

Promoting Efforts in the Eradication of Child Trafficking in Nigeria: The Need for a More Robust Legislation

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Abstract: *The prevalence of child trafficking and its widespread impunity, whether committed in Nigeria or outside the country, has been firmly condemned by the United Nations and its eradication has been consistently recognised in both regional and international laws. The main aim of the article is to examine how effectively the legal framework on eradication of child trafficking in Nigeria has addressed several incidences of trafficking. Driven primarily by efforts to combat child trafficking, overcome the multiple ensuing challenges, and promote a child-friendly environment, there is an urgent need to examine the existing legislation on child trafficking to ascertain the inadequacies in Nigerian trafficking laws. Further, the problematic scenario is attributed to poor regulatory frameworks and it has become imperative to re-examine the legislation in order to curb the emerging challenges in Nigeria. This paper investigates what impedes the eradication of child trafficking in Nigeria and what measures could overcome such problems. This paper adopts an analytical and qualitative approach and builds its argument on existing literature and a synthesis of the ideas in this body of knowledge. It argues that continued neglect of the inadequacies existing in Nigeria's legislation on child trafficking portends a clog in the eradication of child trafficking in the country. Nevertheless, this article provides some recommendations to guide policy makers on how child trafficking can be properly eradicated in Nigeria.*

Keywords: *Child trafficking, Eradication, Robust, Legislation, United Nations*

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I. Introduction

Despite several statutes addressing the issue, child trafficking has been a source of concern to the writer.¹ This paper, among other things, will examine the institutional and regulatory framework on child trafficking in Nigeria. However, it observes that the regulatory framework recognizes two types of trafficking in Nigeria or mode of operations in trafficking of human persons. Furthermore, it is interesting to note that some of the legislation currently in place were introduced into the country's legal system quite late, after the year 2000, when the United Nations Trafficking Protocol was open for signature.² With regard to the above development, this paper, however, notes that the

¹ Section 34, *Constitution of the Federal Republic of Nigeria* (1999).

² *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000.

United Nations Trafficking Protocol accelerated the number of countries introducing a specific offence on human trafficking into their criminal codes. Inasmuch as child trafficking in Nigeria is a major violation of human rights, it must be emphasised that the reason behind child trafficking in persons in Nigeria is attributed to poverty and poor economic development of the country.

Despite the existence of several legislation like the Trafficking in Persons (Prohibition) Law Enforcement Act of 2003 and the Child Rights Act of 2003, trafficking offences have remained unabated. Accordingly, this paper aims at examining some of the principal laws such as the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act of 2003, the Child Rights Act of 2003, as well as complimentary regulations on trafficking offences in Nigeria.³ This paper also aims to better understand child trafficking in Nigeria as it relates to institutional failures resulting from poor implementation mechanisms of existing laws.⁴ Surprising as it may be today, international trafficking of Nigerian Girls and Women has also flourished despite constitutional provisions prohibiting slavery and forced labour.⁵ This is also despite Sections 223-225 of the Criminal Code which are applicable in Southern Nigeria and provide sanctions for the offence: ‘Whoever trades in prostitution facilitates the transportation of human beings within or outside Nigeria for commercial sexual exploitation, and makes profit from related activities is punishable’.

Notwithstanding, the significance of trafficking under the Nigerian Law, this paper notes that the Penal Code that is operative in the Northern part of Nigeria forbids and punishes the buying and selling of minors for immoral purposes and the buying or disposing of slaves and unlawful compulsory labour.⁶ Furthermore, it is important to stress that children are trafficked abroad for several reasons which the findings are gathered by reference to relevant sources including legislation, case law, reports as well as journal articles.

Child trafficking is a complex problem which cannot be tackled in the twinkling of an eye. Despite existing legislation and regulations on child

³ United Nations Educational, Scientific and Cultural Organization, ‘Human trafficking in Nigeria 2004: causes and recommendations’, A Policy Papers in the Poverty Series No. 14.2(E), 2006, 15 <https://unesdoc.unesco.org/ark:/48223/pf0000147844> on 24 October 2022.

⁴ Effah J, *Modernized slavery: Child trade in Nigeria*, Constitutional Rights Project, Lagos, 1996

⁵ *Constitution of the Federal Republic of Nigeria* (1999); Sections 223-225, *Criminal Code* (1916).

⁶ Sections 278-280, *Penal Code* (1990).

trafficking in Nigeria, child trafficking has created a grave risk on the future of the Nigerian child. This is evident in the growing rise of child trafficking that has remained unabated. It means that poor implementation mechanisms or inadequate legislation are invariably key factors for the unabated eradication of child trafficking in Nigeria. The purpose of this study is to therefore find out the extent to which existing regulations on trafficking in Nigeria have successfully addressed several cases of child trafficking. In response to the problem, this study seeks to determine how to eradicate child trafficking in Nigeria through robust legislation. This study is significant and useful to the parents, family members, human rights practitioners, family life educators, policy makers and the general public who care about the effectiveness of existing regulations on child trafficking and the possible steps to take when there is a reported case of child trafficking.

The research design of this study was doctrinal in nature and the study utilises a normative legal research methodology. It dwells on statutory provisions related to child trafficking offences in Nigeria alongside other regional or international regulations and policies. The collected legal sources are analysed and presented in a qualitative approach using prescriptive and argumentative techniques by explaining relevant sources including law, regulations, treaties, reports and legal issues experienced by children vis-à-vis continuous violations of their rights.

This paper is structured into four parts. Part one has provided a background and briefly analysed the regulatory regime of child trafficking in Nigeria. Part two clarifies the basic concepts underlying child trafficking and also considers the various perspectives on child trafficking in Nigeria. Part three examines existing regional and international legislation, regulations and policies on trafficking in persons in Nigeria which are complementary to the municipal laws. The legal duty to report trafficking to authorities will also be explored to know whose responsibility it is to report. This is followed by the conclusion and recommendations in the fourth part.

II. Overview of concepts

A. Definition of a child

According to the provisions of the Convention on the Rights of the Child,⁷ a child is defined as a person under the age of eighteen (18) years, unless national laws determine an earlier age of majority. The Convention enlarges the legal coverage of human rights by protecting children from all forms of exploitation in dealing with the question of the best interest of the child. Furthermore, Article 2 of the African Charter on the Welfare of the Child,⁸ defines a Child as every human being below the age of eighteen (18) years. In light of the above, it must be emphasised that in all actions concerning the child undertaken by any person or authority, the best interest of the child shall be the primary consideration.

In a similar vein, Article 15(1) of the African Charter on the Rights of the Child provides as follows:

Every child shall be protected from all forms of economic and from performing any work that is likely to be hazardous or to interfere with the child's physical, mental, spiritual, moral, or social development.

The thematic focus of the writer is to clarify and produce a better understanding of the concept 'trafficking in persons'. The scope of trafficking in persons to a large extent represents the recruitment, transportation, transfer, harbouring or receipt of person by means of the threat or use of force or other forms of coercion, of abduction, 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. Further, it should be noted that international agreements on what constitutes 'trafficking in persons' are very recent. In fact, it was not until the late 1990s that states began the task of separating trafficking from other practices with which it was commonly associated such as facilitated irregular migration. Thus, the first ever agreed-upon definition of trafficking was incorporated into the 2000 Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking

⁷ See Preamble, *Convention on the Rights of the Child*, 20 November 1989, UNTS Vol.1577.

⁸ Article 2, *African Charter on the Welfare of the Child*, 1 July 1990.

Protocol). The above definition has since been incorporated into many other legal and policy instruments as well as national laws. Even today, trafficking in persons has remained a serious crime and an abuse of an individual's fundamental rights and dignity. These also involve the exploitation of vulnerable persons traded by criminals as commodities for the sole purposes of economic gains. As noted, this crime often has a transnational character which comprises of victims of all genders and age, due to its nature, is often hard to investigate.

B. Definition of child trafficking

Scholars have made significant advances in understanding the concept of child trafficking but it must be emphasised that there is no definite definition of child trafficking. Notwithstanding this, one definition takes child trafficking to mean the recruitment, transfer, harbouring, or receipt of human being regardless of age for the purpose of exploitation. The paper noted that traffickers primarily target women because of the factors that affects their access to educational opportunities, gender discrimination, employment and poverty.⁹ Similarly, trafficking can also be defined as a serious violation of fundamental human rights and human dignity that involves ruthless practices such as the abuse and deception of vulnerable persons, as well as the use of violence, threats, debt bondage and coercion.¹⁰ Following intense debates in 2011, the European Union Directive on Preventing and Combating Trafficking in Persons, and Protecting its Victims replaced a former council decision and adopted a broader definition given by the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplemented the United Nations Convention against Transnational Organized Crime in 2000.¹¹

More importantly, Article 3 of the United Nations Protocol, better known as the Palermo Protocol, defines trafficking as:

The recruitment, transportation, transfer, harbouring 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 the giving or receiving of

⁹ Information Accessed online at www.stopvaw.org/trafficking-in-women on 5 May 2020.

¹⁰ Council of the European Union, *Council Framework Decision 2002/629 on combating Trafficking in Human Beings*, 19 July 2002.

¹¹ Council of the European Union, *Directive 2011/36/EU of the European Parliament on Preventing and Combating Trafficking in Person's Framework Decision*, 2011.

payments and benefits to achieve the consent of a person, having control over another person, for the purpose of exploitation.¹²

Generally speaking, the main change that the Palermo Protocol brought was that the crime of trafficking in persons would be recognized prior to the actual exploitation, and that a person could be considered a victim of trafficking in persons if subjected to at least one of the actions mentioned and by one of the means mentioned in the Protocol.¹³ The above legal definition of trafficking is in agreement with the operational definition found both in Nigeria and in countries of Europe. The operational definition in the Protocol provides that three key elements that must be present for a situation of trafficking in persons (adults) to exist are as follows: (i) action recruitment, (ii) means (threat) and (iii) purpose (exploitation). However, as a point of emphasis, this paper notes that international law provides a different definition for trafficking in children (i.e. persons under 18 years of age). The ‘means’ element is not required in this case. Thus, what is necessary here is (i) an action and (ii) that this action was for the specific purpose of exploitation. In other words, trafficking of a child will exist if the child was subjected to some act, such as recruitment or transport, the purpose of which is the exploitation of that child. Following the above legal definition, the key features of the new international legal understanding about trafficking are as follows:

- i. Trafficking affects women, men and children, and involves a range of exploitative practices.
- ii. Trafficking does not require the crossing of an international boarder.
- iii. Trafficking is not the same as migrant smuggling.
- iv. Trafficking does not always require movement.
- v. It is not possible to ‘consent’ to trafficking.

C. International trafficking in persons

For the purposes of the Nigerian National Agency for Prohibition of Traffic in Persons and other Related Matters Act,¹⁴ international trafficking in

¹² See the *United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially Women and Children*, 2000, A/55/383.

¹³ See Council of Europe, *Explanatory report of the Council of Europe Convention on Action against Trafficking in persons*, 2002.

¹⁴ See Section 11(a) and (b), *National Agency for Prohibition of Traffic in Persons and other Related Matters Act* (2004).

persons covers: First, any person who exports from Nigeria to any place outside Nigeria any person under the age of eighteen years with intent that such person, or knowing it to be likely that such person will be forced or seduced into prostitution in that place; and, second, any person importing into Nigeria from any place outside Nigeria, any person under the age of eighteen with intent that may be, or knowing it to be likely that such persons will be forced into prostitution anywhere in Nigeria commits an offence and is liable on conviction to imprisonment for life. In a similar fashion, international trafficking has significant regional and international dimensions. Thus, over 60 per cent of female trafficking victims are exported to Europe for commercial sex work. More so, the paper notes that an average of ten children pass through Nigerian's borders on a daily basis especially at Seme, Maiduguri, Sokoto and Calabar. Also children from South-South Edo State and Imo State are the majority of those trafficked to Mali, Gabon, Saudi Arabia and Italy.

D. Domestic trafficking in persons

Today, the most important and incidentally, exaggerated statement, is that domestic trafficking occurs with movement from state to state, originating from fostering and extended family systems, coupled with inability of the child to trace his family members. On the other hand, the paper notes that internal movement of children for trafficking usually occurs during festive periods and other cultural activities. In view of the clandestine nature of trafficking, accurate and reliable figures are very difficult to get. However, internal or domestic trafficking is not an issue exclusive to women and girls, men and boys are as well victims of this crime.

III. Perspectives of trafficking in persons in Nigeria

A. Types of trafficking

Legal scholars tend to propose two main types of trafficking in Nigeria with regard to immigration and investigative reports from the National Agency for the Prohibition of Trafficking in Persons (NAPTIP). Firstly, internal trafficking is mainly trafficking of women and young girls within the shores of Nigeria. In this case, such trafficking is done from one state to another which mostly involves movement from rural to urban areas, especially during festive periods. Internally trafficked female children, especially between the ages of 12-

18 years, are transported to urban areas for domestic help, prostitution and street trading, while their male counterparts of similar age are used as scavengers, car washers, bus conductors, drug peddlers and farmers.¹⁵

Thus, internal trafficking is not an exclusive issue to women and girls and, as stated above, men and boys can also be victims of this crime. It is appropriate to state that children can be trafficked for various reasons including sexual exploitation, domestic illegal adoption, fraud or criminal activities. Children trafficked either for the purposes of prostitution, domestic service or other forms exploitative labour is a common phenomenon in Nigeria. This only underlines the dramatic nature of trafficking within Nigeria and has made it difficult to arrive at accurate and reliable figures of trafficked persons within a given year due to its clandestine nature. On the other hand, this paper takes note that child trafficking globally is one of the fastest growing organised crimes with an estimated 1.2 million victims per year, 32% of the trafficked persons are Africans.¹⁶ Private transit camps exist in Akwa Ibom State, Cross River State, Imo State and Ondo State where children are transported to any part of Nigeria either for forced labour or prostitution.

Against this particular set of facts, reports from the National Agency for the Prohibition of Trafficking in Persons have shown that there is an increasing number of cases in the Northern part of Nigeria. The above situation has, of course, raised questions on the efficiency of existing instruments for trafficking of persons in Nigeria. Suffice to say that in spite of these instruments, vulnerable children and women are still exposed to these humanitarian crimes. To this extent, this paper suggests that the rather weak instruments offered by the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) should be reviewed and made more robust and dynamic. Secondly, it is important to take into account that cross border trafficking involves mainly women and young girls who are from Edo State, Akwa Ibom State, Cross-Rivers State, Imo State, Abia State trafficked to Mali, Gabon, Saudi Arabia, Libya and Italy for forced labours or prostitution. One should also recognize that in these circumstances, an estimated 60% of children trafficked to Italy are Nigerians.

¹⁵ UNICEF, 'Lagos Nigeria: Child trafficking in Nigerian Southern Border towns' *ANPPCAN Nigeria, Child Rights Monitor* 1(3), 51-63. See also UNICEF, *Country report on child trafficking in Nigeria*, 2002.

¹⁶ See WCARO Nigeria fact sheet on child trafficking, available at: <https://www.unicef.org> on 6 May, 2020.

Obviously, trafficked children and women do not always enjoy the protection provided by specific instructions or legal provisions in the country they found themselves. The question now is: Are they entitled to some legal protections provided under the United Nations Conventions and or from the Convention on the Rights of Child?¹⁷ Of course, this is not the case for the trafficked persons abroad who are vulnerable groups suffering from several forms of exploitation and serious abuses of human rights and dignity. However, considering that a number of particularly vulnerable groups, including girl-children are at greater risk of sexual exploitation, and that girl-children are disproportionately represented among the sexually exploited, it would be appropriate to extend the measures that State Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography. To this extent, the United Nations in its Optional Protocol to the convention thus provides that:¹⁸

Each state party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether these offences are committed domestically or transnational or on an individual or organized basis:

- (a) In the context of sale of children as defined in Article 2:
 - i. The offering, delivering or accepting, by whatever means, a child for the purpose of: sexual exploitation of the child, transfer of organs of the child for profit and engagement of the child in forced labour.
 - ii. Improperly inducing consent as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;
- (b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in Article 2:
- (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in Article 2.

However, the moot question is: To what extent have these vulnerable persons been protected by state parties under the Convention? Although the significant contribution by the Optional Protocol to stimulate state parties' cooperation has been well documented, it would still be far-fetched to ascertain that its non-binding regulatory nature has made it impotent. As this paper examines different perspectives of trafficking in Nigeria, it will be of immense

¹⁷ *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, UNTS Vol.1249, 13; *Convention on the Rights of the Child*, 20 November 1989, UNTS Vol.1577, 3.

¹⁸ Article 3(a) (b) (c), *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, 16 March 2001, A/RES/54/263.

importance to state that the attendant consequences of child trafficking demands proactive steps in the implementation of the various legal frameworks on child trafficking in the country.

As previously held in this paper, trafficking of persons in Nigeria is of two types: domestic and international trafficking. In the context of domestic trafficking, while human trafficking has been portrayed for decades as a phenomenon affecting foreigners, records have shown domestic trafficking in Nigeria is an important component of contemporary human trafficking. Many of the counter measures are not capable of addressing this form of trafficking in Nigeria. It has to be stressed that, because nationals are not expected to be victims of trafficking in persons, many criminal justice systems tend to identify their own citizens not as victims of trafficking, but as victims of other crimes, such as sexual exploitation, kidnapping or forced labour. Also, from the United Nations Office on Drug and Crime perspective, at a country level, within the central sub-region, Albania, Bulgaria, Lithuania, and Romania are ranked very high in the citation index as origin countries, while the Czech Republic, Estonia, Hungary, Latvia, Poland and Slovakia are ranked high, and Western Europe being reported largely as a destination sub-region.¹⁹ Despite the ongoing efforts to curb this menace on child trafficking in Nigeria, it must be stressed that the extent of child trafficking within the country is hard to assess due to the fact that human exploitation can be hidden behind other criminal offences, such as prostitution, irregular migration, property crime or even labour disputes.

Regarding international trafficking, given the pluralistic nature of societies across the continent with different perspectives on their legal systems, these practices involve transportation of victims of trafficking from one country to another. The movement of a victim of trafficking to another country for forced labour, sexual purpose, and child labour and or other criminal activities may be termed international trafficking.

B. Trafficking in women and young girls

Matters of child trafficking did not especially occupy delegations during the origin of the Protocol on this issue. However, as early as June 1999, the High Commissioner for Human Rights urged the Ad-Hoc committee to include

¹⁹ UNODC Citation index, 2006.

special provisions to prevent trafficking in children and to protect its victims.²⁰ Meanwhile, in February 2000, an informal group consisting of the office of the United Nations High Commissioner for Human Rights, the international organization for migration, the United Nations Children's Fund, and the United Nations High Commissioner for Refugees in a joint submission to the Ad-Hoc Committee recommend as follows:

That the protocol should include an explicit acknowledgement in the fact that children have special rights under international law, and in particular in the light of convention on the Rights of the child,²¹ that child's victim of trafficking have special needs that must be recognized and not by states parties, that states are obliged to take measures to prevent trafficking of children; and that in dealing with child's victims of trafficking, the best interests of the child are to be all times paramount.

As noted above, it seems further that a determination that trafficking has taken place will not require evidence of coercion or force if the individual involved is a child. However, a proposal to expand the list of end-purposes of trafficking to include what have recently been defined as the worst forms of child labour was not taken up. Thus, the Convention on the Rights of the Child further provides that:²²

Child victims of trafficking are entitled to same protections as nationals of the receiving state in all matters, including those relating to protection of their privacy and physical and moral integrity.²³

The above expressions bring us to child trafficking in Nigeria. The inceptions of democratic government in May 1999, after nearly 16 years of military rule, placed the issue of human rights, especially the rights of children and women, at the forefront of the national agenda. Nigeria ratified the United Nations Convention on the Rights of the Child in 1991 and,²⁴ in 1985, ratified the Convention on the Elimination of All Forms of Discrimination against Women.²⁵ Also, in 2001, Nigeria ratified the African Charter on the Rights and

²⁰ United Nations (UN), *Informal note by the High Commissioner for Human Rights*, Doc. A/AC.254/16/1999.

²¹ *Convention on the Rights of the Child*, 20 November 1989, UNTS Vol. 1577, 3.

²² Article 2, *Convention on the Rights of the Child*, 1989.

²³ See United Nations Doc. A/AC 254/27 1999.

²⁴ *Convention on the Rights of the Child*, 20 November 1989, UNTS Vol.1577.

²⁵ *Convention on the Elimination of all Forms of Discrimination against Women*, 18 December 1979, UNTS Vol. 1249, 13.

welfare of the Child,²⁶ the International Labour Convention 182,²⁷ the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.²⁸ The assessment of trafficking of children and women by middlemen to be exploited for personal gain has internal and international manifestations. However, in internal trafficking, children are procured to work as domestic and agricultural workers, while external trafficking provides girls and women for prostitution businesses in Europe and the Middle East Region. They are predominantly from Akwa Ibom, Edo, Ondo, Rivers, Ebonyi, Enugu, Lagos, Delta and Imo States as sources states. In practice, those involved in trafficking are rarely apprehended or successfully prosecuted. Consequently, it is appropriate to state that in 1998, the Constitutional Rights project raised the alarm on what they called child slavery in Nigeria.²⁹

Nigeria has severally been cited as a source, transit and destination country when it comes to human trafficking.³⁰ Nigeria ranks 32/167 of the countries with the highest number of slaves at about 1,386,000 and the Nigerian National Agency for the Prohibition of Trafficking in Persons reports that the average age of trafficked children in Nigeria has been upgraded to a tier 2 country on the United States Department of State's Trafficking in Persons Report 2019. The National Agency further contends that 75% of those who are trafficked within Nigeria are trafficked across states while 23% are trafficked within states. According to the United Nations Education, Scientific and Cultural Organization (UNESCO), trafficking in children and women is the third most common crime in Nigeria after drug trafficking and economic fraud.³¹ While the total number of human trafficking victims both inside and outside Nigeria is therefore largely unknown, it is undisputed that, principally due to Nigeria's population, it is routinely listed as one of the countries with the largest number of trafficking victims overseas (particularly in Europe).

²⁶ *African Charter on the Rights and Welfare of the Child*, 11 July 1990, CAB/LEG/24.9/49/1990.

²⁷ *International Labour Convention Concerning Forced or Compulsory Labour*, 28 June 1930.

²⁸ *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, UNTS Vol. 1465, 85.

²⁹ See International Programme on the Elimination of Child Labour International Labour Office, *Combating trafficking in children for labour exploitation in West and Central Africa*, 2000.

³⁰ See Global Slavery Index Report 2018.

³¹ United Nations Education, Scientific Cultural Organization, *Report on trafficking in persons in Nigeria*; United States Department of Labor, *2006 Findings on the worst forms of child labour in Nigeria*, 31 Aug. 2007.

In the same vein, according to the International Organization for Migration (IOM), approximately 11,000 women arrived via the Mediterranean Sea into Italy in 2016 who are mostly from Edo State Nigeria. 80% of these young women arriving from Nigeria whose number ranges from 1,454 in 2014 to 11,009 in 2016 were all forced into prostitution as sex trafficking victims. In this context it is worth saying that as a measure to curb this menace, the Edo State Governor Launched the Edo State Task Force against Human Trafficking to fight the scourge of human trafficking and unsafe migration in Edo State.³² These however led to the signing into law the Edo State Trafficking in Persons Prohibition Bill in 2018. Delta States has since followed suit, creating its own anti- Trafficking Task Force in April 2019.

Moving a little further down the text, it is noteworthy that since the introduction of the Edo State and other States Law and the Task Force's efforts, international donor efforts targeting the reduction of trafficking in Nigeria and the European Union's (EU) externalization policies of border control and accompanying legislative wall, Traffickers have been pushing their trade underground and/or recruiting naïve children and young girls from other states of Nigeria including Kogi, Ondo, Bayelsa and Cross River. It is not realistic to think that it could be possible to develop the infrastructure critical for achieving a society free from trafficking in Nigeria wherein exact number of children and young women who were trafficked inside and outside Nigeria cannot be ascertained.

C. Challenges and prospects in tackling child trafficking in Nigeria

There are some challenges in tackling trafficking in persons in Nigeria today. However, some of the notable challenges are as follows:

- i. Weak database on the trafficking of women and young girls as well as traffickers;
- ii. Weak enforcement mechanisms, primarily on investigations, prosecutions and of course conventions;
- iii. Inadequate international and regional bilateral agreements against trafficking and on inter-agency collaboration on trafficking;
- iv. Inadequate technical knowledge on trafficking-based evidence by investigators, prosecutors and judges;

³² See Edo State Task Force Against Human Trafficking Workshop May 5th – 6th, 2017

- v. Inadequate infrastructural facilities capable of reintegrating them victims into the Nigerian society upon their return. Victims of trafficking receive very limited assistance from authorities and local organizations, mainly in the form of vocational training.
- vi. Victims of trafficking are often discriminated against or marginalized by their families and society, especially when their return is perceived as a failure to become wealthy in Europe. The social stagnation is also high if the victim returns with health problems;
- vii. The issue of funding has remained a big challenge to the Nigerian National Agency for Prohibition of Trafficking in persons (NAPTIP) in Nigeria.
- viii. The recent draft legislation to regulate Non-governmental Organization (NGOs) by the Nigerian National Assembly in 2019 are an attempt to crack down and its activities concerning trafficking in and outside Nigeria. Human rights defenders are also frequently subjected to threatening phone security agents, intimidation and summons to police stations.

Conversely, this paper notes that some of the challenges found in Europe in combating trafficking in persons are as follows:

Understanding state responsibility to address trafficking, The obligation to identify protect and support victims, Issuance of temporary residence permits and reflection periods, Remedies for trafficking, States obligations for an effective criminal justice response, Few states in the European Union not criminalizing trafficking and related offences, Lack of effective investigation and prosecution of trafficking offences. It is this challenges enumerated and more others that prompted calls for states in the European Union and others to consider demand as part of the problem of trafficking and to acknowledge demand reduction as an important part of any comprehensive approach to prevention.

In the light of the foregoing challenges, the prospects of achieving a child trafficking crime-free society are of course dependent on eradication of poverty and starvation in Nigeria, which is viewed as being responsible for trafficking in persons in and outside Nigeria, Changing our cultural values and practices, providing adequate educational facilities for learning and training, providing adequate national legislation on trafficking in persons capable of curbing the

menace, providing adequate security and surveillance on our borders, intuitional capacity-building capable of sensitizing the public on the risks involved in trafficking.

IV. Overview of the laws, regulations and policies

A. General legal framework

Child trafficking policies and legislation in Nigeria are fast becoming the yardstick for determining the frequency of trafficking in persons both within and outside Nigeria. However, the development and endorsement of most of the international instruments on human trafficking and related issues as well as the Economic Community of West African States (ECOWAS) initiatives to combat human trafficking through legislative regulations have been viewed as part of the movement for eradicating trafficking in Nigeria. This paper noted that Nigeria has entered into various bilateral agreements and memoranda of understanding with individual countries within and outside Africa that have direct relationships with the problems of human trafficking, forced labour and migration in general.

In view of the fact that trafficking in persons involves the violation of fundamental human rights, it is important to consider the relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999 that guarantee these fundamental rights.³³ Chapter IV of the constitution contains fundamental rights whilst Chapter XI spells out the Fundamental Objectives and Directive Principles of State Policy.³⁴ According to Section 34 of the Constitution:³⁵

The right to the dignity of the human persons thus prohibits the subjection of any person to slavery or servitude. It further provides that: Every individual is entitled to respect for the dignity of the person and accordingly no person shall be subjected to torture or to inhuman or degrading treatment, no person shall be held in slavery or servitude, and no person shall be required to perform forced or compulsory labour.

Other relevant provisions in the Constitution are those that safeguard the rights to movement,³⁶ personal liberty,³⁷ and those that prohibit torture and

³³ *Constitution of the Federal Republic of Nigeria* (1999).

³⁴ Chapter IV, Chapter XI *Constitution of the Federal Republic of Nigeria* (1999).

³⁵ Section 34, *Constitution of the Federal Republic of Nigeria* (1999).

³⁶ Section 41, *Constitution of the Federal Republic of Nigeria* (1999).

³⁷ Section 35, *Constitution of the Federal Republic of Nigeria* (1999).

inhuman or degrading treatment, slavery, servitude and forced labour.³⁸ More so, it should be noted that apart from the Constitution of the Federal Republic of Nigeria 1999, there are other relevant bilateral and multilateral agreements to which Nigeria is a signatory and which contain provisions for the protection of the rights of trafficked persons. This includes the United Nations Slavery Convention (1927); the Convention for the Suppression of Trafficking in Persons and of the Exploitation of the Prostitution of Others (1949); the United Nations Convention Against Transnational Organized Crime and its Supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000); International Labour Organization Forced Labour Convention (1930) (No.29); ILO Abolition of Forced Labour Convention, (1957) (No.105); the Convention of Elimination all Forms of Discrimination against Women (1979);³⁹ the United Nations Convention on the Rights of the Child (1989) and of course, ⁴⁰ a host of others numerous to mention. However, the Nigerian constitution stipulates that ‘all treaties ratified by Nigerian have to be passed into law by the National Assembly before they can have force of law in Nigeria’.⁴¹ Thus, this is called ‘domestication of treaties’. It is therefore clear that these international that are to be domesticated in Nigeria.

On the other hand, it should be noted that apart from the above conventions and treaties, Nigeria has the Criminal Code Law,⁴² the Penal Code Law,⁴³ the Edo State Law against Human Trafficking,⁴⁴ the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act,⁴⁵ and other enabling laws very relevant to trafficking and related matters. There are, however, weaknesses found in some of the laws. For instance, the definition contained in the NAPTIIP Act omits trafficking for the removal of body organs as stated in the United Nations Protocol. This has limited the application of the

³⁸ Section 34 (1) (a) (b) and (c), *Constitution of the Federal Republic of Nigeria* (1999).

³⁹ Articles 2, 6, 9, 11, 12, 14, 15 and 16, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, UNTS Vol.1249.

⁴⁰ Articles 7, 16, 19, 32, 34, 35, 36, 37 and 39, *Convention on the Rights of the Child*, 20 November 1989, UNTS Vol.1577.

⁴¹ Section 12, *Constitution of the Federal Republic of Nigeria* (1999).

⁴² *Criminal Code* (1916).

⁴³ *Penal Code* (1990).

⁴⁴ *Edo State Law against Human Trafficking* (2000).

⁴⁵ *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act* (2003): *National Agency for the Prohibition of Trafficking in Persons* (2004).

law to people trafficked for this purpose which is really a worrisome situation. Furthermore, the NAPTIP Act is oriented more towards the prosecution of traffickers than to the prevention of trafficked persons. Another major flaw is that the offences created by the NAPTIP law focuses on trafficking for sexual purposes and involving minors under the age of 18 are much stiffer than other penalties.⁴⁶ It is also not wrong to point out that the existing Nigerian Criminal code and Penal code do not provide for the protection of victims and witnesses. Admittedly, given the flaws found in some of the existing laws on child trafficking, the discrepancies can be obviated only by a proper review of the piece of legislation exhaustively enumerating the law therein leaving no scope of ambiguity or vagueness.

B. Child trafficking as a violation of human rights

As mentioned numerous times in this paper, it should be emphasised that many of the practices associated with modern-day trafficking are clearly prohibited under international human rights law; for instance, human rights law forbids debt bondage. More so, human rights law prohibits forced labour, slavery, servitude, child sexual exploitation, forced marriage, enforced prostitution and the exploitation of prostitution. These are therefore trafficking-related practices that are prohibited under international human rights law. This paper then asks: Does international human rights law actually prohibit ‘trafficking in persons’ or just practices associated with trafficking such as those stated above? This is an important question because it can have an impact on the nature of a state’s obligation and responsibilities. Thus, only two of the human rights treaties, the Convention on the Elimination of all forms of Discrimination against Women and the Convention on the Rights of the Child contain substantive references to trafficking.⁴⁷ Also, both the Council of Europe’s Convention on Action against Trafficking in Human Beings and the European Union Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims identify trafficking as a violation of human rights.

⁴⁶ Section 19(1) (a-f), *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act* (2003).

⁴⁷ Article 6, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979, UNTS Vol.1249. Article 35, *Convention on the Rights of the Child*, 20 November 1989, UNTS Vol. 1577.

Also, Nigeria as a party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol) supplementing the United Nations Convention against Transnational Organized Crime, as well as a number of international human rights instruments. It is important to note that Section 34 of the Constitution of the Federal Republic of Nigeria 1999 also guarantees the right to the dignity of the human person thus prohibiting the subjection of any person to slavery and servitude. Other relevant provisions in the Constitution are those that safeguard the rights to movement provided under Section 41, personal liberty provided under Section 35, and those that prohibit torture and inhuman or degrading treatment, slavery, servitude and forced labour found in sections 34(1) and (a) and (c) respectively.⁴⁸ It is in the light of the above that this paper that trafficking is a human rights issues known to both Nigeria and Europe.

C. Legal duty to report child trafficking in persons in Nigeria

With regard to the legal duty to report trafficking in persons in Nigeria, it should be noted that the Presidential Committee on Human Trafficking, Child Labour and Slavery, the Federal Ministry of Women Affairs and Youth Development, the Nigerian Customs and Immigration office, the National Boundary Commission, the Nigerian Police Commission, media organisations in Nigeria and several Non-Governmental Organizations have the legal duty to report trafficking of any sorts in Nigeria. Aside from the above agencies and ministries empowered to report cases of trafficking in persons in Nigeria, there are also laws working in tandem with the agencies to ensure adequate protection of vulnerable persons who may be victims of trafficking. Of note herein, is the Criminal Code for the Southern Nigeria and the Penal Code of the Northern Nigeria.⁴⁹ However, Nigerian criminal laws have the key role to ensure that traffickers who are reported by any of the agencies of the Federal Government of Nigeria are severely dealt with according to the provisions of the law.

Following the above development, there was support from the United Nations International Children's Emergency Fund (UNICEF) to Nigeria

⁴⁸ Olateru-Olagbegi and Anne Ikpeme, *Review of legislation and policies in Nigeria on human trafficking and forced labour*, 2006.

⁴⁹ Olateru-Olagbegi and Anne Ikpeme, *Review of legislation and policies in Nigeria on human trafficking and forced labour*, 2006.

between the years 1997 to 2002 aimed at sensitizing the police force,⁵⁰ immigration and prison officers on monitoring and border surveillance, institutional capacity building and follow-up on the Libreville Platform of Action.⁵¹ The objectives of the Libreville Consultation were to review activities implementing the recommendations of the Cotonou workshop to improve knowledge around issues of the problem of the worst forms of child labour, especially child trafficking for exploitative labour, and to arrive at the adoption of a common platform for action in this area.

Basically, the information provided by the above agencies will be sufficient to enable the evaluating agencies to carry out an assessment and to determine the possible ways of arresting and prosecuting those involved in child trafficking and other forms of child abuse. In addition to the foregoing, despite the government-maintained anti-trafficking law and enforcement efforts, there are still continued reports of, and negligible efforts to address, government officials complicit in human trafficking offences. These offences are criminalized under the enabling law with a prescription of a minimum penalty of five years imprisonment and one million naira for both sex and labour trafficking.⁵² While it is making significant efforts to do so, the fact still remains that the Nigerian Government does not fully meet the minimum standards for the elimination of trafficking in persons. To achieve this, Member States (MS) are encouraged to adopt a comprehensive legal and policy framework and consistent actions. A very interesting point to note herein is that, despite several cases reported to the Government of Nigeria on cases bothering on trafficking through the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) on a daily basis,⁵³ the government has not shown reasonable commitment in the prosecution of traffickers.

In a similar note, it is important to understand that in 2015, as reported, the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) received 662 cases for investigation completed 116 investigations, prosecuted at least 43 suspects in 43 cases, and convicted 26 traffickers, compared to 654 cases for investigation, 24 prosecutions, and 23 convictions the previous reporting

⁵⁰ UNICEF, *Nigeria Fact Sheet on Child Trafficking in Nigeria*, 2004, 4.

⁵¹ See Libreville Platform of Action on Child Trafficking for Exploitative Labour Purposes in West and Central Africa 2002.

⁵² *Trafficking in Persons Law Enforcement and Administrative Act* (2015).

⁵³ *Trafficking in Persons (Prohibition) Law Enforcement and Administration Act*.

period. Thus, it seems worthwhile to note that NAPTIP did not report how many investigations remained pending or had been dismissed at the end of the reporting period. In addition, the United States Department of State's Trafficking in Persons Report 2018 has asserted that Nigeria is not meeting the minimum standards for the elimination of trafficking.⁵⁴ Despite increased funding, it is unclear whether the Nigeria Police or the National Agency for the Prohibition of Trafficking in Persons has standard procedures for dealing with victims of trafficking.

The 2018 United Kingdom National Referral Mechanism Statistics end-of-year summary published by the National Crime Agency states that in 2018 Nigeria was the 8th most common country of origin of potential victims of modern slavery in the United Kingdom.⁵⁵ Thus, the total number of Nigerian potential victims referred was 208, of those 159 were adults and 49 were children. Also the office of the High Commissioner United Nations Human (OHCHR) published an end-of-visit statement by the United Nations Special Rapporteur on Trafficking in persons on 10 September 2018 which stated that 'Nigeria remains a source transit and destination country for victims of trafficking'.⁵⁶ In a nutshell, it is noteworthy that international and regional agencies have really shown much commitment in this regard through signing of various multilateral and bilateral agreements with the Nigerian government on repatriation, reporting and rehabilitation of trafficked Nigerian children and women.

V. Recommendations and Conclusion

A. Recommendations

It is therefore the recommendations of this paper that:

- a. The Criminal Code, Penal Code and other relevant local laws be reviewed in order to harmonize and make them more effective instruments for addressing the issue of trafficking;
- b. Government should put in place a more comprehensive rehabilitation, reintegration programme for victims;

⁵⁴ The United States Department of States, *Trafficking in persons report*, 2018.

⁵⁵ See The National Referral Mechanism Statistics, *End of year summary*, 2018, 7

⁵⁶ Office of the United Nations High Commissioner for Human Rights, *End of visit statement*, Nigeria 10 September 2018

- c. There should be in place a more comprehensive and favourable human rights-based policy for illegal immigrants and unorganized labour;
- d. Government economic policies should be geared towards increasing funding for NAPITIP to enable the agency carry out its mandate more effectively and implement the National Plan of Action against Human trafficking in Nigeria;
- e. There should be a mechanism for monitoring the indices of successful prosecution of offenders under the anti-trafficking law, as well as the general implementation of the provisions of the law which can be done by NAPITIP;
- f. The Government of Nigeria should be more committed in partnering with Non-Governmental Organisations (NGOs), Community-Based Organizations (CBOs) and other agencies in the enlightenment campaign against children and women trafficking;
- g. Efforts should be made to regularize occupations that are vulnerable to exploitation such as the domestic labour, to formalize the contractual relations between employers and employees, and ensure respect for their labour rights. These rights include the freedom of association and the right to be free from non-discrimination as provided under the Universal Declaration of Human Rights;
- h. There should be institutional capacity-building of the police, immigration service and custom officers charged with providing security around and within the nation borders.
- i. Shelters and reception centres for the protection of victims of human trafficking and forced labour should be provided; and
- j. The prosecuting authorities should ensure that they file proper and relevant charges against the accused traffickers.

B. Conclusion

This paper has attempted a survey of the legal framework on child trafficking in Nigeria. It would like to emphasise that human rights lawyers and stakeholders at the international, regional and national levels have recognized the importance of a comprehensive legal framework as a first step towards combating child trafficking. In further recognition of this, Nigeria enacted the National Agency for the Prohibition of Trafficking in Persons Act. It is not

wrong to submit that some reforms are needed in order to improve the existing laws on child trafficking in Nigeria. There should be an enforceable and exemplary penalty for child trafficking offenders that will adequately cover the issue of trafficking in persons and forced labour.

This paper concludes that the National Agency for the Prohibition of Trafficking in Persons and other Related Matters (NAPTIP) established pursuant to the Act is doing a lot in the area of investigation, prosecution, rehabilitation of victims and it should be pointed out that more focused attention should now be on amending the trafficking laws to make them more effective in terms of adequate protection of the rights of these vulnerable persons. More so, this paper noted that the NAPTIP Act does not clearly incorporate all the international obligations contained in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children. It also falls short of the various international human rights obligations and standards for the treatment of trafficked persons.

What proceeds from the foregoing, therefore, is that, the Act is also deficient in its coverage of the offence of child trafficking in the sense that it is preoccupied with the situation of women and girls and sexual offences which ignores the wider problem of trafficking in men and women. Finally, this paper has identified the shortcomings under the criminal code, penal code and other related laws where the offences such as procurement, kidnapping, sexual exploitation and slave trading were not included in computing the statistics on trafficking cases and some of the penalties for breach are inadequate. These offences under criminal code are treated as mere misdemeanours.