

**ANALYSIS OF THE PROHIBITION OF CHILD TRAFFICKING UNDER
THE TRAFFICKING IN PERSONS (PROHIBITION) ENFORCEMENT
AND ADMINISTRATION ACT, 2015 IN NIGERIA**

BY

AISHA ALI TIJJANI

SPS/15/MLL/00072

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BAYERO UNIVERSITY KANO**

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DECLARATION

I hereby declare that this work is the product of my own research efforts undertaken under the supervision of Prof. Juwayriyya Badamasuiy and have not been presented and will not be presented elsewhere for the award of a degree or certificate. All sources have been duly acknowledged.

AISHA ALI TIJJANI

SPS/15/MLL/00072

SIGN

CERTIFICATION

This is to certify that the research work for this dissertation and the subsequent preparations of this dissertation by AISHA ALI TIJJANI with registration no.SPS/15/MLL/00072 were carried out under my supervision.

Prof. Juwairiyya Badamasuiy
Supervisor

Date

APPROVAL PAGE

This dissertation has been examined and approved for the award of the degree of LL.M.

SUPERVISOR:

PROF. JUWAIRIYYA BADAMASUIY

DATE

INTERNAL EXAMINER:

DR. AISHA HARUNA

DATE

EXTERNAL EXAMINER:

PROF. A.M. MADAKI (A.B.U)

DATE

LL.M COORDINATOR:

DR. AISHA HARUNA

DATE

DEAN, SCHOOL OF POSTGRADUATE STUDIES:

PROF. M. YAKASAI

DATE

DEDICATION

This research work is dedicated to my little daughter Amina Abubakar Ibrahim who form part of my LL.M history.

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3. African charter on the rights and welfare of children (1990), CAB/LEG/24.9/49 (1990)
4. United Nations Convention on the Rights of the Child (1989), (CRC) 1989, Resolution 44/25
5. United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), general assembly resolution 55/25 of 15 November, 2000
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2. Co-operation Agreement between the Governments of the Federal Republic of Nigeria and Republic of Benin, June, (2005).
3. Nigeria- Netherland trade and Anti- Human Trafficking Agreement (2019)

List of Abbreviations

ACJA- Administration of Criminal Justice Act

AIDs – Acquired immune Deficiency syndrome

CEDAW- Convention on the Elimination of All Forms of Discrimination Against Women

ECOWAS- Economic Community of West African State

FCT- Federal Capital territory

FHC- Federal High Court

IOM- International Organization of migration

NAPTIP- National agency for the protection of trafficking in person

NGO- Non- governmental organization

NIA- Nigerian Immigration Act

STDs sexually transmitted diseases

TIPS – Trafficking in Person

TTPPEA- Trafficking In Persons (Prohibition) Enforcement and Administration Act

TTPPLEA- Trafficking in Persons (Prohibition) Law Enforcement and Administration Act

UN- United Nations.

UNCRI- United Nations Interregional Crime and Justice Research Institute

UNICEF – United Nations International Children Emergency Fund

UNODC – United Nations Office on Drug and Crime

UNTOC- United Nations Conventions Against Transnational Organized Crime.

WOTCLEF- Women Trafficking and Child Labour Eradication Foundation.

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ABSTRACT

Child trafficking in Nigeria involves both criminal and social complexities. It takes different dimensions which are dealt with separately by distinct statutes that were enacted during the pre-colonial and post colonial era. The catastrophic effects of child trafficking (with serious social and economic consequence which violates fundamental human right to life, liberty, dignity, and freedom from discrimination) in Nigeria are not only restricted to the child, but also to his family as well as the society at large. The Nigerian government has taken a bold step to be among the countries in Africa which have not relented in her efforts to fight the menace by enacting the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 to specifically and directly deal with the issue. Despite the great efforts made by Nigerian government in curbing the menace, child trafficking continue to be on the rise. This may not be unconnected with the identifying inadequacies of the law which could be traced to the early laws on child trafficking like the Criminal Code which considered child trafficking a mere misdemeanor to a specific law on child trafficking like Trafficking In Persons (Prohibition) Enforcement and Administration Act, 2015. Using doctrinal method, this research has made an in-depth analysis of the 2015 Act with the sole aim of finding out the areas of some emerging phenomenon that it fails to cover. It is therefore the main recommendation of this research that the 2015 Trafficking in Persons (Prohibition) Law Enforcement and Administration Act should be amended to cover other forms of child trafficking like baby harvesting for it to be a better place in dealing with child trafficking in Nigeria and the NAPTIP agency should be giving financial autonomy to discharge its duties diligently.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Trafficking in children is a global phenomenon that takes place across all regions of the world. It is a crime that involves gross violations of human rights which threaten children's survival and development.¹ Trafficking in children results in denying children their fundamental rights including, the right to education, health and protection from exploitation and abuse.² The International Labour Organization recently estimates that 1.2 million children are victims of trafficking around the world³. Child trafficking is one of the three most profitable trades which come next to drugs and arms trafficking. However it is hard to ascertain the exact number of persons including children that are trafficked across the globe, Traffickers reap a significant profit from exploiting fellow human beings, including children. Trafficking in children is directly associated with child abuses.

¹ Benjamin, N.L And Richards L,R, (2012), 'Contextualizing Trafficking In Women And Children In Africa', In Benjamin, N.L And Richards L,R,(Eds), Trafficking In Slavery's Wake: Law And The Experience Of Women And Children In Africa, Ohio University Press,P.1

² Ibid,p.2

³ ILO, 'Trafficking in Children'. Available at <http://www.ilo.org/ipec/areas/Traffickingofchildren/lang--en/index.htm>, accessed 13 October 2016.

Adopting a unique approach to addressing the issue appears not to prove efficient regarding yielding the expected result. It is understood that every effort to combat human trafficking, in general and child trafficking, in particular, is aimed at the total eradication of the phenomena or at least having them under control so as to find the best approach to tackling them. The growing concern of Nigeria over and its commitment to the fight against trafficking in person in Nigeria are based on the same reasons which have inspired other national and international organizations and agencies to intensify efforts at combating the scourge.⁴

The Federal Government of Nigeria enacted the Trafficking In Persons (Prohibition) Law Enforcement And Administration Act 2003⁵ which harmonized all the scattered domestic laws discussed in chapter three of this research work, centralized them and created National Agency for Prohibition of Traffic In Persons and Other Related Matters (NAPTIP), which is fully committed to the prevention of all forms of human degradation and exploitation. This law was later amended in 2005 for some few reasons one of which is lack of prosecutorial power. Many challenges were faced which led to the repealing of the law in 2015. The Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2015 which is the subject of this research played a great role in overcoming a lot of the challenges faced by the previous enactments with few of its loopholes which

⁴ Sand, H., J. Nckechie et al (1988), Child Labour; A World History Companion ABC-CLIO Ltd

⁵ The Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003

this research has identify. Nigeria also adopted several international instruments such as the Universal Declaration of Human Rights (UDHR) 1948, International Convention on Civil and Political Rights (ICCPR) 1981; and host of others including the United Nations Child Rights Convention (UNCRC) 1989 that was adopted by the United Nations General Assembly in 1989, which affirms children's entitlement to development, protection, participation and non discrimination; it also acknowledges that the realization of these rights for children can only be accomplished through care and assistance of adults. Nigeria ratified the UN Convention on Rights of Children in 1991. This implies that henceforth the country had committed itself to a code of binding obligations towards her children.

1.2 Statement of problem

Human trafficking in general and child trafficking in particular is a heinous transnational crime undertaken by highly organized syndicates who employ deceit, coercion, and prey on vulnerable children particularly girls whom they traffic overseas for domestic servitude and sexual exploitation. Child trafficking is inherently demeaning, harmful and violates human right to life, liberty, dignity and freedom from discrimination. Trafficking of children has a multidimensional problem which requires multi-dimensional approaches before solving. It includes moral, criminal, migration, human rights, public order and labor issue.

The concept of right is inclusive of the child protection, children should be protected because they have Rights too. As a universal fact, all children are entitled to special rights on account of being young. A better understanding of child Biology can support serious attempts to enforce their protection when compared to the various abuses a child can suffer paying cognizance to his physical development which is always at risk. Child trafficking therefore is intended to drag the victims into different types of activities / abuses each of which has its adverse impact on the health of the child since the child is still in the development stage, he is not physically fit to undertake certain activities involved in child trafficking. This makes the issue of child abuse to be of serious concern and a matter of urgency there is still the need to protect child irrelevant of what is perceived by traditional settings, cultural and customary values and the constrain of development. The welfare approach to children also particular recognize their need for special protection because of their peculiar physical and mental development needs they must receive legal protection, security, freedom and dignity.

The Trafficking In Persons (Prohibition) Enforcement and Administration Act, 2015 which is the subject of this research played a great role in overcoming a lot of the challenges faced by the previous enactments with few of its loopholes which this research has identified.

However, the existing literature about child protection, child abuse, child labour and especially child trafficking appears sufficient in that various questions related to the phenomenon have been elaborated on by scholars, experts, and practitioners, there is a lingering gap in the literature regarding the specific case of child trafficking in Nigeria. The issue has yet to be addressed from a different angle that encompassed multiple topics. In other words the combat against child trafficking in Nigeria demands that other issues be addressed on the ground across Nigeria. For instance, poverty, political will, customary fosterage, illiteracy, corruption, and the wrong approach to the application of legal pluralism are issue to be efficiently addressed if there is a genuine will to eradicate child abuses and child trafficking in Nigeria.

1.3 Research Questions

The research questions are;

1. How does the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 protect children from child trafficking in Nigeria?
2. What are the issues and challenges in the implementation of the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015?
3. How can the 2015 Act be strengthened to prevent child trafficking in Nigeria?

1.4 Aim and Objectives

The aim of this research is to make Trafficking in Persons (Prohibition) enforcement and Administration Act, 2015 better in dealing with child trafficking.

The objectives of this research work are:

1. To examine how the Trafficking in Persons (Prohibition) Enforcement Administration Act, 2015 protect children from child trafficking in Nigeria.
2. To analyze the issues and challenges in the implementation of the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015.
3. To proffer recommendations on how to strengthened the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 in order to prevent child trafficking in Nigeria.

1.5 Scope of the Research

The phenomenon of trafficking is wide. However, the scope of this research is limited to the examination of the provisions of the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 by looking at its potentials in the prevention of the crime and in the protection of children from being trafficked in Nigeria.

1.6 Research Methodology

The research methodology used in this research is predominantly doctrinal (textual analysis) also known as library-based research. Secondary sources such as books, journal articles, and previous researches were reviewed. Relevant primary data were sourced from NAPTIP, the main institution charged with the responsibility of implementing the provisions of the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 (TIPPEA Act, 2015).

1.7 Significance of the Research

This research examines the opportunities and challenges attendant upon Nigeria in attempt to eradicate child trafficking. Whereas international, regional and sub-regional institutions consider the setting of legal frame work to be an efficient way of addressing the issues and as a response to this, states develop law and policy frameworks. However dealing with the problem of child trafficking in Nigeria demands a holistic approach, the research propose a comprehensive approach on how to tackle the issue of child trafficking.

The usefulness of the discoveries of this research cannot be over emphasized it is therefore a necessary tool to be appreciated by Justices, Researchers, Legal Practitioners, members of the National Agency for the Prohibition of Trafficking in Persons, Human Right activists, Immigration Officers, members of the

International Labour Organizations, Civil Society Organizations, Non-Governmental Organizations and any Person interested in the area.

1.8 Literature Review

A lot of literatures have been reviewed in order to have a wide and in depth reading in the area of trafficking in general so as to prove the existence of a lingering gap that will raise a problem, The essence of literature review is to provide a comprehensive knowledge in the area of trafficking in general and child trafficking in particular and to see whether or not child trafficking have been taking care of by the literatures reviewed. Below are the literatures that have been reviewed in the research.

Ehindero,⁶ in his paper Drug and Human Trafficking: A Symbiotic Convergence of Criminality tried brought out the problems of trafficking. He is of the opinion that Trafficking in persons (TIP) commonly referred to as human –trafficking re-emerged in recent times as a globalized and modernized form of slavery and thus recapitulating the history, mechanisms of recruitment and the socio-economic, cultural, health and educational consequences associated with the trans-atlantic slave trade. This research tries to examine from the legal

⁶ Ehindero, O. J., (2004) Drug And Human Trafficking: A Symbiotic Convergence Of Criminality, being a paper delivered to NYSC and other Youth Organization In at a workshop on drugs and human trafficking, at Barcelona hotel, Abuja, August, 2004.

perspective the provisions of the TIPPEA Act, 2015 and see the role it played in protecting the child from being trafficked.

Reef⁷, In An article titled ‘Who shall Save the Almajiri from Ignorance’ was able to identify ignorance as a major factor in trafficking under the Almajiri system of education which is also popularly referred to as the Tsangaya system. According to Reef, the system affords the child the opportunity of reciting the Holy Qur’an and acquiring the knowledge of the Qur’an in influencing religious obligations. Reef held that over 10 million of the Nigerian children are estimated to be in the Almajiri system, most of them in the northern part of the country. These children are at the risk of being trafficked while some have been reported to be trafficked for begging, stealing, domestic work and prostitution. This author dwell much in trying to bring out the fact that Almajiri system contributed a lot in exposing the children to trafficking while this research has gone along way in analyzing the effort of the TIPPEA Act, 2015 in combating the menace of trafficking .

The National Agency for the Protection of Trafficking in Persons⁸ in one of its publication titled National Policy on Protection and Assistance to Trafficked Persons in Nigeria emphasized on how the problem of Trafficking in persons (TIPS) became prominent in the past two decades due to severe economic plight of

⁷ Reef, M. S., (2005), Who Shall Save The Almajiri’s From Ignorance, Punch, September 26, th,p.17.

⁸ USAID; (2005), *Nigeria Anti Trafficking Assessment*, Abuja, APRIL 11-27

the African continent. In this regard, Trafficking for prostitution and forced labour has become big time money – spinning business by cartels and has posed a tremendous challenge to African countries. NAPTIP maintained that it is the third largest profit yielding business after arms dealing and drug trafficking. This research lays emphasis on the TIPPEA Act 2015, and how it prevented child trafficking

In a counter trafficking initiative, Akinyode,⁹ made an analysis with regards to the evolution of trafficking in persons, grass root social intervention, building social services and how trafficking increased, a growing number of people were also being rescued. Integrated approaches in the area of social protection and prevention started taking shape as rescued victims were processed through NAPTIP shelters prior to returning them safely and reintegrated to their states. This research tries to examine from the legal perspective the provisions of the TIPPEA Act, 2015 and see the role it played in protecting the child from being trafficked.

Briggs,¹⁰ in a co-authored book by Legal Research Initiative which discusses mainly reform and review in relation to Gender-Biased sexual offences laws in Nigeria, it make serious emphasis on trafficking in persons especially the

¹⁰ Akinyade A., (2011), Counter Trafficking Initiative: Analysis of the Evolution of Trafficking in Persons, Grass Root Social Intervention, Building Social Services and Networking Capacity and Promoting Direct Assistance. Project Hand Book. African Studies Center Leiden, The Neither lands Leiden, layout design: creative Xpressions limited, Accra Ghana,p8

¹⁰ Briggs ,O., (2003), Reform and Review of Gender-Biased Sexual Offences Laws in Nigeria, legal Research Initiative, by Nayee Press ltd, p.9

provisions of the Penal Code which prescribe punishment for the traffickers. This research tries to examine the provisions of the TIPPEA Act, 2015.

Olurunmehin,¹¹ noted in his paper titled Cultural and Economic Impetus for Trafficking in Nigeria that the consequences of implementation of the Structural Adjustment Policy (SAP) featuring inflation, depreciation of the naira, low installed capacity of the industries, retrenchment, unemployment, under-employment have been the main causes of the rapid growth and indeed the preponderance of the informal sector activities which include such activities as drug and human trafficking and prostitution. The author discusses economic causes of child trafficking this research analyses the provisions of the TIPPEA Act 2015.

In a journal published by WOTCLEF¹² on the United Nation Actions Against Trafficking in Persons, it went along way in explaining the causes and effect of Human Trafficking in general and Child Trafficking in particular are complex and Inter-woven. Traditional, demographic, economic, political, military and motivational “push” and “pull” factors plus recent facilitators like international trade liberalization, the fall of strict and restrictive regulations on migration and improvements in and cheaper transportation are factors which contribute to the rapid rise in the trafficking business. The author of this journal discusses causes

¹¹ Olurtimehin , O., (2002), Cultural and Economic Impetus for Trafficking in Nigeria. Being a Paper Delivered in the World Bank Workshop on Culture and Development, Abuja, 18th -19th March,p.4

¹² “United Nations Action Against Trafficking in Human Beings” in Tunde Fagbonhungbe (ed), (2001), .The Rape of the Innocents- Evolving an Initiative Against Human Trafficking, Abuja WOTCLEF Publication , p.238.

and effect of child trafficking in Nigeria, this research analyses the provisions of the TIPPEA Act 2015.

According to Gbadamasi,¹³ Countries where child trafficking is common, tolerated and accepted, and even sought after because of the (money) it brings experience every day the devastation it causes. The author tries to show the implication of the practice and this research work shows the seriousness of the TIPPEA Act 2015 in tackling the problem. Another magazine author¹⁴ with similar opinion argued that any financial profit it may produce is inevitably annulled by the Individual family and social disasters generated by such a practice.

Folami,¹⁵ argues that the free economic system has created the opportunity for children exploitation in modern Nigerian. He notes that children are now the tools of income generation for the parents. This problem has become unprecedented compared to what is obtainable in the traditional structure of Nigeria when children were seen as economic tools for further production of wealth by parents on farm. While this author talks about force labour and children exploitation, this research deals with the analysis of the TIPPEA Act, 2015 that prohibits child trafficking and sees that children are protected from being used as economic tools.

¹³ Gbadamasi, O.A., (2006), International Perspectives and Nigerian Laws on Human Trafficking, Network for Justice and Democracy, All Nation Press Benson Idahosa University Campus, Ugbor ,Benin city Nigeria first edition,p.25 .

¹⁴ Awake Magazine(2003), *Child Prostitution. A Tragic Reality*, February 6th, p.4.

¹⁵ Folami, M.O., (2011), 'Criminal Exploitation of Children in Contemporary Nigeria', Social Work Review, p.39

According to Nnadi,¹⁶ Values such as transparency, the protection of human rights, in general, and the protection of women and children's rights, in particular, are scarce in most traditional communities of developing countries yet they are part of the global community. The author maintained that such situation creates the debate about the genuine participation of some developing countries in the building of a global community and there is an impression that countries engage in international cooperation merely for the purpose of compliance to international order. A genuine interest in observing international order, adherence to international treaties and standards must transpire in a country's handling of issues of universal character and importance. This research has to do with domestic law .i.e the TIPPEA Act, 2015.

According to Adefi,¹⁷the handling of phenomena such as child labour, child trafficking and other child abuses require that the authorities initiate law and policy reforms having in mind the reconciliation of traditional and modern values. It is evident that most of these social issues have strong tied to cultural and traditional settings. Hence they cannot be dealt with from a legal perspective without exploring the possible challenging and the adequate responses. This research work deals with the issue of child trafficking from legal perspective only.

¹⁶ Nnadi I., (2013), 'Son Preference –A Violation of women's Human Rights: A Case Study of Igbo Custom in Nigeria', 6 *Journal of Politics and Law*, p.134, 141.

¹⁷ Adefi, M.O., (2012), 'Prospects for the Realization of Human Rights: Rural Nigeria in Perspective' 5 *Journal of Politics and Law*, p.40, 48.

Crawford,¹⁸ is of the opinion that the traditional perception of children's rights, women's rights, and good governance are issues to be properly dealt with in the case of child trafficking in Nigeria and transparency is a key feature of a human rights-based approach to development which reflects both intrinsic and instrumental human rights values. Citizens' insight and oversight regarding issues of public concern are important intrinsic values, enabling people to make informed and autonomous choices and live meaningful lives.

According to Abba,¹⁹ the existing literature on child protection in general and child trafficking, in particular, is considerable, but the responsibility for creating the sound legal environment for child rights protection rests with the authorities, parents have the primary responsibility to apply a level of care and protection irrelevant of their environment. In this regard, this research views child protection from the legal perspective of the TIPPEA Act, 2015.

Vinkovic,²⁰ highlighted in his book peculiar characteristics child trafficking in Nigeria that require a different approach in going about the issues and also discussed the adverse effect of child trafficking, this research views different

¹⁸ Crawford, G., (2015), 'Human Rights and Development: Putting Power and Politics at the Center' 37 *Human Right Quarterly*, p. 662.

¹⁹ Abba, J., (2015), 'Children's Rights and Human Trafficking and Responsible Parenthood in West African Country Nigeria' vol 3, *Journal of Arts and Humanities*, p. 81.

²⁰ Vinkovic, M. , (2010), 'The 'Unbroken Marriage''-Trafficking and Child Labour in EUROPE' 13 *Journal of Money Laundering Control*, p. 87, 102.

approaches in going about the issue of child trafficking, from the legal perspective of the TIPPEA Act, 2015.

Oderinde,²¹ is of the opinion that human trafficking, in general, is exclusively driven by a financial gain in most societies where it occurs, the practice of child trafficking in Nigeria is underpinned by several factors which include poverty coupled with weak enforcement of the Child's Right Act, ignorance, greed, illiteracy, collapse of family values and increase in violence against women. However, the observation contains the essential elements to the perpetuation and the thriving of child trafficking; there are elements such as traditional and customary settings, this research views child protection from the legal perspective of the TIPPEA Act, 2015.

Conclusively, sixteen literature have been reviewed concerning the issue of trafficking and were able to analyse trafficking from various perspective based on the area of their interests regarding their research. The authorities cited were able to deal with the areas of their research very well. However, they were not able to particularly cover the area of my research i.e see it from the angle of the law regulating trafficking and its implementation. In view of this, there is an existing gap

²¹ Oderinde, A.O., (2014), 'The Religio -Cultural Context of Child Trafficking in Nigeria', *6 Review of European Studies*, p. 190.

in the literatures covering the area. It is therefore the aim of this research to analyse the prohibition of child trafficking in Nigeria under the TIPPEA Act. 2015.

1.10 Organizational Layout

This research is divided into five chapters. The first Chapter consist of the general introduction of the research topic, statement of the research problems, aim and objectives, scope, methodology adopted in conducting the research, significance of the research and review of related literature as well as organizational layout that gives the brief content of the dissertation.

The second chapter is on the conceptual discourse; where issues such as definition nature and prevalence, types and causes, effects of child trafficking in Nigeria.

Chapter three examines the legal of child trafficking In Nigeria which includes the Constitution of the federal republic of Nigeria 1999 as amended, Penal Code, Criminal Code, Labour Act 1974, Child's Rights Act 2002, Immigration Act, Trafficking In Persons (prohibition) Enforcement and Administration Act, 2015, International instrument to which Nigeria is signatory or has ratified and lastly the chapter discusses Extensively the National Agency for the Protection of Trafficking in Person (NAPTIP).

Chapter four being the backbone of the project did the actual analysis of the Trafficking In Person (Prohibition) Enforcement Act, 2015. The chapter discusses

the potentials of the Act in preventing Child Trafficking in Nigeria, challenges of the Act and how to strengthen the Law to combat child trafficking. The fifth and the final chapter made provision for the summary, findings, and recommendation.

CHAPTER TWO

CONCEPTUAL DISCOURSE OF CHILD TRAFFICKING IN NIGERIA

2.1 Introduction

This chapter discusses generally conceptual discourse which includes definition of trafficking in person, who is a child, and what constitutes Child Trafficking in Nigeria, The chapter also describes the nature of child trafficking together with its types, causes and effect. The chapter also discloses the relationship between child trafficking and slavery and why children are preferred than adults.

2.2 Definitions

2.2.1 Trafficking in persons (TIPS)

Trafficking in persons (TIPS) is also referred to as human trafficking people trafficking. The three terms i.e TIPS and Human trafficking are always used interchangeably. trafficking in person includes all acts and attempted acts involved in the recruitment, transportation within or across Nigerian borders, purchase, sell, receipt or harboring of persons involving the use of deception, coercion or debt bondage for the purpose of placing or holding the person whether for or not in

involuntary servitude (domestic, sexual or reproductive) in forced or bonded labour, or in slave-like condition.²²

The Palermo protocol, which is the most significant international legal instruments defines people trafficking as follows;

“the recruitment, transportation, transfer, purchase, sell, harboring receipt or harboring of persons by means of the threat or use of force or other form 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”²³

2.2.2 Trafficked Person (TP)

Trafficked person means a victim of TIPS. A victim is person trafficked voluntarily or in voluntarily for the purpose of exploitation such as child labour, commercial sex, pornography, armed conflict, drugs, sex with animal/objects etc, rituals, organ harvest/sales, baby harvest/sales, seduction,

²² NAPTIP, (2008), National Police on Protection and Assistance to Trafficked Persons in Nigeria, published by NAPTIP Wuse zone 5 Abuja, November, p. g 7

²³ United Nations convention against transnational organized crime (adopted 15 November, 2000, entered into force 29 September 2003) 2224 UNTS 209 (Palermo Protocol).

servitude, debt bondage or slavery by the use of deception, coercion, force or fraud²⁴

2.2.3 Trafficker

A trafficker is a person or an entity that intends to commit, aids, abets or acquiesces to an act of trafficking in person.²⁵

2.2.4 Child

As it is with most of the Social Science concepts, they hardly get a universally acceptable definition; the definition of a child is in no way different. Divergent and conflicting definitions and age limits were given by various Nigerian Legislations with the aim of determining the age of a child,²⁶ the lack of uniformity in the definition extends to Islamic Law, Customary Law and even the Common Law applicable in the country.²⁷

In some ethnic groups, a boy remains a child until initiated into an age-grade society or until he is old enough to contribute physically and financially to community development. But in some societies, childhood terminates at puberty.²⁸

²⁴ NAPTIP, (2008), National Police on Protection and Assistance to Trafficked Persons in Nigeria, published by NAPTIP Wuse zone 5 Abuja, November, p. g 7

²⁵ Ibid pg 18

²⁶ O. S. Akinwumi (2009), "Legal Impediments on Practical Implementation of the Child Rights Act, 2003", International Journal of Legal Information: Volume 37: Iss. 3, Article 10. www.scholarship.law.cornell.edu/ijli/vol37/iss3/10 pdf (accessed on the 1st October, 2016 at 9: 20pm) Page 387

²⁷ A . A. Francis, et al, (2010) "Law and Children's Right Protection: the Nexus for a Sustainable Development in Nigeria", Canadian Social Science, Vol. 6, No.2, 2010. www.cscanada.net or www.cscanada.org pdf (accessed on the 1st October, 2016 at 11: 51am) P.28

²⁸ Ibid

At common law, the age of puberty in respect of a boy is fourteen (14) years, while a girl is considered to have attained puberty at twelve (12) years. Thus in *Harrod v. Harrod*.²⁹

Under the customary law there is no fixed minimum age of puberty. For Yoruba the age of puberty is fourteen (14) for a girl and seventeen (17) for boys,³⁰ while for Hekiris, it is sixteen (16) for girls and twenty (20) for boys.³¹

Section 2 of the Children and Young Persons Act³² defines a child as a person under the age of fourteen (14) while a young person is a person who is above the age of fourteen (14) but under the age of seventeen (17) years. The Nigerian Labour Act³³ considers a child as a person below the age of fifteen (15), National Child Welfare Policy³⁴ defines a child as anybody who is twelve (12) years of age and below, Immigration Act stipulates that any person below the age of sixteen (16) is a minor, whereas Matrimonial Causes Act puts the age of maturity at twenty-one (21) (anybody below 21 is a child).³⁵ Section 50 of the Penal Code (Northern) States that: “No act is an offence which is done by a child under seven years of age; or by a child above seven years of age but under twelve years of age who has not attained sufficient maturity of understanding to judge the nature and consequence of such act. However in line with the convention on the rights of the child (CRC) and the African Charter on the Rights and Welfare of the Child both to which Nigeria is a signatory, section

²⁹ (1954) 69 ER 344

³⁰ A. A. Francis, et al, op cit, page 28

³¹ Ibid

³² Section 2 of the Children and Young Person Law 1958

³³ 1974

³⁴ 1989

³⁵ F. D. Nzarga (2016), “Impediments to the Domestication of Nigeria Child Rights Act by the States”, *Journal of Culture, Society and Development*, Vol. 19, 2016 www.iiste.org pdf (accessed 1st October, 2016 at 11:17pm) page 48

274 of the Child Rights Act³⁶ finally laid to rest the uncertainty trailing the definition of a child under the Nigerian Laws, which defines child as a person as who has not attained the age of eighteen (18) years.³⁷

A trafficked child in the Act must be under 12 years by virtue of section 23(1) of the TIPPEA Act, 2015. This is in accordance with the provision of section 23 of the arms trafficking Act of United Kingdom provided the training will not cause grievous bodily harm to the child.

2.2.5 What constitute child trafficking.

Bearing in mind the definition of human trafficking, child trafficking involves children only, not that children are not humans, but they are vulnerable humans that require special attention when compared with adults.

2.3 Nature of Child trafficking In Nigeria

The nature and occurrences of child trafficking in Nigeria does not insinuate that the practice is less dramatic in other countries. Instead, this research have highlighted the fact that child trafficking in Nigeria has its peculiar characteristics that require a different approach to deal with this problem. While human trafficking, in general, is exclusively driven by a financial gain in most societies

³⁶ The Child's Right Act, 2003, Laws of the federation of Nigeria, 2010, Vol. 4, p. C50-1

³⁷ A. A. Francis, et al, op cit, page 28

where it occurs, the practice of child trafficking in Nigeria is underpinned by customary and traditional practices.

As a slavery-like practice first and foremost, the concept of child trafficking can be incorporated into the general concept of human trafficking. It could be agreed that TIPS is a much wider concept which includes trafficking for sexual exploitation, forced labour, armed conflict, child soldiers, irregular adoption, servitude, forced marriage, begging and the removal of human organs and body tissues.³⁸ Child trafficking and women trafficking are often discussed on the same platforms.³⁹ Unfortunately, these two categories of persons are often easily duped by recruiters into the sex trade and other domestic, agricultural, and commercial purposes. Trafficking in children has a long history in Africa in general and in Nigeria in particular. Indeed Africa is a central part of the history of trafficking in children because of its involvement in the global trade in slaves.⁴⁰ As of Nigeria, mid-nineteenth-century in south-east Nigeria, there were three distinct economic zones. These radiated inland from the coastal trading states with their reliance on slaves as canoe men and porter, through the palm oil belt with its small-scale producers and a mild form of domestic servitude, to the third and more lightly

³⁸Mollema, N., (2013) 'Combating Human Trafficking in South Africa: A Comparative Legal Study' (Thesis, University of South Africa,).

³⁹Either the Issues are Dealt with in Single Legal Instruments or discussed in Conferences 6 Miers, S. and Roberts, R.L. 'The End of Slavery in Africa' (University of Wisconsin Press, Madison 1988)

⁴⁰ Lawrence, B. N and Roberts, R. L., (2012) 'Contextualizing TRAFFICKING IN Women and Children in Africa' in Benjamin N Lawrence and Richards L Roberts (eds) 'Trafficking in Slavery's Wake : Law and the Experience of Women and Children in Africa' (Ohio University Press,) p1.

populated northern and eastern areas with their slave settlements devoted to yam production.⁴¹

It is evident that ‘Human trafficking has historical parallels with the traffic and exploitation of black African in previous centuries when the colonial slave trade was considered not only a lawful but desirable branch of commerce by European empires. Slave trade may simply be described as a trade in human beings; it thrived in Africa between the 16th and 18th centuries and peaked in the latter century’. However, 200 years later, this inhuman trade has re-emerged albeit in the form of human trafficking. Principally motivated by the quest for huge financial benefits, it involves gross violations of human rights.⁴²

Comparing human trafficking in general and trafficking in children in particular with slavery is justified by the similarities in characteristics of both practices. The history of human trafficking, which includes trafficking of women and children, cannot be completely divorced from the phenomenon of slavery.⁴³ Akor’s observation is pertinent because slavery and trafficking have in common, acquisition and transportation of human beings local, national and international borders for servitude, with or without the consent of the trafficked

⁴¹ Eltis, D., (1987) *Economic Growth and The Ending of The Ransatlantic Slave Trade* (Oxford University Press, (Oxford) P. 226

⁴² Okogbule, N.S., (2013), ‘Combating the ‘New Slavery’ in Nigeria: An appraisal of the Legal and Policy Responses to Human Trafficking’, vol. 5, *journal of African laws*, p.57

⁴³ Akor, L., (2011), ‘Trafficking of Women in Nigeria: Causes, Consequences and the Way Forward’ 2 *Corvinus Journal of Sociology and Social Policy*, p.89.

person(s)’.⁴⁴Undoubtedly, the subject of both practices is a human being. Whereas slavery was primarily concerned with able-bodied African adults, trafficking in children is specifically concerned with children. However, both have human beings as subject matters. More importantly, slavery and trafficking in children are equally destructive of the subject’s human rights and dignity. The significance of Human Trafficking in general and Child Trafficking, in particular, must be understood through the perspective of the patterns of the practice that have been anchored to Nigerian society since the era of tolerated and widespread slavery.⁴⁵

2.4 Types and causes of Child Trafficking in Nigeria

Trafficking in person in general and child trafficking in particular, is one of the most challenging phenomena to the modernization and developmental aspirations of Nigeria.⁴⁶

Human trafficking in the Nigerian context has two dimensions. It is necessary to shed light on the two dimensions in order to understand their mechanisms and identify the type and level of challenges they constitute for law enforcement authorities, law and policymakers as well as scholars.

⁴⁴ Ibid p.110

⁴⁵ Children were equally enslaved during the Slave Trade. Scholarship on Slavery in Africa shows that Traffickers in the Indian Ocean Region Preferred Children between the Ages of Ten and Twenty. see Elisabeth McMahon, ‘Trafficking and Re enslavement: the Social Vulnerability of Women and Children in Nineteenth-Century East–Africa’ in Benjamin N.L. and Richards L.R. (eds), (2012), *‘Trafficking in Slavery’s Wake : Law and the Experience of Women and Children in Africa’* (Ohio University Press), Athens, p. 33.

⁴⁶ Okogbule, N.S, Opcit, footnote 26, p.80.

The internal dimension of human trafficking consists of a situation where young⁴⁷ women, girls, and boys are trafficked from their natural rural environments to urban areas in the country through intermediaries or by loosely Organized crime networks. This practice is derived from the tradition in several African countries where less endowed members of the community living in rural areas send their children and wards to other relations in urban areas who are financially more able to take care of their less fortunate relations.

This is currently what is practiced in most of the elites houses in kano. They do employ house helps from rural areas usually very young girls who will be engaged in domestic work and baby sittings and will be paid at the end of the month a token sum. It is usually done through an old women known as an agent who use to host a number of girls in her house waiting for peoples requests. The old women agents are recognized for the practice and even paid commissions for linking the young girls up to their employers. In most cases this old women don't even know exactly where the girls come from talk less of knowing their parents in the rural areas. In most cases descriptions of the houses or the locations of the agents were passed from one interested person to another and the interested person will bring her daughter to the agent with a little bribe to rush the employment. On the other hand, the elites in the urban areas have made lots of requests to the agent in most cases

⁴⁷47

with a bribe to facilitate the employment and when the girl is brought to the employer's house, the agent will be given her commission which in most cases is fixed amount according to the area. The parents of this young girls are not fully aware of the employers of their children.

The external dimension of human trafficking has been a subject of grave concern in Nigeria in recent years. This increased concern is attributable to the extent of exploitation involved in the practice and its implications for the country's international corporate image. It involves the trafficking of victims from Nigeria to other African and European countries, based on attractive offers made to them by the traffickers or through their intermediaries. The general trend in this dimension of human trafficking is that, before the victims leave Nigeria, they are made to sign documents agreeing to pay to their sponsors a sum of money as a refund for their travel expenses.⁴⁸

External and internal child trafficking thrive principally in Nigeria because some factors contribute to its perpetuation such as poverty, customary and traditional practices. Child trafficking is closely linked to the problem of poverty. Child trafficking is practiced either for parents to solve their economic demise or traffickers exercise the practice out of pure greed. It could be argued that what is

⁴⁸ Ibid p.82

regarded as exploitation of children by parents has never been understood as such in most African societies.⁴⁹

According to the United Nations International Children's Emergency Fund (UNICEF), there are diverse reasons why many Nigerian children are vulnerable to trafficking, including widespread poverty, large family size and rapid urbanization with deteriorating public services, low literacy levels and high school dropout rates. More significantly, the demand for cheap workers in the commercial sex sector contributes to the growth of the phenomenon and the thriving of criminal networks. UNICEF reports that heads of large family, often overburdened with the care of too many children, are prone to the trafficker's subterfuges entrusting some of their children with city residents or even strangers promising a better life for them.⁵⁰ It is frequent that traffickers exploit the trust of people rooted in a constant and well accepted, cultural practice of placement and fostering which is part of the extended family safety net in West Africa. It is common that poor, desperate, and ill-informed parents co-operate with the traffickers by giving away their children in exchange for a fee. Once in the hands of their unscrupulous guardians, the victims are increasingly trafficked and exploited for financial gain. The poor,

⁴⁹ Adesina, O.S. (2014) 'Modern day Slavery: Poverty And Child Trafficking in Nigeria' 12 African Identities 165, 180. See also Asian Development Bank and Jan P M Van Heeswijk, 'Combating Trafficking of Women and Children in South Asia: Regional Synthesis Paper for Bangladesh, India, and Nepal' (Asian Development Bank, 2004)

⁵⁰ See UNICEF Factsheet on Child Trafficking in Nigeria, available at http://www.unicef.org/wcaro/WCARO_Nigeria_Factsheets_ChildTrafficking.pdf, accessed 22 October 2014

disadvantaged economic conditions in Nigeria have led to high rate of unemployment and increasing school dropout. Consequently, a large pool of inactive and unengaged children and adolescents occurred across Nigeria. These children and adolescents are much more vulnerable to trafficking than their peers who attend schools.⁵¹

From UNICEF's analysis, it appears that the specificity of child centre- trafficking resides in the fact that the children not only cannot express their opinion in the decision making, whether this is with the participation of their parent or guardians about the trafficking but also due to their young age, they are unable to challenge the users on various violations of their fundamental rights during the exploitation process. Unlike adult women or men who can facilitate their rescue operations in the event of grave violations, children are defenseless hence more vulnerable. Whereas adults, to some extent, can ask for salary or payment at the stage of exploitation or employment, children cannot make any request in this respect; they cannot engage in any negotiation with regard to their exploitation or employment.⁵²

From the sociological perspectives, it could be said that children in Nigerian society are seen as an economic asset thus as 'non-rights holders'.⁵³ Based on such perception, the idealization of the child as an object that can be subjected to

⁵¹ Ibid p.18

⁵² Lee M.,(2011), 'Trafficking And Global Crime Control', Sage, London p.11

⁵³ Nwoke, M. B.,(2013), 'Influence of Cultural Value System and Home on Child-Rearing Practices in the Contemporary Nigerian Society', i, P.200, 206.

pecuniary transactions, obviously, cannot be viewed as a socially disturbing approach. This analysis recalls the ongoing debate about child labour and the rights of the child in employment. From analysis conducted by Garg, A., it is confirmed that users prefer children to adults on the assumption that children possess little legal and political power. The view is that children are easier to exploit than Adults because they perform monotonous work without complaining and are easily intimidated. In Nigeria as well as in other regions of the world they are targeted because they cannot form unions, do not receive social security, are ignorant of their legal rights, and can be discharged easily.⁵⁴

More importantly, the use of young girls in the trafficking process appears to be based on the traditional perception of the girl child within some indigenous communities. Stereotypes and taboo often account for the early release of the girls into relationship or marriage.⁵⁵ Upon such perception, the situation of the girl child in the general conception of the child in society appears to be worse. While the perception of the child in Nigerian society contributes to the enduring of child trafficking, a reference to some elements contributing to the perpetuation of the practice in this section should be understood in the sense that the participants in the trafficking process exploit the weakest point in traditional settings to achieve their

⁵⁴Garg, A., (1999), 'A Child Labor Social Clause: Analysis and Proposal for Action', *31 New York University Journal of International Law and Politics*, p. 473

⁵⁵ Ayittey, G.B.N., (2010), 'Traditional institutions and the state of accountability in Africa', *77 Social Research*, p.1183

goals. Child trafficking being a fact in Nigeria it is necessary to comprehend the scale of the problem.

2.5 Effects of Child Trafficking In Nigeria

Child trafficking exposes its victims to quite a lot of health hazards. Diseases such as HIV/AIDS and other sexually transmitted disease (STDs), sign of rape and sexual abuse are prone to girls particularly used for sexual business. Malnutrition, dehydration and poor personal hygiene are physical features and health characteristics of a trafficked child. Other harmful effects include bruises, broken bones and several other signs of untreated medical problems.⁵⁶

2.6 Conclusion

This chapter discusses the nature of child trafficking in Nigeria, the internal and external types of trafficking, causes including wide spread poverty, large family size, low literacy level, customary and traditional practices among others. Child traffickers always expose children to health hazards as a major effect, poor personal hygiene and several other signs of untreated medical problems. Children

⁵⁶ Gbadamasi, O.A., Opcit, p.115

are preferred in trafficking because they do quite a lot of work without complaining, easily intimidated, don't have unions, don't receive social security and most importantly are ignorant of their rights,

CHAPTER THREE

LEGAL FRAME WORK OF CHILD TRAFFICKING IN NIGERIA

2.3 Introduction

In an attempt to give child trafficking in Nigeria a response from the legal perspective, this chapter analyses the legal and institutional frame work of child trafficking. It also analyses the international legal instrument on child trafficking which Nigeria has ratified and other bilateral agreements between Nigeria and other countries.

2.4 Legal Framework

3.2.1 International and Regional Conventions and Treaties on Child Trafficking in Nigeria

Nigeria is signatory to and has ratified a number of international conventions which are directly or indirectly related to the issues of human trafficking in general and child trafficking in particular. This includes;

- i. Universal Declaration of Human Rights (1948)⁵⁷: The declaration consists of 30 articles affirming an individual right which a child is not an exception. These articles are concerned with the duty of the individual to the society and the prohibition of the use of the right in contravention of purpose of the United Nation Organization.
- ii. Convention on the Elimination of All Forms of Discrimination against Women (1979) (CEDAW)⁵⁸: This convention among other things makes it mandatory on state parties to take all appropriate measures including legislation to suppress all Forms of traffic in women and exploitation of prostitution of women.⁵⁹

⁵⁷ The United Nation, 1948, art.21.3. adopted by General Assembly Resolution 217 A (III) of 10 December, 1948

⁵⁸ Convention on the Elimination of All Forms of Discrimination against Women (1979) (CEDAW), General Assembly Resolution 34/180 of 18 December, 1979

⁵⁹ Gbadamasi, O.A., opcit, footnote 13, p.68

iii. African Charter on the Right and Welfare of the Children, (1990);⁶⁰ the Charter commits all state signatories to take appropriate measures to prevent the abduction, sale and trafficking of children for any purpose in any form, by any person including parents or legal guardians of the child. A committee on the rights and welfare of the child was established and was able to identify child trafficking as one of the main issues to be addressed together with children in armed conflicts, child labour, sexual abuse of children, orphans affected and infected by HIV/AIDS and the child's right to education.⁶¹

iv United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000); The protocol also known as “Palermo protocol” is mainly supplementing the convention against transnational organized crime (2000) and was adopted by states parties as a comprehensive approach to prevent and combat trafficking in persons especially women and children in their countries of origin, transit and destination. The protocol include measures to prevent human trafficking, to punish the traffickers and to protect the victim of such trafficking including the protection of their rights as humans.⁶²

⁶⁰ African charter on the right and welfare of the children, (1990), CAB/LEG/24.9/49

⁶¹ Ibid, p.96

⁶² Ibid, p.79

v. United Nations Convention Against Transnational Organized Crime (2000)

(UNTOC);⁶³ The convention represents a major step forward in the fight against transnational crime and signifies the recognition of U.N. Member States that it is a serious and growing problem that can only be solved through close international cooperation. State parties are to rely on one another in investigating, prosecuting and punishing crimes committed by criminal groups. This should make it much more difficult for offenders and organized criminal groups to take advantage of gaps in national law, jurisdictional problems or lack of accurate information about the full scope of their activities.⁶⁴

vi United Nations International Labour Convention (No. 182) on Worst Forms of Child Labour (2001);⁶⁵ The convention recognizes child trafficking as one of the worst form of trafficking, which must be eliminated without delay. It describes it as “all forms of slavery practices similar to slavery” such as sale and trafficking of children, debt bondage, serfdom, forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflicts. It also includes the use ,procuring or offering of a child for pornographic, performances and work

⁶³ United Nations Convention Against Transnational Organized Crime (2000) (UNTOC), General Assembly Resolution, 55/25 of 15 November, 2000

⁶⁴ Ibid, p.77

⁶⁵ United Nations International Labour Convention (No. 182) on Worst Forms of Child Labour (2001), General Assembly Resolution, 55/25 of 15 November, 2000

which by its nature or the circumstances, in which it is carried out, is likely to harm the health, safety or morals of children.⁶⁶

vii Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of others, (1949);⁶⁷ the convention went along way in criminalizing and punishing prostitution and offences related to prostitution. The link between prostitution became very closer with the adoption of the convention in 1949.⁶⁸

viii. ECOWAS Declaration and Plan of Action Against Trafficking in Persons (2001);⁶⁹ the plan of action urges member states to commit themselves to measures that prevent trafficking in persons, protect and support victims of trafficking, promote awareness raising activities and establish cooperation for law enforcement officials at borders, share data amongst ECOWAS nations and the United Nations. The plan of action, which is the consensus of all heads of governments of member states of ECOWAS itemized all necessary actions to be taken against trafficking in persons⁷⁰

3.2.1.2 Bilateral agreements

⁶⁶ Ibid, p.73

⁶⁷ Convention for the Suppression of the Traffic in Persons and of the Exploitation of Prostitution of others, (1949), Approved by General Assembly Resolution of 317 (IV) of 2 December, 1949

⁶⁸ Ibid,p.66

⁶⁹ ECOWAS Declaration and Plan of Action Against Trafficking in Persons (2001), 20-21 December, 2001

⁷⁰ Ibid, p.98

- i. France-Nigeria Anti-Human Trafficking Agreement (2005). Through this agreement, France is to finance the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) with 30,000 Euros to assist and reintegrate children who have been victims of human trafficking in Nigeria.
- ii. Co-operation Agreement between the Governments of the Federal Republic of Nigeria and Republic of Benin. June 2005. The agreement applies to the enforcement, prevention and detection of crime of trafficking in persons, protection, repatriation and rehabilitation of victims especially women and children in the territory of both countries.

The objectives of this agreement are:

1. To develop a common front to prevent, fight, suppress and punish trafficking in women and children by setting up joint security surveillance patrols and joint sensitization campaigns along the border areas of both countries;
 2. To protect, rehabilitate and reintegrate victims of trafficking into their original environment;
 3. To promote friendly cooperation between the parties with a view to attaining these objectives
- iii. International Organization for Migration (IOM), Memorandum of Understanding with Nigeria (2004) which focused on improving National

Agency for the Prohibition of Trafficking in Persons –(NAPTIP’s) capacity to provide direct assistance to victims of Trafficking.

iv. Memorandum of Understanding on C-operation between the Attorney General of the Federal Republic of Nigeria and the National Anti Mafia Bureau of Italy in combating trafficking in persons and other related organized crimes and laundering of the proceeds from crime. (11th November 2003).The Memorandum of Understanding serves the following objectives:

- a. Aims at establishing and developing co-operation in combating trafficking in persons and other related organized crimes and laundering of the proceeds from crimes committed by criminals and criminal associations.
- b. Co-operation on exchange of information and documents on trafficking in persons and other related organized crimes and persons involved in it. In this case, the Parties, in compliance with investigation secrecy requirements shall mutually exchange information where any of their nationals, foreign nationals and stateless persons are being investigated for trafficking in persons and other related organized crimes offences committed in the other Party, also for having therein invested proceeds from crime.
- c. Adopt such measures as may be necessary to favor the effective and prompt execution of any request for extradition and legal assistance in criminal

matters relevant to trafficking in persons and other related organized crimes

According to the collaborative agreement, co-operation within this Memorandum shall be effected through the constant willingness of the Parties aimed at adopting practical decisions in combating trafficking in persons and other related organized crimes and in the co-operative spirit which characterizes this document.

- v. Nigeria-Italy Republic Anti-Human Trafficking Agreement, 2005, As part of an international collaboration with Italy to fight human trafficking for sexual exploitation, Nigeria signed an agreement with Italy to work together on a United Nations sponsored programme against the practice of human trafficking between the two countries.⁷¹

The programme (which was designed to stem the flow of Nigerians into Italy for the purpose of sexual exploitation) was set by the United Nations Interregional Crime and Justice Research Institute (UNCRI) and the United Nations Office on Drug and Crime (UNODC). The programme outlines greater judicial cooperation between Nigeria and Italy, public awareness raising activities in both countries and measures to strengthen Nigerians law enforcement, prosecution and criminal justice agencies.

⁷¹ Ibid, p.100

- vi. In May 2002, the Nigerian government entered into an agreement with the United Nations to focus on fighting trafficking in Nigeria, Benin and Togo; combat international organized crime and improve the collection and analysis of data on trafficking in the region.
- vii. Memorandum of Understanding on Co-operation to prevent, suppress and punish trafficking in persons between Nigeria and the Government of United Kingdom of Great Britain and Northern Ireland, November 2004. Under this agreement, Nigeria and United Kingdom signed a bilateral pact to stem the tide of human trafficking, a practice which the British Solicitor-General, Harriet Harman described as “nothing more than modern slavery”.⁷²

The objectives of the memorandum are:

1. To facilitate international cooperation, develop common goals and prevent, suppress and punish trafficking in persons;
2. To protect victims of trafficking, and to provide them with assistance to enable re-integration into their original environment;
3. To provide mutual support, capacity building and strengthening of institutional capacities to effectively prevent, suppress and punish trafficking in persons.
4. Memorandum of Understanding on Co-operation between the Federal Republic of Nigeria and Spain to Combat trafficking.

⁷² Vanguard Newspaper November 17th, 2004, p.3

5. A similar co-operation agreement with the United States Agency for International Development has resulted in the United States earmarking a budget of \$3million to support Nigeria's anti trafficking drive especially in the area of skills training.

vii. Bilateral Agreement between Nigeria and Netherland. The Nigerian President General Mohammadu Buhari and the Prime Minister Of Netherland Mark Brutt meets in Abuja on the 26th of November, 2019 and pledge to collaborate on trade and human trafficking.⁷³ The two leaders agreed to work together to deepen trade volume, private investment and fight human trafficking among others. The two leaders reviewed the promise that has been made with implementing the MOU on improving the bilateral relations between the two nations concluded and signed by the respective foreign ministers in the Haque in July 2018⁷⁴.

3.2.2 Nigerian Legislation

3.2.2.1 The Constitution of the Federal Republic of Nigeria, 1999.⁷⁵

The Nigerian constitution provides for the issue of human trafficking which is against the freedom and dignity of human beings. According to section 34 which guarantees the right to respect the dignity of the human person and at the same

⁷³ www.thisdaylive.com-edit.26/12/2019at 4.46pm

⁷⁴ www.undoc.org –last accessed 17.16pm .20/12/2019

⁷⁵ The Constitution of the Federal Republic of Nigeria, 1999, Act No. 24, LFN, 5 May, 1995

time prohibit slavery, servitude and forced/compulsory labour. All what is prohibited by this section (torture, inhuman or degrading treatment, slavery/servitude and forced/compulsory labour) are elements of trafficking.

Section 34 provides that:

“Every individual is entitled to respect for the dignity of his person and accordingly:

- a. No person shall be subjected to torture or to inhuman 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 labour”.

Section 17 provides for the states social order which ideals are founded on equality, freedom and justice. The section further maintained that state policy should be directed towards ensuring that children, young persons and the aged are protected against any exploitation whatsoever and against moral and material neglect. This is a clear proof that the constitution is against child exploitation in whatever form. The fact is that child trafficking is only a process towards a final point, namely; that of child exploitation, that is why the constitution in its endeavor to combat child trafficking opted to make the goal of child trafficking non-existent. Section 17 states as follows:

- The State social order is founded on ideals of Freedom, Equality and Justice.
- In furtherance of the social order, the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced;
- The State shall direct its policy towards ensuring that -
- Children, young persons and the aged are protected against any exploitation whatsoever, and against moral and material neglect.

A trafficked person can challenge the infringement of the above-mentioned rights under Section 46 of the Constitution of the federal republic on Nigeria, 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.”⁷⁶

It is on the basis of the Constitution child labour and other child abuses are prohibited. This Constitutional Principle transpires in most of the state’s anti-trafficking laws.

3.2.2.2 Penal Code, 1960⁷⁷

The Penal Code (as applicable in the Northern States of Nigeria) contains similar provisions of the Criminal Code on trafficking of women and girls for immoral purposes or sexual exploitation.

⁷⁶ Constitution of the Federal Republic of Nigeria 1999 as amended.

⁷⁷ The Penal Code, cap 87, Laws of the Federation of Nigeria, 1960,

1. Section 275 which prohibits the inducement of a girl child to be roaming about with intent of forced or seduced to illicit intercourse will be punished with ten years imprisonment and a fine. This section is clearly prohibiting child sexual exploitation. By necessary implication, the section is fighting child trafficking because sexual exploitation is one of the reasons that sustain child trafficking. This is similar with the provisions of section 15 of the TIPPEA Act 2015. Section 275 provides as follows:

“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 may be, 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 and shall be liable to a fine”.

Section 278 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 exploited or used for prostitution or other unlawful or immoral purposes is guilty of an offence punishable with imprisonment of up to ten (10) years and liable to pay a fine in addition; This section provides similar definition as contain in section 21 of the TIPPEA 2015 Act which implies the intention of the Penal Code to fight trafficking

Section 279 creates the offence of slave dealing and provides that any person who imports, exports, 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. This prohibition of slave dealing in this section is similar with the provision of section 14 of the TIPPEA Act, 2015 which prohibits importation and exportation of persons

Section 280 punishes forced labour while section with a fine and a year's imprisonment;

5) Section 281 punishes the procurement, 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.

3.2.2.3 The Criminal Code, 1963⁷⁸

The Criminal Code is another Nigerian Statute that imposes criminal sanctions on prostitution and human trafficking.

Section 223 of the Criminal Code prohibits and punishes the procurement of a girlchild or woman to have unlawful carnal connection or become a prostitute, an inmate or brothel either in Nigeria or elsewhere. The section 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

⁷⁸ The Criminal Code Act, cap 87 Laws of the Federal republic of Nigeria, 1963

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 purposes 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 years⁷⁹

Section 224 of the Criminal Code prohibits the unlawful detention of persons against his will. The section further 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 pretence procures woman 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

⁷⁹ See also section 281 of the Penal Code Of The Northern States of Nigeria, which states as follows: “whoever, in order to gratify the passion of another person ,procures entices or leads away with her consent Any woman or girl for immoral purposes, shall be punished with imprisonment which may extend to seven Years or shall also be liable to a fine “

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 a misdemeanor, and is liable to imprisonment for two years.⁸⁰

Section 365 of the Code also provides that:

“Any person who unlawfully confines or detains another in any place against his will, or otherwise unlawfully deprives another of his personal liberty is guilty of a misdemeanor, and is liable to imprisonment for two years.”

Section 222(a) punishes any person who, having lawful custody, charge or care of a girl under age 13 years, causes or encourages the seduction, unlawful carnal knowledge or prostitution of, or the commission of an indecent assault upon such a girl with imprisonment for 2 years;

Section 225(a) punishes every male or female person who exploits female prostitutes for a living with imprisonment for 2 years for first offenders and for a subsequent conviction of a male offender, imprisonment for any number of years in addition to caning.

⁸⁰ Ibid section 224.see also Criminal Code of the Southern States of Nigeria, Section 225 Immigration Act cap.171, Laws of the Federation of Nigeria.

Section 227 punishes any person who conspires with another to induce any woman or girl, by means of false pretence or other fraudulent means to facilitate unlawful sexual intercourse between her and any man with imprisonment for 3 years;

Section 366 encompasses most of the methods used by traffickers to place their victims under subjection. According to the section, any person who compels another to do any act, which he/she is lawfully entitled to abstain from doing by means of:

1. Threats of injury to the person, reputation or property of the victim or those of anyone in whom the victim is interested;
2. Persistent surveillance of victim; and
3. Other forms of intimidation such as name-dropping, seizure of clothing, work tools or other items of property is guilty of an offence punishable with imprisonment for a year;

Section 369 prohibits slavery or servitude and punishes slave dealing with imprisonment for 14 years upon conviction of any offender. The section defines the offence to include:

1. Dealing/trading in, purchasing, selling, transfer or taking of any slave, or for the purpose of holding or treating any such person as a slave; or

2. Placing or receiving any person in servitude as a pledge or security for a current or future debt; or
3. Conveying, sending or inducing any person to go outside Nigeria to enable the person to be possessed, dealt or traded in, purchased, sold or transferred as a slave or be placed in servitude as a pledge or security for debt; or
4. Entering into any contract or agreement with or without consideration for doing any of the acts or accomplishing any of the purposes listed in (a) –(c).

Section 369 (5) punishes any person who assist another in slavery or servitude.

“Any person who conveys, or sends or induces any person to go out of the limits of Nigeria in order or so that such person should be possessed, dealt or traded in, purchased, sold or transferred as a slave, or be placed in servitude as a pledge or security for debt is guilty of slave dealing and is liable to imprisonment for fourteen years”.

In its concerted efforts to eliminate human trafficking and project the dignity of womanhood, Edo State, often tagged as the “hub of human Trafficking” in Nigeria, amended some of its Section Criminal Code as follows:⁸¹

Section 223 of Edo state Criminal Code deleted the words:

⁸¹ Criminal Code (Amendment) Law 2000 of Edo State of Nigeria. Anambra and Cross rivers States of Nigeria have also Adopted Similar Laws to Combat Child Labour and Trafficking in Women.

“is guilty of a misdemeanor and is liable for imprisonment for two years” and Substituting the word: “is guilty of an offence and shall be liable on conviction to imprisonment for fourteen years”

Also by inserting after section 223, the following new sections:

Sponsors a girl or woman by giving her any financial, physical or material assistance to enable her travel out of Nigeria for the purpose of becoming a prostitute or to carry out any immoral act

- a. Administers any oath on a woman or girl or perform any fetish ritual in order to enable her to travel out of Nigeria for the purpose of becoming a prostitute or to have unlawful carnal knowledge with any person is guilty of an offence and is liable on conviction to imprisonment for ten years or to a fine or fine of five hundred thousand Naira or both. The amendment also added the following section:⁸²

“Any female person who knowingly offers herself for the purpose of prostitution or carry out any immoral act within or outside Nigeria shall be guilty of an offence and shall be liable on conviction to imprisonment for two years or a fine of twenty thousand Naira”

⁸² Ibid section 223(b)

3.2.2.4 The Labour Act.⁸³

The historical development of labour law in Nigeria is one that sprouted out of its colonial history which the British practiced and bequeathed to the post colonial independence of Nigeria government.⁸⁴ It was under this system that formal and semi-formal relationships were established with the British in particular and the Europeans in general. Such relationship led to the introduction of wage employment in formal industrial settings in Nigeria which is governed by labour law.⁸⁵ The Nigerian labour Act applies to all workers and employees, except the armed forces, the police and the intelligence agencies. It is worth noting that Section 73(1) of the Nigerian Labour Act⁸⁶ in line with section 31(1) (c) of the Nigerian constitution, prohibits forced /compulsory labour and provides that:

“Any person who requires any other person, or permits any other person to be required, to perform forced labour contrary to Section 34 of the Constitution of the Federal Republic of Nigeria (1999) shall be guilty of an offence and, on conviction shall be liable to a fine not exceeding N1000 or to imprisonment for a period not exceeding two years or both.⁸⁷

⁸³ The Labour Act Cap, 1958, Laws of the Federation of Nigeria 2010, Vol. 7, p L1-1

⁸⁴ Moses, A, A. “History and Development Of Industrial Relations In Nigeria: Hybridity Of The Western Models Versus Military Interventionist Culture”, Vol. 4, No.14, Mediterranean Journal Of Social Sciences, (2013),p.687.

⁸⁵ Ibid

⁸⁶ Labour Act cap L1 ,198 , Laws of the federation of Nigeria, 1990

⁸⁷ Ibid section 73

In addition, section 49 and 59 of the labour Act set for employment and apprenticeships the minimum age at 12 years, except for light agricultural or domestic work performed for the family.

Section 59 and 61 prohibits children of less than 12 years from lifting or carrying any load likely to inhibit physical development, and they establish a minimum of 15 years for industrial work and maritime employment.

Section 50 prohibit work under ground, on machines, at night, more than four consecutive hours or more than eight hours in a day for children less than 16 years.

Section 59 and 65 prohibits children less than 18 years from entering any employment that is dangerous or immoral, although this does not apply to domestic service.

Although the labour law was not enacted to primarily deal with child trafficking, it has provided strong support against all form of exploitive means against children in Nigeria and safe guard children who may be engage in work. Among the contemporary forms of trafficking, trafficking for labour exploitation appears to be the most prominent in West Africa where majority of the victims are recruited through that channel. It is base on the above reason and by way of recommendation that the Law needs to be strengthened to provide support mechanism in fighting trafficking.

Despite the above provision of the labour law, it has not achieved much in addressing and protecting the Nigerian child who are mostly the victims. This can be attributed to the insufficient penalty imposed against violators of the law. As a

result of that, there has been declined in the performance of labour officers in the recent past.⁸⁸

3.2.2.5 The Child's Right Act, 2003⁸⁹

Historically, the development of the Child Rights into Nigeria is as a result of the international convention on the Rights of the Child, this convention enjoins that the principles contained in the conventions be disseminated by the member states and take all appropriate legislative measures for the implementation of the rights recognized therein.⁹⁰

The general frameworks within which human rights are protected in Nigeria are enshrined in the 1999 constitution of the Federal Republic of Nigeria (as amended). Chapter IV contains an elaborate Bill of Rights.⁹¹

In 1996 Nigeria submitted its first report on the implementation of the Child Rights Convention to the United Nations Committee on the Rights of the Child.⁹² The committee recommends among other things, that, for Nigeria to realize full implementation of the Child Rights under the Nigerian Laws, it has to domesticate the Child Rights Convention.⁹³ Domestication of the convention and subsequent enactment of the Child Rights Act 2003 has generated a lot of discussions and

⁸⁸ Olateru-olagbebi, B., 43, p.31

⁸⁹ The Child's Right Act, 2003, Laws of the federation of Nigeria, 2010, Vol. 4, p. C50-1

⁹⁰ O. S. Akinwumi, op cit, p. 386

⁹¹ Ibid p. 385

E. I. Alemika and S. K. Kigbu, op cit, p. 2

⁹² Nigeria Convention on the Rights of the Child: Second Country Periodic Report (2004), Federal Ministry of Women Affairs, Abuja www.ohchr.org pdf (accessed on the 2nd October, 2016 at 9:24pm) p. 12 of 163

⁹³ CRC, Concluding Observation of the Committee on the Rights of the Child, CRC/C/15/Add.61 30/10/96; also [www.unhcr.ch/tbs/doc.nsf\(symbol\)-crc.c.15Add1En?openDocument](http://www.unhcr.ch/tbs/doc.nsf(symbol)-crc.c.15Add1En?openDocument); see also section 12 of the constitution of the Federal Republic of Nigeria 1999 (as amended) on the requirement for domestication of foreign articles and conventions.

criticisms from left, right and centre of the country, ranging from Islamic values, traditions and culture.⁹⁴

Finally, the Child Rights Act was adopted in September, 2003,⁹⁵ albeit only some out of the 36 states in Nigeria passed the Child Rights Act into law, due to religious, traditional and cultural reasons.⁹⁶

Domestically, the Act originated from a private bill presented to the Nigerian National Assembly, by the women trafficking and child labour eradication foundation (WOTCLEF), 2001. A non-governmental organization (NGO) with nationally recognized advocacy, formed by the then wife of the vice president of Nigeria, Hajia Titi Atiku Abubakar; The National Assembly passed into law on the 7th July, 2003 and was assented to by the then President of the federal republic of Nigeria, chief Olusegun Obasanjo, on the 14th July, 2003.⁹⁷ The Child's Rights Act of Nigeria, 2003 in relation to trafficking provides inter-alia:

“Every child is entitled to respect for the dignity of his person, and accordingly, no child shall be subjected to torture, inhuman or degrading treatment or punishment; held in slavery or servitude”.⁹⁸

⁹⁴ O. S. Akinwumi, op cit, p. 386

A. Sirajo and I. U. Zwall, (2012) “Child Protection System and Community Policing”, European Journal of Humanities and Social Sciences, Vol. 13, No. 1, 2012 www.journalsBank.com pdf (accessed on the 2nd October, 2016 at 10:09 pm) p. 627

⁹⁵ www.unicef.org/wcaro/WACRAD_Nigeria_factsheets pdf (accessed on the 2nd October, 2016 at 10:27pm) p. 2

⁹⁶ O. S. Akinwumi, op cit, p. 386

⁹⁷ Shatsari, R.S., (2011) “The Trafficking Of Women And Children In Nigeria, An Analysis Of The Trafficking of The New Anti-Trafficking Legislation And Its Application, *Jurnal Undang-undang*, .p.85

⁹⁸ Child's Right Act 2003 Section 11(a) &(d)

“No child shall be subjected to any forced or exploitative labour; employed as a domestic help outside his home or family environment”.

Basic Provisions of the Child Rights Act 2003

The Act recognizes the freedom of a girl child from discrimination on grounds of belonging to a particular community or ethnic group, place of origin, sex, religion, the deprivation of forming a political opinion; and it is stated categorically that the dignity of the child shall be respected at all times.⁹⁹ The Act further guarantees the right of a Nigerian Child to recreation, rest, leisure and enjoyment of the best attainable state of physical, mental and spiritual health.¹⁰⁰

The Act also provides for the less privileged as well as mentally or physically challenged, street children, orphans, abandoned, victims of violence (sexual violence and torture inclusive).¹⁰¹ The basic provisions of the Act follow chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) with specific focus on children.¹⁰²

The Child Rights Act is an embodiment of comprehensive legislation with Twenty Four (24) parts, containing about 278 sections. Each part of the Act contains different topical issues on children's interest, welfare, juvenile justice and administration.¹⁰³

⁹⁹ Ibid, p. 388

¹⁰⁰ F. D. Zarga, op cit, p. 50

¹⁰¹ O. S. Akinwumi, op cit, p. 388

¹⁰² Ibid

¹⁰³ Ibid, p. 390

Part I – II (sections 1 - 20) deal with the primacy of the best interest of the child and maintenance of the child;

Part III (sections 21 - 40) concerns protection of the rights of the child;

Part IV (sections 41 - 49) covers additional protection of children;

Part V (sections 50 - 52) protects children in need of care;

Part VI (sections 53 - 62) provides for rules for care and supervision of children;

Part VII (sections 63 - 67) contains tests for determining the paternity or maternity of a child;

Part VIII (sections 68 - 81) deals with possession and custody of children;

Part IX – XII (sections 82 - 148) is on guardianship, wardship, fostering and adoption of children;

Part XIII (sections 149 - 162) provides for a family court;

Part XIV (sections 163 - 170) deals with child-minding and day care of young children;

Part XV – XIX (sections 171 - 203) provide for governmental support, community and voluntary homes;

Part XX – XXIII (sections 204 - 238) is on child justice administration and approval institution;

Part XXIV (sections 239 - 279) deals with miscellaneous matters.

Challenges to Effective Operation of the Rights of The Children In Nigeria

There are numerous reasons that hinder the smooth adaptation of the Child Rights Act among the federating states of Nigeria which include among others:

1. Political Reason:

More states have joined the league of state that domesticated the Child Rights Act in Nigeria, bringing their numbers to 26 out of 36 in Nigeria.¹⁰⁴

But the domestication is more of a lip service than real implementation of the content of the laws, this will be seen from insignificant difference on the lives of the children in the various states before the domestication of the Act and after the passage of the Act as against the highly anticipated gains that motivated to a great extent the passage of these bills into laws.¹⁰⁵

2. Protest by the Supreme Council for Shari'ah in Nigeria

Soon after the Act was ratified in Nigeria, the Supreme Council for Shari'ah in Nigeria kicked against it and protested arguing that it is an imposition by the Federal Government on States Assemblies, aiming at equating males and females in matters of inheritance, giving a share of inheritance illegitimate child and establishing a family court to rob shari'ah court with jurisdiction on matters affecting children.¹⁰⁶

3. Child Labour

Hawking, begging and house help ("Yar/Dan Aiki")¹⁰⁷ which have eaten deep the roots of Northern Nigeria are all part of the politics rocking the ratification and implementation of Child Rights Act in the Northern part of

¹⁰⁴ F. D. Nzarga, op. cit., p. 50

¹⁰⁵ Ibid

¹⁰⁶ Ibid

¹⁰⁷ House Help – "Yar/Dan Aiki" – These are children mostly girl-child below the age of 14 brought from rural area to an urban area to work as an errand in the houses of well to do, when their children are there schooling (Modern Slavery).

the country.¹⁰⁸ The Act in Section 30 forbids the use of a child for Alms begging, hawking, slavery and compulsory labor even though the act proved insufficient and inadequate on this section by not prescribing a punishment for it.

4. Poverty

It will be difficult to protect children's rights if there is poverty, because a poor person will use all that is within his/her disposal for survival.¹⁰⁹ One of the instruments for survival that are usually within the disposal of most people is/are their child/children.¹¹⁰ Therefore child labor, child prostitution and other child related vices cannot be wished away as long as poverty exists.¹¹¹

5. Religious and Cultural Practices

Some religious and cultural practices obtainable in the country have made the domestication of the Child Rights Act difficult in so many states. Some of which are:

Religious Practices:

- i. Almajiri¹¹² Practice
- ii. Early Marriage
- iii. Child Witches¹¹³

¹⁰⁸ F. D. Nzarga, op. cit., p. 52

O. S. Akinwumi, op. cit., p. 393

¹⁰⁹ O. U. Odera, op. cit., p. 1596

¹¹⁰ Ibid

¹¹¹ Ibid

¹¹² Children sent from far and near their homes in the Northern Part of Nigeria and entrusted into the care of Islamic teachers to learn the Islamic Studies, who are mostly left responsible for themselves, living on their daily earnings through hard labour, begging and so many unbefitting activities for a child.

¹¹³ This practice is common in Akwa-Ibom and Cross-Rivers of Nigeria, where self-professed pastors blame them for causing illness, death and destruction. In these states about 15,000 children have been branded child witches. C. N. Uzuegbu, 2010, "Culture and Child Abuse in Nigeria", International Journal of Research in Arts and Social Sciences, vol.2 www.academicexcellencesociety.com pdf (accessed 11/10/2016 at 11:31am) p. 203

Cultural Practices (Cultural Relativism):

- i. Female Genital Mutilation (FGM)
- ii. Desire for large family size
- iii. Preference for male children
- iv. Tribal Marks

6. Federalism:

Nigeria operates a federal system of government in which each of the federating units is autonomous and equal to others,¹¹⁴ each state has its legislative system. Until Child Rights Act is enacted into law in a state it is not binding on that state.¹¹⁵

Observations

1. Children are left at the mercy of legislators;
2. There is lack of enlightenment programs organized by either the government or Non Governmental Organizations (NGOs) to educate people on the rights of children and the Child Rights Act;
3. The increase in number of poor beggar's children in Nigerian cities, the number of children without basic education, and the number of children in one form of servitude or the other indicates the nation's poor level of development.

Conclusion

With the Child Rights Act, Nigeria has a future. The more it invests in the children, the more it is investing in its future. No sustainability if there are

¹¹⁴ O. S. Akinwumi, op. cit, 391

¹¹⁵ Ibid

no persons to manage tomorrow's resources. The quality of the nation's future is directly proportional to the quality of its children, today.

3.2.2.6 Children and Young Persons Law 1958¹¹⁷

The Children and Young Persons Law (CYPL) was Enacted for The Federation and Lagos Colony. It was contained in chapter two of the Laws of the federation 1958 that has its commencement dated as 1st July 1946. It makes provision for the welfare of young persons and the treatment of young offenders and for the establishment of juvenile courts. The CYPL has differentiated between a child and young persons. The child is a person who is below the age of 14 years while the young person is above 14years but below 18 years.¹¹⁸ The CYPL is a special code of law and procedure put in place to handle cases involving juvenile as against the conventional courts. The use of juvenile justice was meant to protect the child from the cumbersome, harsh and overly technical nature of procedures in the ordinary court. This practice help in providing protection to victim of trafficking who usually do not have volunteering information about traffickers for fear of being attacked. The adversarial criminal justice system in Nigeria has made the practice subject of attack because victims child trafficking who are usually subjected to all

¹¹⁷ Children and Young Persons Law 1958, Cap 22 KSLN

¹¹⁸ Section 2 of the Children and Young Person Law 1958

kinds of threat both physical and spiritual find it difficult to open up in open court to give evidence to prove the crime against traffickers.¹¹⁹

3.2.2.7 The Immigration Act.¹²⁰

The Nigerian Immigration Act (NIA) is one of the various National Laws put in place by the Nigerian government which assist in fighting child trafficking. Although the Act is not primarily enacted to fight child trafficking, it frowns at all forms of child trafficking in Nigeria, and to achieve this, it has undergone various changes since the immigration service was separated from the Nigerian police force (NPF) in 1958. Since then, the Act was able to provide good legislative provision that match international and global practice in the implementation of modern migration management and criminalizes child trafficking.¹²¹ Furthermore, the NIA has continued to go through changes to accommodate emerging phenomenon aliens control and border management, issuance of all Nigerian travel documents among other functions. In their effort to perform their statutory functions the Nigerian immigration service has been able to arrest a number of child traffickers and their kingpin.¹²² This was disclosed by the comptroller of the immigration Services who is in-charge of Katsina state, Nigeria. He stated that, 37

¹¹⁹ Olateru-olagbegi, B. and Ikpeme, A.,(2006) “Review of Legislation and Policies in Nigeria on Human Trafficking and Forced Labour: International Labour Organization, Abuja, p.24

¹²⁰ The Immigration Act 1990, Cap. 11, Laws of the federation of Nigeria, 2010, Vol. 7, p. 11-1

¹²¹ Ibid p.260.

¹²² Ibid P.26

people have been arrested and arraigned before the court for various offences relating to human and child trafficking in Nigeria.¹²³

3.2.2.8 The Trafficking In Persons (Prohibition) Law Enforcement And Administration Act, 2003

Prior to 2003 there is no any unified law that is directly dealing with trafficking and no agency /institution that is saddled with the responsibility of dealing with trafficking offences. What were available were the relevant scattered domestic laws which include the penal code, criminal code, Immigration Act, child right Act, Labour Act. In the year 2000 the United Nation Transnational Organized Convention 2000 which pave way for a law that will directly deal with trafficking offences. Apparently worried by the adverse social problems and dented international image caused by the unwholesome practice of human trafficking in general and child trafficking in particular, the Federal Government of Nigeria enacted the TIPPLEA Act, 2003¹²⁴ which harmonized all the scattered domestic laws and centralized them.

The 2003 TIPPLEA Act prohibits and prescribes punishment for traffic in persons, particularly women and children, and other related offences. It also establishes a

¹²³ Ogbumuo , E.,(2015) “Immigration Arrest Human Trafficking Kingpin,5 Victims in Katsina.”Premium Times of 6th january,.

Note that section (1) (a-h) of the NIA also fights trafficking as it prohibits the brothel keepers, defilement of girls and procurement for the purpose of prostitution.

¹²⁴ Gbadamasi,O, A,opcit, 74, p.113

national agency for the prohibition of trafficking in persons and other related matters vesting it with the responsibility for investigation and prosecution of offenders thereof and the counseling and rehabilitation of trafficked persons.

3.2.2.9 The Trafficking in Persons (Prohibition) Law Enforcement And Administration Act, 2005 as amended.

Amendments to some sections of the 2003 Act have been enacted by virtue of the trafficking in persons (prohibition) law enforcement and administration (amendment) Act, 2005.¹²⁵ The amendments provide sundry amendments to the trafficking in persons (prohibition) law enforcement and administration Act to;

1. Give prosecutorial power i.e expand the scope of NAPTIP from investigation to prosecution of human traffickers, seizure of properties and forfeiture. This so because initially, the NAPTIP Agency has power to investigate on the issue of trafficking only and submit the report to the ministry of justice for prosecution and enforcement. This lack of prosecutorial power was a serious stumbling block to the agency in the sense that they don't have enforcement power and a serious delay in prosecution, trial and also conviction. The Attorney general has the power to assign cases to the state councils in his ministry, who are also having lots of other cases

¹²⁵ See further, Act NO.14, an Act to amend the Trafficking In Persons (Prohibition) Law Enforcement And Administration Act, 2003, NO.24; and for related matters. Commencement:(7th December 2005), enacted by the National Assembly of the Federal Republic of Nigeria

to prosecute, they don't have very good attention paid to trafficking cases. At times when they succeed in prosecuting the case they find it difficult to arrange for calling of witnesses. Now that the Agency is giving power to prosecute and have their own lawyers they do so immediately after fresh investigation. Along this they also have power to arrest, seize and search on their own. The delay is drastically reduced.

2. Give NAPTIP separate legal entity capable of suing and being sued, all empowered it to be a law agency on its own. This is so because for the Agency to prosecute it must have acquired its legal personality separate and distinct from others.
3. Raised the status of punishment by increasing fine and sentences.¹²⁶

3.2.2.10 Conclusion

Several policies and programmes adopted by the federal government with the intention of improving the wellbeing of its citizens and the protection of their rights which found its basis in the constitution of Nigeria. These domestic and international laws are for the purpose of dealing with the problem of child trafficking in Nigeria. The 2015 TIPPEA Act is considered to be the exclusive Human trafficking law in Nigeria; other laws discussed in the chapter plays a significant role in either protection of the child or helping in the eradication of

¹²⁶ Gbadamosi, O.A, opcit, 74, p.122

child trafficking in one way or the other. This chapter went along way in discussing all the relevant laws that deals with child trafficking. It shows how Nigeria has played a significant role in trying to curtail child trafficking looking at the punishment apparatus existing in the legal framework in Nigeria.

CHAPTER FOUR

AN ANALYSIS OF THE TRAFFICKING IN PERSONS (PROHIBITION) ENFORCEMENT AND ADMINISTRATION ACT, 2015

4.1 Introduction

The chapter being the backbone of the research analyzes the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2015, with a view to examining the extent to which this law have addressed the issue of child trafficking in Nigeria, identify its weaknesses and suggest required amendment to the Act.

4.2 The Trafficking In Persons (Prohibition) Enforcement And Administration Act, 2015¹²⁷

The 2015 Act being the latest version of the law dealing with the menace of human trafficking and child trafficking in particular. This law carve its way as a result of the dare need for reducing the crime to the barest minimum considering the increase in the crime. The TIPPEA Act, 2015 is the latest version of the law in Nigeria dealing with child trafficking. There are about 22 penal provisions (sections 14-35) of the law prescribing different punishment ranging from a minimum six months to life imprisonment for serious offences such as slavery, exportation or importation of girls under the age of 18 years for prostitution, etc.

¹²⁷ The Trafficking In Persons (Prohibition) Enforcement And Administration Act, 2015, Laws of the federation of Nigeria, , Vol. 14, 2010, p. 723-1

The Law vests the power of arrest, search and seizure in the NAPTIP officials or any law enforcement officer.

Victim treatment and protection is also central to the law. By virtue of section 61-66 the law, a victim of TIPs offences is to be identified and treated as a victim and not as a criminal and, where the circumstances so justify, should not be detained or imprisoned. The identity and personal history of an identified victim should be protected from the public by investigators, counseling officers and any other person(s) authorized to work closely with him/her. The responsibilities of the agency towards the victim of trafficking in persons are well set out. A fund known as victim to trafficking trust fund is also established under sections 67 and 68 where in monies realized from the sale of confiscated and forfeited assets of a convicted trafficker under section 48- 50 would be paid into the benefit of the victim, the law is a step forward in addressing crime together with its associated problems.¹²⁸

¹²⁸ National Agency for the Prohibition Of Trafficking In Persons And Other Related Matters [NAPTIP], Trafficking In Persons (Prohibition) Law Enforcement And Administration Act. 2003 as amended with Trafficking In Persons Protocol, p.v-vi.

4.3 The Potentialities of the 2015 TIPPLEA Act in Preventing Child Trafficking

The enactment of the 2015 TIPPLEA Act is a great stride made by the Federal Government to stem the tide of human trafficking in general and child trafficking in particular. The Act has done a lot in reducing the crime drastically. The Act was proved to be a better legislation because it came with new innovations not present in the previous legislation in the following ways;

1. Simplicity of the Language of the Law

The Act improved its language nomenclature. The simplicity of the language is one of the greatest achievement and distinctive feature of the Act. The United States Human Trafficking Watch List in the year 2000 at the Palermo Convention rated Nigeria to be at the second tier because of the language used in drafting the TIPPLEA Act, 2003. This is what led to the repeal and the law was changed there by using the language of the Palermo Protocol.¹²⁹ It can simply be said that the 2015 TIPPEA Act is regarded as the simple domestication of the Palermo protocol.

2. Offences Created By The Act

¹²⁹ Ibid, p.vii

The Act criminalized the following offences;

a. Facilitation of travelling by virtue of Section 18 of the 2015 Act is a crime thus;

“any person, who organizes, facilitate or promotes foreign travels which promote prostitution or other forms of exploitation of any person or encourages such activity, commits an offence and is liable to on conviction to imprisonment for a term of not less than seven years and a fine of not less than #1,000,000.00”

b. Conspiracy is also a crime as provided under section 27 of the 2015 Act;

“Any person who conspires with another to commit an offence under this Act is liable –

1. Where the offence is committed, to the punishment provided for the commission of the offence; and

Where the offence is not committed, to a punishment which is half the punishment of the offence.”

c. Attempt to commit an offence in the act is also a crime as provided under section 29 of the 2015 Act;

“any person who attempts to commit any offence under this Act is liable on conviction to half the punishment for the offence.”

d. Obstruction of the Agency: The agency can charge any person for obstruction of agency as provided under section 32(1) & (2) of the 2015 Act.

“any person who unlawfully_

I (a) - the Agency or any authorized officer of the Agency in the exercise of any of the powers conferred on the Agency by this Act or,

(b) - fails to comply with any lawful enquiry or requirement made by any authorized officer in accordance with the provisions of this Act, commits an offence and is liable on conviction to imprisonment for a term not exceeding 5 years or a fine of #250,000 or both.”

3. Penalties

a. The Act streamlined punishment for all its offences; for instance, the 2003 TIPPLEA Act provides that;

” any person who attempts to commit any offence under this act is liable on conviction to 12 months imprisonment or a fine of #50,000.00 or both.”

Whereas on the same offence in section 29 of the 2015 Act provides:

“Any person who attempts to commit any offence under this Act is liable on conviction to half the punishment for the offence.”

In another instance with regard to the offence of forced labour section 22(e) of the 2003 TIPPLEA Act provides that;

“Any person who employs a child in industrial undertaking commits an offence and is liable on conviction to fine not

exceeding #100,000.00 or imprisonment for a term of five years or both such fine and imprisonment.”

On the other hand section 22(b) of the 2015 Act provides that:

“permit any place or premises to be used for forced labour, commits an offence and is liable on conviction to imprisonment for a term of not less than five years and a fine of not less than #1,000,000.00.”

In both the two instances cited above, it can be inferred that the judge in the previous law is given the discretion to decide what punishment because of the presence of the word “or”, while in the 2015 Act, the punishment is streamlined ,the judge doesn’t have any discretion, he just have to apply the punishment as it is.

b. There is stricter punishment in the Act; The 2015 Act totally removed the option for fine, increased sentences, streamlined punishment and doubled compensation. This is enough to justify that there is seriousness with regards to enforcement. The more strict punishment is, the more the compliance. Below are some illustrations.

1. The Act removed totally the option of fine in all its punishments. For instance, with regard to the offence of forced labour section 22(e) of the 2003 Act provides that;

Any person who employs a child in industrial undertaking commits an offence and is liable on conviction to fine not exceeding #100,000.00 or imprisonment for a term of five year or both such fine and imprisonment.”

On the other hand section 22(b) of the 2015 Act provides that:

“permit any place or premises to be used for forced labour, commits an offence and is liable on conviction to imprisonment for a term of not less than five years and a fine of not less than #1,000,000.00.”

The 2015 Act substituted the word “or” with “and” ,thus removing the option totally and thereby making the punishment stricter. It can be rightly observed from the illustration below how cases differed before or after the enactment of 2015 Act with regard to fine option.

Pre-2015 cases with fine options.

a. *AGF v. Ozavize*

*Adanini*¹³⁰: The defendant in this case was convicted and sentenced to 2years imprisonment or pay a #20,000 option fine.

b. *AGF v. Kafayat*

*Ayomide Ajao*¹³¹: The defendant in this case was convicted and sentenced to 2 years imprisonment or #50,000 option of fine.

c. *AGF v. Blessing*

*Osagie*¹³²: The defendant in this case was convicted and sentenced to 1year imprisonment or #50,000 option of fine

¹³⁰ Charge no: FHC/KN/CR/50/2014, Federal High Court Kano

¹³¹ Charge no: FHC/KN/CR/176/2014 , Federal High Court Kano

Cases decided after the 2015 enactment has no fine options, hence the following cases will serve as illustrations;

a. *AGF v. Clifford*

*Osumah*¹³³: Here the defendant was convicted and sentenced to 4 years imprisonment without option of fine.

b. *AGF v. Wasilu*

*Umar*¹³⁴: Here also, the defendant was convicted and sentenced to 2years imprisonment without option of fine.

c. *AGF v.*

*Kamaluddeen Yau*¹³⁵: Here also, the defendant was convicted and sentenced to 2years imprisonment without option of fine.

d. *AGF v. Dalhatu*

*Gambo and Nuhu Ahmed*¹³⁶: Here also, the defendant was convicted and sentenced to 3years imprisonment without option of fine.

e. *AGF v. Alh. Bature*

*musa*¹³⁷: Here also, the defendant was convicted and sentenced to 2years imprisonment without option of fine.

¹³² Charge no: FHC/KN/CR/178/2014, Federal High Court Kano

¹³³ charge no: FHC/KN/CR/68/2016 , Federal High Court Kano, Court 2

¹³⁴ Charge no: FHC/KN/CR/146/2016, Federal High Court Kano.

¹³⁵ Charge no: FHC/KN/CR/145/2016, Federal High Court Kano, Court 2

¹³⁶ Charge no: FHC/KN/CR/150/2016, Federal High Court Kano, Court 2

2. The Act increased sentences i.e make longer sentences. This is illustrated in the cases below;

a. *AGF v. Favor Kingsley*¹³⁸: The defendant in this case was convicted and sentenced to 21 years imprisonment without option of fine.

b. *AGF v. Sallau Mohammed*¹³⁹: The defendant in this was also convicted and sentenced to 7 years imprisonment without option of fine.

It can be seen in the above two cases cited, sentences are much longer than in the previous cases cited on various illustrations.

3. The Act doubled the payment of compensation to the trafficked victims: compensation paid to the trafficked victims according to the 2015 Act was doubled, and in the event where the accused was unable to pay the compensation, he is not allowed to go free, additional sentence will be given to the accused in lieu of the compensation and will have to pay a fine of not less than #1,000,000 again.

This can be seen in the following illustrations;

a. *AGF v. Salisu Abdullahi*¹⁴⁰: The defendant in this case was convicted and sentenced to 14 years imprisonment without option of Fine and to pay a compensation of 2 million naira to the victim.

¹³⁷ Charge no: FHC/KN/CR/303/2016, Federal High Court Kano, Court 2

¹³⁸ Charge no: FHC/KN/CR/47/2016, Federal High Court Kano, Court 3

¹³⁹ Charge no: FHC/KN/CR/229/2016, Federal High Court Kano, Court 2

b. *AGF v. Yunusa Umar*¹⁴¹: The defendant in this case was convicted and sentenced to 15 years imprisonment without option of fine and to pay compensation of 1 million naira to the victim.

c. *AGF v. Yusuf Umar*¹⁴²: The defendant in this case was convicted and sentenced to serve 10 years imprisonment without option of fine and to pay a compensation of 2 million naira only to the victim.

4. Jurisdiction

a. Concurrent jurisdiction; The Federal High Court, The High Court Of A State And The High Court Of The Federal Capital Territory Have Concurrent Jurisdiction To Try Any of the offences under sections 36(1) and 37 the law. The High Courts has powers to impose the penalties provided for in this act notwithstanding anything to the contrary in any other enactment¹⁴³

b. Extra-territorial jurisdiction

The seriousness of the law is under scored by its section 36 which provides for extra-territorial jurisdiction In the form of active personality jurisdiction. That is to

¹⁴⁰ Charge no: FHC/KN/CR/303/2016, Federal High Court Kano, Court 3

¹⁴¹ Charge no: FHC/KN/CR/54/2017, Federal High Court Kano, Court 2

¹⁴² Charge no: FHC/KN/CR/39/2018, Federal High Court Kano, Court 2

¹⁴³ The Trafficking In Persons (Prohibition) Law Enforcement And Administration Act, 2015, Laws of the federation of Nigeria, , Vol. 14, 2010, p. 723-1

say, any Nigerian or person granted permanent residence in Nigeria who commits any of the offences provided for in the law outside Nigeria is guilty of the offence and liable to be tried anywhere in Nigeria as if the offence is committed in Nigeria.

d.

Civil jurisdiction

Victim treatment and protection is also central to the law. By virtue of section 61-66 of the law, a victim of TIPs offences is entitled to compensation and restitution from his /her exploiter (s) by way of a civil action.

5. Speedy Trial

Quick and speedy trials of trafficking offences was achieved with the help of Administration of Criminal Justice Act (ACJA) of 2015: This is visible because 99% of cases tried after the TIPPLEA 2015 Act was enacted lasts for days from the date of filing, date of trial commencement and to date of judgement as quick as 1 day, 2 days, 4days and 7 days, as it is illustrated in the below cases. The trafficking offences that were concurrently tried by the Federal High Courts, High Courts of FCT And State High Courts (as discussed above) are among the offences listed under section 232(4)(d) of the ACJA, thus making the ACJA law applicable to the two high courts.

In addition to the above, section 349(2) of the ACJA law provides that any two adjournments must be within 30 days. In addition, section 396(3) of the ACJA law

provides for day to day trial. So it is base on the above statutory authorities that, cases of trafficking must be heard immediately for speedy and easy trial. Hence the following illustrations in the cases below

a. *AGF v. Moses Jackson*¹⁴⁴: This case lasted for a day, filed on the 10/12/2015, trial commenced on 11/12/2015 and judgement given on the same day.

b. *AGF v. Zulai Garba and Aisha Abdullahi Abubakar*¹⁴⁵: This case lasted for 2 days, filed on the 07/12/2015, trial commenced on 09/12/2015 and judgement given on the same day.

c. *AGF v. Sallau Mohammed*¹⁴⁶: This case lasted for 4 days, filed on the 18/11/2016, trial commenced on 22/11/2016 and judgement given on the same day.

d. *AGF v. Joy Obi*¹⁴⁷: This case lasted for 6 days, filed on the 02/02/2016, trial commenced on 08/02/2016 and judgement given on the same day.

e. *AGF v. Dalhatu Gambo and Nuhu Ahmad*¹⁴⁸: This case lasted for 6 days also, filed on the 08/06/2016, trial commenced on 14/06/2016 and judgement given on the same day.

¹⁴⁴ Charge no: FHC/KN/CR/252/2015, Federal High Court Kano

¹⁴⁵ Charge no: FHC/KN/CR/248/2015, Federal High Court Kano

¹⁴⁶ Charge no: FHC/KN/CR/299/2015, Federal High Court Kano, Court 2

¹⁴⁷ Charge no: FHC/KN/CR/035/2016, Federal High Court Kano, Court 1

¹⁴⁸ Charge no: FHC/KN/CR/150/2016, Federal High Court Kano, Court 2

f. *AGF v. Shafiu Ali*¹⁴⁹: This case lasted for 10 days also, filed on the 03/06/2016, trial commenced on 13/06/2016 and judgement given on the same day.

Only in very rare cases where there is one problem or the other for instance where accuse jumps bail before judgement, the sentencing defer for 7 months till he was arrested as seen in the case of

*AGF v. Ehimatie Idehen*¹⁵⁰: where the case was filed on 07/03/2016, trial commenced on 23/04 2016 and judgement given on 16/11/16

However, cases tried before the enactment of the 2015 Act lasted for 7, 8 10 and 13 months in some cases hence the following illustrations;

a. *AGF v. Alh.Moh'd Sani*¹⁵¹: The case lasted for 10 Months, filed on the 03/03/2010, trial commenced on 26/01/2011 and judgement given on the same day.

b. *AGF v. Hamza M Indabawa*¹⁵²: The case lasted for 8 Months, filed on the 10/02/2011, trial commenced on 17/10/2011 and judgement given on the same day.

c. *AGF Mohammad Lawal*¹⁵³: The case lasted for 13 Months, filed on the 11/10/2012, trial commenced on 28/01/2013 and judgement given on the same day.

¹⁴⁹ Charge no: FHC/KN/CR/145/2016, Federal High Court Kano, Court 2

¹⁵⁰ Charge no: FHC/KN/CR/68/2016, Federal High Court Kano, Court 3

¹⁵¹ Charge no: FHC/KN/CR/32/2010, Federal High Court Kano

¹⁵² Charge no: FHC/KN/CR/21/2011, Federal High Court Kano

¹⁵³ Charge no: FHC/KN/CR/255/2011, Federal High Court Kano

d. *AGF v. Adamu Haruna*¹⁵⁴: The case lasted for 7 Months, filed on the 15/05/2012, trial commenced on 18/12/2012 and judgement given on the same day.

e. *AGF v. Mohd Sani*¹⁵⁵: The case lasted for 8 Months, filed on the 10/02/2011, trial commenced on 18/10/2011 and judgement given on the same day.

4.4 Institutional Framework

4.4.1 Task force on child trafficking created by the federal government.

The initial response by the Nigerian Government to the challenges posed by this heinous crime of human trafficking was the establishment of a Task Force on Human Trafficking in the Nigerian Police Force and Nigerian Immigration Service in 2001.

The Task Force was charged with the following responsibilities:-

- i. The investigation and prosecution of cases of human trafficking and other related offences
- ii. Documentation, screening, and release of deportees to their State Liaison Offices for the purpose of rehabilitation and reintegration with their families.

¹⁵⁴ Charge no: FHC/KN/CR/58/2012, Federal High Court Kano

¹⁵⁵ Charge no: FHC/KN/CR/22/2011, Federal High Court Kano

- iii. Documentation and screening of victims of human trafficking which is considered as one of the most important methods of gathering information from the victims, how they left the country and their sponsors.
- iv. Liaising with Non-Governmental Organizations who are working on the rehabilitation of deportees.
- v. Enlightenment of the public and informing the deportees on the hazards of prostitution and the modern slavery christened “Human Trafficking”.
- vi. Enlightenment of the public and informing the deportees on the hazards of prostitution and the modern slavery christened “Human Trafficking”.
- vii. Liaising with other security Agencies, Ministries and Embassies on matters relating to human trafficking.
- viii. Gathering of information on traffickers and their modus of operation.
- ix. Working jointly with security agencies and Ministries in the evacuation of victims of Human Trafficking.
- x. Attendance to Interpol Conferences, where joint actions are mapped out on the eradication of human trafficking and formulation of “manual of best

practices' for the use of the Police on investigation of cases of human trafficking.¹⁵⁶

The above responsibilities of the Task Force were later taken over by the National Agency for the Prohibition of Trafficking In persons (NAPTIP) as statutory responsibilities under the Trafficking in Persons (Prohibition) and Law Enforcement and Administration Act of Nigeria, (2003).

Towards monitoring and evaluating the various measures to combat Human Trafficking and Child Labour in conjunction with the National Agency for Prohibition of Trafficking in Persons (NAPTIP), the then President of the Federal Republic of Nigeria chief Olusegun Obasanjo created the Office of the Special Assistant to the President on Human Trafficking and Child Labour in its concerted efforts to deal with the increasing incidence of organized crime of human trafficking, its magnitude, effect on the economy, political system, socio-cultural and moral values on the Nigerian society. The Office was charged with the following responsibilities: -

1. Coordinating all the activities of Human Trafficking and Child Labour in the Country and making direct input to government in form of policy formulation.
2. Advising the President on issues relating to human Trafficking and child labour.

¹⁵⁶ Gbadamasi ,O .A, (2006), International Perspective and Nigerian Laws on Human Trafficking, Network for Justice for Democracy , ALL nations Press, Benson Idahosa University Campus Ugbor, Benin city,Nigeria,1st Edition , ,p.110-111.

3. Initiating and developing programmes of action which would help alleviate the problem.
4. Coordinate and collaborate with all Governmental and non-Governmental organizations involved directly or indirectly with human trafficking and child labour.
5. Continually gather relevant data and information on issues relating to human trafficking and child labour
6. To influence governmental policies which could serve as a means of eliminating and reducing the scourge of human trafficking and child labour
7. To work with international organizations and countries with specific interest on the subject area.

At a consultative session held on January 2006 in Jos, Nigeria between the various agencies engaged in anti-trafficking measures, the need was emphasized for all the affected agencies to enter into a partnership if they are to subdue the monster called human trafficking but factors such as rivalry among the law enforcement agencies, lack of effective training, research and intelligence gathering were identified as part of the hydra headed problems amongst other factors militating against anti-human trafficking crusade.

The position today is a better than the previous one because, with the coming of the TIPPEA Act, 2015, the functions of the agency are spelt under section 5(f), (q),

(t) and (u). Paragraph (f) imposes on the NAPTIP Agency to strengthen cooperation and conduct joint operations with relevant law enforcement and security Agencies, international authorities and other relevant partners in the eradication of TIPS. Paragraph (q) imposes on the NAPTIP Agency to collaborate with government Bodies both within and outside Nigeria whose functions are similar to those of the Agency in different areas listed in the Act. Paragraph (t) imposes on the NAPTIP Agency to initiate, develop and improve special training programs for personnel of the Agency and relevant law enforcement Agents charged with the responsibility of detecting offences created under the Act. Paragraph (u) imposes on the NAPTIP Agency to carry out any other activities as are necessary for the efficient discharge of the functions conferred upon it under the Act.¹⁵⁷

4.4.2 National Agency for the Protection of Trafficking In Person (NAPTIP)

It is imperative that legislations should be supported by programmes and policies that will make the elimination of trafficking in persons a de facto reality. Nigeria is the first country in Africa to enact a law against trafficking in persons and to establish a specific agency -the National Agency for the Prohibition of Traffic in Persons and other related matters (NAPTIP) to implement the law. NAPTIP as an

¹⁵⁷ **Section 5**, The Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2015, Laws of the federation of Nigeria,, 2010, Vol. 14, p. 723-1

Agency is the creation of the Trafficking In Persons (Prohibitions) Enforcement And Administration Act (TIPPEA) 2015.¹⁵⁸

The Act establishes the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) significantly, to harmonize all anti- human trafficking laws in Nigeria so as to confront the common enemy which is human trafficking including children through investigating and prosecuting trafficking offenders while rehabilitating trafficking victims. The was purposely enacted in order to domesticate the United Nation Trafficking Protocol to prevent, suppress and punish trafficking in persons, especially women and children which Nigeria had ratified in 2001.¹⁵⁹

Section 5 of the 2015 Act in an effort to effectively tackle and address TIPs inter alia, vests in NAPTIP as a specific multi disciplinary crime fighting agency the following functions:

1. To coordinate all laws on Trafficking in Persons and related offences.
2. To adopt measures to increase the effectiveness of eradication of Trafficking in Persons.
3. To adopt witness protection measures;

¹⁵⁸ NAPTIP,(2008), National Policy on the Protection and Assistance to Trafficked Persons in Nigeria, Published in Abuja November, p. I

¹⁵⁹ Shatsari, R.S., Opcit, footnote 64, p.85

4. To enhance effectiveness of the law enforcement agents to suppress trafficking in persons;
5. To establish proper communication channels, conduct research and work on improving international cooperation in the suppression of traffic in persons; by land, sea and air.
6. To reinforce and supplement measures in bilateral and multilateral treaties and conventions on traffic in persons;
7. To work with collaboration with other agencies or bodies that may ensure elimination and prevention of the root causes of the problem of traffic in any person;
8. To strengthen cooperation between the attorney general of the federation, Nigeria police, Nigeria immigration services, Nigeria custom services, Nigeria prison services, welfare officials and all other agencies in the eradication of traffic in persons.
9. To take charge, supervise, control and coordinate the rehabilitation of trafficked persons;
10. To investigate and prosecute traffickers.¹⁶⁰

¹⁶⁰ National Agency For The Prohibition of Traffic In Persons and Other Related Matters (NAPTIP), Trafficking in Persons and (Prohibition) Law Enforcement And Prohibitions Act, 2003 As Amended With Trafficking in Persons Protocol.

By these functions the agency became the country's focal point in the fight against trafficking in persons and its associated social problems.

4.4.3 Department of the Agency

Specialized operational departments are created by section 11 of the law to implement the mandate of the agency. The seven departments include,

- a. Investigation and monitoring Department
- b. Legal and prosecution Department
- c. Public enlightenment Department
- d. Counseling and rehabilitation Department
- e. Research and programme Development department
- f. Training and manpower Development Department
- g. Such other departments as the Agency may establish with the approval of the Board from time to time.

This shows that there is division of labour / active participation for effective and efficient performance of the agency.

4.4.4 Composition of the Governing Board of the Agency

The composition of the governing board of NAPTIP Agency is empowered and made in such a way that it became a specific multi-disciplinary crime fighting

Agency. By virtue of section 3 (1) (c) of the TIPPEA Act, 2015 which provides for the establishment and composition of the governing Board, the agency is really empowered more than the former laws as a paramilitary, they are empowered by having a representative each from other institutions or Agency who should be within the Directorate cadre. These representatives include people from;

- i. federal ministry of justice
- ii. federal ministry of women affairs
- iii. federal ministry of labour and productivity
- iv. Nigerian police force
- v. National intelligence
- vi. Nigeria immigration services and
- vii. National planning commission.

4.4.5 Powers of the Minister of justice

The minister under sec 67 (3) of the TIPPEA Act 2015, has the exclusive power to make regulatory and issue guide lines for the management of funds established under sub-section (1) section 67. The Minister is having the absolute and exclusive power to approve any disbursement of monies. Under sec 68 (4) By virtue of sec 68 (3) the Ministry should be the chairman of the trust fund committee

4.5 The Challenges of Act

The NAPTIP Act has undergone two amendments since its enactment in 2003 to date. All the amendments were aimed at strengthening the law (Act) so as to adequately and effectively fight child trafficking in Nigeria. Despite these amendments, the overall performance of NAPTIP Act is still not satisfactory. Although the amendments were able to enlarge its scope in area of Investigation, prosecution of Human Traffickers, treatment of trafficked person as well as seizure of properties and forfeiture,¹⁶¹ that were hitherto identified as challenges facing the Act in fighting the menace of child trafficking in Nigeria, but still there exist some weaknesses in the Act which hinders adequate operation of the NAPTIP in fighting the menace of child trafficking in Nigeria.

The following are some challenges which have not been covered by 2015 TIPPEA Act;

1. New forms of trafficking: it is important to point out that, child trafficking is traditionally known for exploitive purposes such as prostitution, begging, and domestic servant. However, in recent past human trafficking in Nigeria has metamorphosed into what is called “baby harvesting”. The first case of baby harvesting or baby factory was reported in 2006 and since then it has been increasing by the day like wild fire. In May 2008 alone, about 25

¹⁶¹ Trafficking In Person (Prohibition) Law Enforcement and Administration Act, 2015. Explanatory memorandum of appendix iv.

teenage girls were intercepted in Enugu. Between June and October 2011, about 49 teenage girls were rescued from a baby factory in Abia and Lagos states of Nigeria. While between May and July 2013, over 53 teenage girls and 11 babies were arrested by the police in Enugu and Abia state of Nigeria. This demonstrates how rapid the menace is spreading. Under this type of modernized form of child trafficking, teenage girls and young women are deceived by traffickers to the so called baby factory with empty assurance for job, while those who got pregnant through extra marital means come voluntarily to the factory for either safe abortions or delivery. Other young girls come to the factory voluntarily and later impregnated by men who are specially employed for that purpose. The newly born babies are then either sold out to interesting public or sometimes disappeared through mysterious means or even dashed out to childless couples or religion orphanages¹⁶². The NAPTIP Act being the principal law which is enacted to purposely address cases of human trafficking in Nigeria cannot therefore be said to cover cases of baby factory. It is therefore questionable whether NAPTIP can effectively combat the “baby factories” phenomenon.

Section 21 of the act provides;

¹⁶² Cambridge university online, available at <http://dictionary.cambridge.org/dictionary/english/autonomy>, last accessed on 1st September, 2015.

“ any person who buys , sells , hires, let other wise obtains the possession or disposal of any person with intent, knowing it to be likely or having reasons to know that such a person will be subjected to exploitation , commit and offences and is liable on conviction to imprisonment for a term of not less than 5 years and a fine of not less than N2.000.000.00.”

A carefully reading of the law will show that it is only concerned with selling or buying of another person for exploitive means. The question here is can the phenomenon of baby harvesting fall under this category? Particularly situation were such children are given out free to childless couples or to religion orphanages as the situation is sometimes in baby factory? Will such a situation fall under the above section. It is the opinion of the researcher that this type of situation has not been envisaged by the drafter of the law which makes it fall outside the realm of this Act. To further buttress this argument, it is the submission of the researcher that mere mentioning of the word “sale or buy” of a person in the Act alone is not enough. Because “ sale or buy ” are generic in nature which cannot be construed to cover phenomenon like “baby harvesting” which we consider more complicated than the word “sale or buy” of a person simpliciter as it is not captured in the definition of trafficking as envisaged by the NAPTIP Act.

2. Lack of Financial Autonomy: Financial Autonomy has been defined as the ability to make your own decision without being controlled by anyone else¹⁶³. The NAPTIP Act 2015,¹⁶⁴ provide for the appointment of DG to head the agency as against executive secretary in the former Act ,who shall be the chief executive officer of the agency, But this elevation or change in nomenclature did not extend to cover financial autonomy of the agency, the power of the agency to access fund for its general administration is still vested in the Attorney General and Minister of Justice. The Act provides that:

“The Minister shall make regulations and issue guidelines for the management of the fund established under sub-section (1) of this section and related matters.”

¹⁶⁵

The Act further provides that:

“.....provided that where it is expedient, and subject to approval of the Minister, the Director General shall have power to disburse monies, not exceeding ₦500,000.00”¹⁶⁶

The combine effect of these Sections means that the DG of NAPTIP is also the chief executive officer of the agency cannot do anything without the approval of

¹⁶³ Cambridge university online, available at <http://dictionary.cambridge.org/dictionary/english/autonomy>, last accessed on 1st September,2015.

¹⁶⁴ Section 3(d) of the NAPTIP Act, 2015.

¹⁶⁵ Section 67(3) of the NAPTIP Act,2015

¹⁶⁶Section 68 of the NAPTIP Act,2015

the Minister including the routine activities of the agency as provided under the law.¹⁶⁷ This is because, the duties of the agency among others, requires constant monitoring of activities of traffickers across Nigeria through gathering of intelligent, and due to the secretive nature of the operation of the traffickers, it requires a lot of intelligence gathering through travelling across the length and breadth of Nigeria and Neighboring countries, and this requires a lot of money that must be available on demand. Furthermore, power of the agency to investigate and prosecute suspected traffickers requires money which will be used to invite witnesses both within and outside Nigeria and their upkeep during the pendency of the trial. All these requires readily available fund without necessarily waiting for approval from outside. Conclusively, the provision of the Act which tie the power of the agency to acquire money to perform its routine activities under the whims and caprices of the Attorney General/Minister of Justice is hindering the smooth performance of the agency because the Attorney General/Minister of Justice is already choked up with many other states responsibility as such may not have time to attain to daily demand of the agency and this will hamper the effective performance of the agency.¹⁶⁸ There is urgent need to further amend the Act so as to tackle the emerging challenges as well as meet up the current realities which

¹⁶⁸ Kwagyang, G. U. and Murgan, G. M.,” Appraisal Of The Legal Frame Work Against Child Trafficking in Nigeria”, www.unimaid.edu.ng. last accessed 11th July, 2018.

were not addressed by the 2015 amendments. By so doing, the agency (NAPTIP) will be able to achieve its desire for wiping out child trafficking in Nigeria.

3. The ethical issues in Nigeria's governance are often put forward as an impediment to tackling various social predicaments and indeed the ethical issue among those in the leadership position has continued to worsen leading to Transparency International, at one time, ranking Nigeria among the top three most corrupt nations on earth.¹⁶⁹ However, amid the current social and political disarray, law and policy makers at both national and international levels Endeavour to set workable legal frameworks to address the lingering phenomenon.¹⁷⁰

4.6 Conclusion

The 2015 Act was a giant stride to tackle child trafficking in particular being considered as the exclusive human trafficking law in Nigeria. The 2015 Act has played a great role in speeding trials, streamlining punishment, total eradication of fine option, criminalizing acts that were not offence in the previous laws, empowering the agencies and above all known for its language simplicity. This chapter also discusses some challenges like lack of financial autonomy and

¹⁶⁹ Nwadiogwa, E.K, (2010), 'Nnabuike Defining and Enforcing Ethical Leadership in Nigeria' *African Journal of Economic and Management Studies*, P.25.

¹⁷⁰ Ibid p.26

emerging phenomenon such as baby harvesting among others which are discovered to be a stumbling block to the smooth operation of the law and its agency.

CHAPTER FIVE

CONCLUSION

5.1 Summary

Chapter one which is the introductory part of the Research lays the basis and foundation upon which the research lies. It brings out the problem upon which the research is embarked on, the chapter Reviewed Several literatures which created

the gap that justifies the Research The research analysis, child trafficking under the TIPPEA Act, 2015, and see how it took care of child trafficking, its challenges and aims at making it a better place in preventing child trafficking.

Chapter two provides an area where several definitions were made to give a conceptual discourse on the subject of matter, this chapter gives a good clarification on the terminologies used in the research and also gives a clear understanding with regard to the area of child trafficking of particularly as oppose to other forms of trafficking.

Chapter three provides for the legal frame work of child trafficking, it discusses several laws and policies that in one way or the other cater for child trafficking. It starts with the provision of the constitution of the federal Republic of Nigeria, 1999 as amended which transpires in all the laws cited. It also traces the occurrence of the TIPPLEA Act 2003, what lead to its amendment in 2005. It also discusses the reasons for the repeal of the 2005 that lead to the present enactment of the TIPPEA Act, 2015 which is the latest version of the law now.

Chapter four gave the analysis of the TIPPEA Act 2015 in terms of its potentialities in dealing with the TIPS phenomenon. The 2015 TIPPEA Act has its super powers which include, making punishment stricter, expanding jurisdictions of courts, speedy trial etc. These among other things were discussed in the chapter

citing various relevant judicial authorities that justified the potentialities of the 2015 TIPPEA Act. The chapter also discusses the institutional framework of child trafficking as whole and lays emphasis on the powers vested on the agency, the departments the under Agency and also powers of the Minister and the D.G of NAPTIP Agency. Baby harvesting and Lack of financial autonomy of the agency are seen as the major challenges of the 2015 TIPPEA Act.

Chapter five being the concluding chapter summarizes the whole research bring out the findings and provide for Recommendation

5.2 Findings

The findings of this research include the following;

1. The TIPPEA Act, 2015 did not take care of the new emerging method of trafficking which is baby harvesting that is being used by traffickers now.
2. The agency does not have financial autonomy for the smooth discharge of its duties.
3. On the part of the government,
 - a. There is no political will and mind to implement and discharge its primary duties of child protection and improving social standards of its children.
 - b. The Government is not serious about fighting poverty and education

- c. The Government is not serious in fight corruption and its associate crimes
- 4. Parents are not serious at all in shouldering the responsibility of their children and civil society organization should also keep their focus on issues concerning children's Right and welfare.

5.3 Recommendation

Trafficking in general is a multi-dimensional problem which needs to be addressed from different approaches. The problems include a moral, a criminal, a migration, a human right, a public order and a labor issue problems.¹⁷¹ Law alone cannot fight it. Eliminating the problems of child trafficking therefore requires both the resolve of the individual, community, political will of the state, multi-sectoral approaches and well coordinated international efforts to combat the scourge of child trafficking which presents difficult legal and social challenges of our time.

In an attempt to make the 2015 trafficking in persons (prohibition) enforcement and administration Act a better place in dealing with child trafficking, this research therefore recommends;

- a. The immediate amendment of the Act to cover the following issues;

¹⁷¹ Foundation of Women's Forum, (1998), "Trafficking Of Women For The Purpose Of Sexual Exploitation- Mapping The Situation And Existing Organizations Working In Belarus, Russia, The Baltic And Nordic States". Stockholm, August, P.18-20

- i. To take care of baby harvesting as a new method used by traffickers.
 - ii. The agency should be given financial autonomy for the smooth discharge of their duties as contained in the law.
 - b. The State Assemblies that are yet to enact and domesticate the Child Rights Act for the protection of children should endeavor to enact and of course with some little modifications that may not affect the development and well being of the child. Government should organize enlightenment programs as the major bottle neck for the acceptability of the Act is lack of education and awareness, particularly in the North.
3. Government should have the political will and stand up to its primary task of improving social standards of children and people in general, by securing the polity, educating them and also create poverty alleviation programmes to address the situation urgently, as part of the promises it always makes at the point of campaign. More so the government should tighten its belt and strengthened its anti-corruption agencies so as to seriously check the menace of corruption urgently.
4. Parents should be more serious in taking up to the responsibility of taking care of their children. Civil Society Organizations (CSOs) should also help the government in discharging the above responsibilities.

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