the Federal Republic of Nigeria 1999 which provide for the protection of the liberty of individuals and respect for the dignity of persons. The Trafficking in Persons (Prohibition) Enforcement and Administrative Act, 2003 was also enacted by Federal Government. This law established the National Agency for the Prohibition of Trafficking in Person (NAPTIP). The organization is vested with the responsibilities of enforcing the laws against traffic in person, investigation and prosecution of persons suspected to be engaged in traffic in persons and to take charge and coordinate the rehabilitation and counseling of trafficked persons; and other related matters. There are provisions contained in the

Criminal Laws, these are the Penal and Criminal Codes. The laws prohibit prostitution or other sex-related activity. The pre 2003 legal framework i.e. the Criminal Laws was basically sanction-orientated; no attention whatsoever was paid to prevention and protection measures. Usually, such procured or exploited persons were treated as criminals themselves and subject to deportation. The state of Anti-Trafficking Laws and Policy in Nigeria is far from being satisfactory. The Trafficking Act is not broad based enough to accommodate the provision of International Human Rights Convention. The definition of trafficking under the Nigeria Anti-Trafficking Act 2003 has excluded a very important phrase 'for the purpose of exploitation'. The Act does not include offences of organ trafficking and human smuggling etc. Nigeria has ratified, acceded and is signatory to a number of international conventions which are related to human trafficking. However, Nigeria's policy on international treaties is an inhibiting factor because treaties validly entered into by Nigeria can only be part of Nigeria's domestic law by the process of specific adoption that is,

domestication by local enabling laws. Rather than specifically adopting the most critical international anti-trafficking laws to make it part of her domestic law, Nigeria has opted to create home-grown alternatives that would not offend some well-entrenched cultural, religious and social practices the international community obviously considers as abuse of human rights. Consequently, these issues would be the foundation on which to propose an effective legal framework and enforcement mechanisms in the fight against human trafficking in Nigeria.

- i. Government should put in place more constitutional measures in order to guarantee the safety of citizens against Human Trafficking in Nigeria.
- ii. There should be significant efforts in the prosecution of Human Trafficking cases in Nigeria.
- iii. There should be significant efforts in the rehabilitation of Human Trafficking victims to reduce depression and stigmatization among victims in Nigeria

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