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A Critique on the Legal Framework for Combating Human Trafficking in Nigeria

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Abstract

Human trafficking is a menace that affects the global community, because of its adverse effect on the members of the society. It is therefore a violation of the human rights of persons and is believed to oppress thousands of people globally. In Nigeria, there is a legal framework to combat human trafficking, however, human trafficking still remains a major concern that has eaten so deep into the fabric of Nigeria and has become very complex to tackle. Human trafficking just like any other crime has evolved and is still evolving as society evolves. Therefore, there is an expectation that laws are constantly in conformity with the current trends and practices of human trafficking in a community. This study aims to critically critique the position of the law on human trafficking in Nigeria, the gaps present in these laws and make recommendations to effectively fight against human trafficking. This study also recommends that further amendments of the extant laws should comply with the present-day realities.

Key words: combating, effectively, human trafficking, legal framework

1. Introduction

Most countries in the world are infected by the crime called human trafficking which has eaten deep into fabrics of their society.¹ Human trafficking has been identified as one of the fastest growing criminal industries in the world.² For years, large number of men, women, and children fall prey to human traffickers, both nationally and internationally.³ The International Labour Organization (ILO) estimated that approximately 28 million people from 8 different countries are trafficked around the world, 17.3 million of these people are experiencing forced labor in the private sector industries while 6.3 million are experiencing forced commercial sexual exploitation.⁴ Nigeria is well-known globally as a source country, a transit country as well as a destination country for trafficking of persons.⁵ The victims of human trafficking, particularly women and children, are recruited from within and outside the country's borders and are trafficked for a range of purposes, including forced marriage, forced labour, sexual exploitation, street hawking, domestic servitude, mining and begging.⁶ Thus, the crime of human trafficking is a globe phenomenon that poses a huge threat to human existence and peaceful living. The reason why it is a major issue is because it has proved to

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¹ A Ashiru, 'Human Trafficking And Human Rights In Nigeria: Examining The Domestic And International Legal Framework' [2021] 1-21
<https://www.researchgate.net/publication/348183056_Human_Trafficking_And_Human_Rights_In_Nigeria_Examining_The_Domestic_And_International_Legal_Framework> Accessed 1 September 2022.

² PO Iwe, 'Human Trafficking and Changing Economy in Nigeria' *South-South Journal of Humanities And International Studies* [2021] (4) (1) 57-67

³A. Ashiru (n.1)

⁴Office on Trafficking in Persons, 'International Labor Organization' [2021] <<https://www.acf.hhs.gov/otip/news/international-labor-organization>> accessed 15 September 2022

⁵ EB Onyekachi And AJ Azubike, 'The Menace of Human Trafficking Across the Sahel Region and The Efforts Of NAPTIP' *IDOSR Journal of Arts and Management* [2021] (6) (1) 15-29 <https://www.google.com/search?q=onyekachi+and=Azubike%2C+The+menace+of+human+trafficking&ie=UTF-8&oe=utf-8&hl=en-ng_&client=safari> accessed 2 September 2022

⁶A. Asiru (n.1)

be the cause of crimes and a constant threat to human beings around the world.⁷ As a result, fighting this menace has become extremely important during the past years. It has been discovered that the various root causes of human trafficking worldwide, are manifested in the demographic boom, poverty, illiteracy, greed, gender cultural biases and unfavorable economic conditions, which exacerbate unemployment, underemployment and insecurity, forcing citizens to seek better opportunities in other countries.⁸ Victims are recruited and captured by traffickers through several means some of which include; through promise of educational scholarships, blackmail, abduction, the guise of proffering financial relief to their poor families, false promises of well-paid jobs, fake employment advertisements, manipulation of emotions, coercion and many more.⁹

Nigeria was in fact for a long period in a state of denial and did not recognize trafficking in persons as a serious problem that needed to be urgently tackled, however, in recent times there has been a need to pay urgent attention to human trafficking by the Nigerian government.¹⁰ There was no specific legislation prohibiting human trafficking and this gave the illegal trade the opportunity to continue to grow and flourish, the closest thing that was referred to as anti-trafficking legislation was part of the existing Criminal code and Penal code rather than a separate broad-gauged law. However, in 2003 the first anti-trafficking legislation was enacted which was the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003, which was amended in December 2005 and subsequently

⁷ J Osahon, 'NAPTIP to Partner Security Agencies, Traditional Rulers in Fight against Trafficking' *The Guardian Nigeria News* (Yenagoa, 13 March 2022) <<https://guardian.ng/news/naptip-to-partner-security-agencies-traditional-rulers-in-fight-trafficking/>> accessed 3 September 2022.

⁸ SK Kigbu and YB Hassan, 'Legal Framework for Combating Human Trafficking in Nigeria: The Journey So Far'. *Journal of Law, Policy and Globalization* [2015] (38) 205-220 <<https://core.ac.uk/download/pdf/234650198.pdf>> accessed 5 September 2022.

⁹ Editorial, 'Laws on Human Trafficking in Nigeria' *SCC Blog* (India, 20 September 2020) <<https://www.sconline.com/post/2020/09/20/human-trafficking/?amp>> accessed 6 September 2022

¹⁰ *ibid*

amended in 2015.¹¹ Nigeria became the first nation in the region to adopt national legislation to tackle the problem of human trafficking.¹²

Therefore, it is pertinent to note that the focus of this work is to conduct an in-depth study on those legal frameworks that have been developed, while providing recommendations for the success of these legislations in the prohibition and prevention of human trafficking.

Hoques, stated that till date, it is still unknown what clearly defines human trafficking despite the several definitions by various international governmental and non-governmental organizations.¹³ However, human trafficking is defined internationally under the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, supplementing the United Nations convention against Transnational Organized Crimes. Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Person (Palermo Protocol)¹⁴ defines trafficking as:

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.¹⁵

¹¹ Trafficking In Persons (Prohibition) Law Enforcement and Administration Act 2015.

¹² B Olateru-Olagbegi and A Ikpena, 'Review of Legislation and Policies in Nigeria on Human Trafficking And Forced Labour, Action Programme Against Trafficking and Forced Labour in West Africa' (ILO Geneva, 2010) <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/-/declaration/documents/publication/wcms_083149.pdf> accessed 20 September 2022

¹³ M Hoques, 'Female Child Trafficking from Bangladesh: A New Form of Slavery' *Canadian Social Science* [2010] (6) (1), 45-58 <<http://www.cscanada.net/index.php/css/article/view/j.css.1923669720100601.007>> accessed 21 September 2022

¹⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime, 2000, (United Nations)

¹⁵ IM Ibrahim, II Omoregbe, 'Human Trafficking in Nigeria: causes, efforts by Nigerian Government and the way forward' [2020] <https://www.njss.org.ng/publication/vol/xxiii_apr_2020/9.pmd.pdf> accessed 9th September 2022

Human trafficking is also defined by the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (TIPLEA).¹⁶ Section 82 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (2015) has similar definition with that of the Palermo Protocol.¹⁷

Within Africa, Nigeria is considered a hub of human trafficking in sub-Saharan Africa both as a source, transit and destination country.¹⁸ It is one of the largest sources of trafficked persons in the world. As a source, the country produces a large number of trafficking victims.¹⁹

2. Types of Human Trafficking

Human trafficking is divided into two types namely; internal trafficking and external trafficking.²⁰

3.1 Internal Trafficking: Internal trafficking refers to a domestic trafficking. It involves the recruitment and transfer of people within the borders and territory of a country. It usually occurs either from one state to another or from rural to urban areas within a state.

3.2 External Trafficking: This is also known as Cross-border trafficking.²¹ It involves the movement of people across national and international borders for various purposes such as child labour, sex work, domestic servitude and organ trafficking, in exchange for monetary rewards. Victims are moved through trans-national borders either by air, land or sea routes.²²

¹⁶ Section 82 TIPLEA 2015

¹⁷ *ibid*

¹⁸ *ibid*

¹⁹ *ibid*

²⁰ DC Beck, KR Choi, ML Muro-Kramer & JR Lori, 'Human Trafficking in Ethiopia: A Scoping Review to Identify Gaps in Service Delivery, Research, and Policy' *Trauma, Violence & Abuse* [2017] 18 (5) <<https://journals.sagepub.com/doi/abs/10.1177/1524838016641670>> accessed 11th September 2022

²¹ IM Ibrahim and II Omoregbe, 'Human Trafficking in Nigeria: Causes, Efforts by Nigeria Government and The Way Forward' *Nigerian Journal of Social Studies* [2020] (23) (1) <https://www.njss.org.ng/publications/vol_xxiii_apr_2020.pmd.pdf> accessed 6 September 2022

²² (n.64)

For instance, people are trafficked from Gabon, Niger, Italy, Spain, Benin Republic, Saudi Arabi, Europe among others.²³

3. Legal Framework for Combating Human Trafficking in Nigeria

The legal framework for combating human trafficking in Nigeria constitutes various national laws as well as international treaties and conventions to which Nigeria is a signatory. Presently the national laws for combating human trafficking in Nigeria includes:the Trafficking in Persons (Prohibition) Act, Child’s Right Act, Criminal Code Act, Penal Code, Violence Against Person (Prohibition) Act and Nigerian Immigration Act.

3.1 The Constitution of the Federal Republic of Nigeria 1999 (as amended)

There is a clear credence to the fight against human trafficking by the provisions made in the constitution of the Federal Republic of Nigeria 1999 (as amended).²⁴ The Nigerian constitution by its provisions has lent credence to the fight against human trafficking. The constitution of the Federal Republic of Nigeria is the supreme grund norm which has a binding force on every authority and person in Nigeria.²⁵ Therefore, since the constitution enshrines fundamental human rights of the citizens, it is important to consider the relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), that fight against human trafficking,²⁶ this is because human trafficking is a clear violation of the fundamental human rights of citizens.

²³ ibid

²⁴ Ewulum and Ossy-Okoye, ‘The Legal Implication of Human Trafficking in Nigeria’ *International Review of Law and Jurisprudence(IRLJ)* [2022] (4) (3) 80-85 <<https://www.nigerianjournalonline.com/index.php/IRLJ/article/view/2986/2901>> accessed 12 April 2023

²⁵Section 1, CFRN 1999 (as amended)

²⁶ Section 33-45, CFRN 1999 (as amended)

Chapter IV of the Constitution of the Federal Republic of Nigeria²⁷ spells out the fundamental human rights, some of which human trafficking is in breach of, these rights include; right of life,²⁸ right to dignity of human person,²⁹ right to freedom of movement³⁰ and the right to personal liberty. Chapter II of the Constitution of the Federal Republic of Nigeria³¹ contains the fundamental objectives and directive principles of state policy. The sections aforementioned makes reference to the maintenance of human rights and the protection against exploitation which human trafficking actively fights against.

Furthermore, Section 34 of the Constitution of the Federal Republic of Nigeria³² guarantees the right to the dignity of human, it provides that;

Every individual is entitled to respect for the dignity of his person,

- (a) no person shall be subject to torture or to inhuman or degrading treatment;
- (b) no person shall he held in slavery or servitude; and
- (c) no person shall be required to perform forced or compulsory labour.

This section prohibits slavery, inhumane and degrading treatment as well as forced labour. It provides that no person shall be subject to torture or inhumane treatment, be held in slavery or servitude and no person shall be required to perform forced or compulsory labour. Section 34(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)³³ provides for what does not include “forced or compulsory labour” in sub-section (1)(c) of section 34.

The courts have placed emphasis on the constitution as a basis for the protection of rights in Nigeria. Section 34 of the constitution of the Federal Republic of Nigeria fights against

²⁷ Chapter IV, CFRN 1999 (as amended)

²⁸ Section 33, CFRN 1999 (as amended)

²⁹ Section 34, CFRN 1999 (as amended)

³⁰ Section 41, CFRN 1999 (as amended)

³¹ Chapter II, CFRN 1999 (as amended)

³² Section 34, CFRN 1999 (as amended)

³³ Section 34(1)(c), CFRN 1999 (as amended)

torture, inhumane or degrading treatment, slavery or servitude and forced labour, which are the elements found in human trafficking. The constitution of the Federal Republic of Nigeria has indirectly objected and disagreed with the concept of human trafficking. Although section 34 of the Constitution of the Federal Republic of Nigeria can be used as a constitutional backing against trafficking in Persons, because of its violation to the fundamental right of persons especially dignity of persons, the legislators failed to use the term human trafficking in the constitution which is also a contributor to the lack of effectively prosecuting traffickers.

3.2 Criminal Laws

Nigeria's criminal law has two (2) codes, which are; the criminal code and the penal code. The criminal code is applicable to the Southern region of Nigeria³⁴ and the penal code is applicable to the Northern region in Nigeria.³⁵ These codes contain some provisions relevant to the prohibition of human trafficking in Nigeria.

3.2.1 Criminal Code

The criminal code was enacted on the 1st of June 1916. It prescribes for offences against personal liberty or slave dealing and trafficking for prostitution.³⁶ However, the Criminal Code does not define what constitutes trafficking neither does it deal with the different forms of human trafficking. Section 223, 224, 365 and 369 are the provisions for human trafficking under the criminal code.³⁷

³⁴ Southern regions that criminal code applies to are: Delta, Edo, Cross Rivers, Rivers, Bayelsa, Akwa Ibom, Anambra, Abia, Enugu, Ebonyi, Imo, Lagos, Ogun, Osun, Oyo, Ondo and Ekiti.

³⁵ Northern regions that penal code applies to are: Borno, Bauchi, Taraba, Katsina, Kebbi, Kaduna, Gombe, Nasarawa, Yobe, Zamfara, Kwara, Jigawa, Sokoto, Niger, Adamawa, Plateau, Benue, Kano state and FCT

³⁶ SA Joshua, 'Protecting the Nigerian child against child trafficking; issues, challenges and prospect' *International Journal of Criminal, Common and Statutory Law* [2022] (2) (2), 38-44 accessed 9 March 2023

³⁷ (n.13)

Section 223 of the Criminal Code³⁸ provides that any person who

- (1) procures a girl or woman who is under the age of eighteen years 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 misdemeanour, and is liable to imprisonment for two years.

This section shows the irrelevance of the means through which women or girls below the age of eighteen are procured. The procurement alone without threat, intimidation and deception is an offence under this section. However, the number of years prescribed as punishment for the procurement of persons is not sufficient to deter such a person or other persons from procuring others for the purpose of prostitution and becoming an inmate of a brothel, in Nigeria or in other countries. Furthermore, this section did not also provide for the male gender as victims, as they can also be victims of human trafficking. Therefore, it is submitted that this section be reviewed to cover, all human beings, irrespective of their ages as both children and people above the age of 18 years have also been victims of human trafficking.

Section 224 of the Criminal Code³⁹ states 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 a woman or girl to have unlawful carnal connection with a man, either in Nigeria or elsewhere; or
- (3) administers to a woman or girl, or causes a woman or girl to take, any drug or other thing with intent to stupefy or overpower her in order to enable any man, whether a particular man or not, to have unlawful carnal knowledge of her; is guilty of a misdemeanour, and is liable to imprisonment for two years.

³⁸ Section 223, Criminal Code

³⁹ Section 224, Criminal Code 1916

A person cannot be convicted of any of the offences defined in this section upon the uncorroborated testimony of one witness. The offender may be arrested without warrant.

Section 224 of the Criminal Code⁴⁰ does not define the meaning and extent to unlawful carnal connection. The use of the phrase unlawful carnal connection with a man limits this protection to female gender only and does not protect the male gender whom also fall victim of sexual exploitation under human trafficking. However, this section provides for the means through which persons can be procured. The punishment for procurement of persons does not seem adequate enough to completely discourage the procurement of persons. References to it as a misdemeanour and the punishment for two years imprisonment does not show the seriousness of the crime of human trafficking and the efforts of the laws to stop the crime. The years of imprisonment should be increased to 20 years, with a compulsory payment of fine which will be calculated according to the monetary value at the time the crime was committed and the gravity of the offence. Section 365 of the Criminal Code⁴¹ 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 misdemeanour, and is liable to imprisonment for two years. The punishment for breach of a person's fundamental human right of personal liberty should be regarded a felony rather than the provided misdemeanour. Every breach of the fundamental right of a person should be categorised under a felony and should not be handled lightly or with leniency. Therefore, the years of imprisonment should be increased to 10 years and the offender must engage in community service.

⁴⁰(n.39)

⁴¹ Section 365, Criminal Code 1916

Section 369 of the Criminal Code⁴² provides that any person

- (1) deals or trades in, purchases, sells, transfers or takes any slave;
- (2) deals or trades in, purchases, sells, transfers or takes any person in order or so that such person should be held or treated as a slave;
- (3) places or receives any person in servitude as a pledge or security for debt whether then due and owing, or to be incurred or contingent, whether under the name of a pawn or by whatever other name such person may be called or known;
- (4) conveys or induces any person to come within the limits of Nigeria in order or so that such person should be held, possessed, dealt or traded in, purchased, sold, or transferred as a slave, or be placed in servitude as a pledge or security for debt;
- (5) 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;
- (6) whether or not a citizen of Nigeria holds or possesses in Nigeria any person as a slave;
- (7) enters into any contract or agreement with or without consideration for doing any of the acts or accomplishing any of the purposes herein above enumerated; is guilty of slave dealing and is liable to imprisonment for fourteen years.

This section prescribes punishment of fourteen (14) years imprisonment for the above persons. However, there is need to increase the years of punishment and include a payment of fine which will be determined by the monetary value at the time of the offence and the gravity of emotional and physical damages suffered by the victims. The criminal code makes the concept of trafficking in persons appear restrictive to only two forms of trafficking (slavery and sexual exploitation) whereas there are others forms such as forced labour, forced marriages, domestic servitude, trafficking for organs among others. The criminal code does not fully encompass the whole idea of human trafficking.

3.2.2 Penal Code

The penal code is similar to the provisions of the criminal code but it provides a stricter punishment for offenders. The provisions of the penal code that relate to human trafficking

⁴² Section 369, Criminal Code 1916

are provided in sections 275, 278, 279 and 280 of the Penal Code.⁴³ The aforementioned provisions are discussed below:

Section 275 of the Penal Code⁴⁴ states

Whoever by any means whatsoever induces a girl under the age of eighteen years to go from any place or to do an act with intent that the girl maybe or knowing, that it is likely that she will be forced or seduced to illicit intercourse with another person shall be punished with imprisonment which may extend to ten years and shall be liable to a fine.

The section does not specify the means used to induce the girl under the age of eighteen. Also, the word seduced used connotes that there might be consent from the girl but through seduction, however, the forcing or seduction is immaterial and such a person who induces her to go somewhere or do an act which she will be forced or seduced to have illicit intercourse with another person will be punished under this section. This section does not provide for the male gender. is it only girls under the age of 18 that can be seduced or forced? The section should be amended to remove the age and gender limit as any human being could be a victim under this offence.

Section 278 of the Penal Code⁴⁵ provides that

any person who buys, sells, hires, lets to hire or otherwise obtains possession or disposes of any person below 18 years with intent that the person will be or is likely to be employed or used for prostitution or other unlawful or immoral purposes is guilty of an offence punishable with imprisonment up to ten years and liable to pay a fine in addition.

This section does not refer to any gender in particular, however, it provides that such person must be below the age of eighteen (18 years) which should be removed in order to allow persons above the age of 18 seek protection from it.

⁴³Section 275, 278, 279 & 280, Penal Code

⁴⁴ Section 275, Penal Code

⁴⁵ Section 278, Penal Code

Section 279 of the Penal Code⁴⁶ creates the offence of slave dealing and provides that any person who exports, imports, removes, buys, sells, disposes of, traffics or deals in any person as a slave or accepts, receives or detains such person is liable to imprisonment for a maximum of 14 years and a fine. The punishment should include a public apology after the sentence.

Section 280 of the Penal Code⁴⁷ punishes forced labour with a fine and one year imprisonment; enticement or leading away of any woman or girl (with or without her consent); for immoral purposes with imprisonment of up to 7 years and a fine. The punishment available for forced labour is too lenient, the duration of the imprisonment should be increased to five years imprisonment with community service.

The Penal Code did not define the term human trafficking.⁴⁸ The Penal Code unlike the Criminal Code provided a stringent punishment for offenders and made provisions for three elements of human trafficking which are; sex trafficking, forced labour and slavery, however, the Criminal Code provided more comprehensive and detailed information on slave dealing. The penal code is also restrictive and not sufficient enough to prosecute traffickers.

The Criminal Code and Penal Code has not been amended since the year 1916 and 1960 respectively, which poses a challenge to the effectiveness and efficiency of the provisions for the fight against human trafficking. The law should be dynamic rather than static and should respond to the shortcomings of the society. This buttresses the need for amendment of this law so that it can respond to the current trends and practices of human trafficking in Nigeria.

⁴⁶ Section 279, Penal Code

⁴⁷ Section 280, Penal Code

⁴⁸ SK Kigbu and YB Hassan, 'Legal Framework for Combating Human Trafficking in Nigeria: The Journey So Far' *Journal of Law, Policy and Globalization* [2015] (38) 205-220

<https://core.ac.uk/download/pdf/234650198.pdf> accessed 10 January 2023

3.3 Child's Right Act 2003

The Child's Right Act provides for the rights and responsibilities of a child in Nigeria and constitute a system of child care, supervision and justice administration with other things relating to a child.⁴⁹

Section 26 of the Child's Right Act⁵⁰ prescribes punishment of fourteen (14) years for any person that employs, use or involves a child in any criminal activity involving or leading to the commission of any other offence provided in the Act. This section seeks to protect a child from abuse, forced labour and any form of human trafficking.

Section 27 of the Child's Right Act⁵¹ prohibits the abduction and removal of a child out of the custody or protection of his father or mother, guardian or any other person that have lawful care or charge of the child. It also provides for the penalising of such offender with a period between 10 to 20 years, depending on the gravity of the offence. This section protects a child from abduction and removal out of the lawful care or protection which human trafficking involves.

Section 28 of the Child's Right Act⁵² prohibits any form of forced or exploitative labour and prescribes a punishment of 5 years imprisonment or a fine not exceeding ₦50,000 for an individual and a fine of ₦250,000 for a body corporate. This section prohibits the exploitation of children through forced labour and exploitative labour which are elements of human trafficking. However, the fine is not sufficient to curb this act because it barely holds any value in this present time.

⁴⁹ Section 26-32 CRA 2003

⁵⁰ Section 26, CRA 2003

⁵¹ Section 27, CRA 2003

⁵² Section 27, Child Rights Act 2003

Section 30 of the Child's Right Act⁵³ prohibits the buying, selling, hiring, disposal of or obtaining or otherwise deal in a child for the purpose of begging for alms, guiding beggars, hawking, prostitution, domestic or sexual labour or for any unlawful or immoral purpose. It also provides for the conviction of any person found to contravene this provision with imprisonment of 10 years. Many underprivileged children especially in the northern part of Nigeria are found hawking, begging for alms and guiding beggars. It is however unfortunate that this section of the Act has not been able to prevent the use of children for such acts. In the case of *AGF v. AffiongOkon*⁵⁴ the accused recruited 7 children for street begging and forced labour. He pleaded guilty to the charge was convicted and sentenced to 2 years imprisonment.

Section 31 of the Child's Right Act⁵⁵ prescribes the punishment of life imprisonment for any person who has sexual intercourse with a child.⁵⁶ It is immaterial that such offender believed that the person is either 18 years or above 18 years or the person had obtained the consent of the child for the sexual intercourse. In the northern part of Nigeria, there are still cases of child marriage which is believed to lead to sexual intercourse.

Section 32 of the Child's Right Act⁵⁷ prohibits any form of sexual abuses and sexual exploitation of a child and provides the punishment of 14 years.

Section 33 of the Child's Right Act⁵⁸ prescribes a punishment of 5 years imprisonment or a fine of ₦500,000 or both fine and imprisonment for exploitation of a child in any other form

⁵³ Section 29, Child Rights Act 2003

⁵⁴ Unreported. Charge No. 0/26c/2005 (High Court of Anambra State, Onitsha judicial Division). Judgment was delivered on 13/02/2006).

⁵⁵ Section 30, CRA 2003

⁵⁶ Section 31, CRA 2003

⁵⁷ Section 32, CRA 2003

⁵⁸ Section 33, CRA 2003

or way which is prejudicial to the welfare of the child that have not been mentioned in the previous sections.

The Child Rights Act deals comprehensively with the issue of child trafficking in Nigeria. However, even with this Act there are only 23 states in Nigeria including the Federal Capital Territory (FCT) that has adopted this Act, which has made it difficult to fully ascertain its effectiveness. The problem with this Act is that the prescribed fine allocated barely holds any substantial value today and as such cannot efficiently deter the crime, therefore there is need to amend the act to accommodate a better way to prescribe fine or prescribe both imprisonment and fines as punishments.

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

This is the first primary anti-trafficking legislation in Nigeria that addresses the issue of human trafficking in Nigeria. The Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015 comprises of 83 sections and 2 schedules. Section 1 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015⁵⁹ provides the objectives of this Act which are to provide an effective and comprehensive Legal and Institutional framework for the prohibition prevention, detection, prosecution and punishment of human trafficking and related offences Nigeria as well as protect victims of Human Trafficking and lastly to promote and facilitate National and International co-operation.

⁵⁹ Section 1 TIPLEA 2015

Section 82 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015⁶⁰ defines Trafficking in person as the;

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

The definition of human trafficking in the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act⁶¹ takes cognisance of the elements of trafficking in person (the means, act and purpose) which were also provided under the Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons with special regards to Women and Children (Palermo Protocol) which Nigeria is a signatory to.⁶² There are offences and prescribed punishment for the various forms of human trafficking. Section 13-22 of the Act provides for these offences.

3.4.1 Some of the Offences provided for in the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (TIPLEA) 2015

Section 13(1) of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act⁶³ generally prohibited all acts of human trafficking in Nigeria. It provided that any person who recruits, transports, transfers, harbours or receives another person using fraud, force, abuse of authority, deception, payment or receiving of money for the exploitation of that person commits an offence is liable on conviction to a term of not less

⁶⁰ Section 82, TIPLEA 2015

⁶¹Section 82, TIPLEA 2015

⁶² SK Kigbu and YB Hassan, 'Legal Framework for Combating Human Trafficking in Nigeria: The Journey So Far' *Journal of Law, Policy and Globalization* (2015) (38) 205-220 <<<https://core.ac.uk/download/pdf/234650198.pdf>> accessed 21 March 2023

⁶³ Section 13, TIPLEA 2015

than 2 years imprisonment and a fine not less than ₦250,000. The provided years of imprisonment and the fine for the recruiter, transporter and receiver is too lenient, they are the main reason why the crime is still flourishing, therefore there is need to increase the number of years for imprisonment and include the payment of fines. Section 13(4)⁶⁴ makes guilty any person whether within or outside Nigeria that does or omit to do, or threaten; induce by fraud; act by proxy; aide or abet, assist or facilitate the commission of any offence under Act, and such a person upon conviction shall be liable to a term of imprisonment for not less than 5 years and a fine not less than 1million. Section 13(5) TIPLEA⁶⁵ makes the consent of the victim of trafficking as defined under Act immaterial in the determination of the guilt of a suspected offender under the Act.

Section 14 TIPLEA⁶⁶ provides for the exportation of persons out of Nigeria and importation of persons into Nigeria. The offence is to the effect that a person who imports into Nigeria or exports out of Nigeria to any other country another person knowing or having reason to know, that the person will be forced or induced into prostitution or other forms of sexual exploitation in Nigeria or the country he/she is exported to respectively commits an offence punishable upon conviction with a term of 5 years imprisonment and a fine not less than ₦1million. This section makes reference to both genders and is not limited to age which is very commendable. However, it has been submitted that use words ‘importation’ and ‘exportation’ of persons is derogating, it reduces persons to the level of commodities that can be imported and exported.

⁶⁴ Section 13(4), TIPLEA 2015

⁶⁵ Section 13(5), TIPLEA 2015

⁶⁶ Section 14, TIPLEA 2015

Section 15 TIPLEA⁶⁷ prescribes the punishment for procurement of any person under the age of 18 for sexual exploitation. It is to the effect that any person whether by the use of deception, coercion, debt bondage or any means induces any person under the age of 18 years to go from one place to another to do any act with the intent that such person may be, or knowing that it is likely that the person will be forced or seduced into illicit intercourse with another person' commits an offence is liable upon conviction to imprisonment for 5 years and a fine of ₦500,000. It is limited to persons below the age of 18 years and as such it failed to include the young adults who are also vulnerable to the traffickers due to current economic state of the country.

Section 16 TIPLEA⁶⁸ provides for the procurement or recruitment of persons under 18 years for prostitution or other forms of sexual exploitation. Section 16(1) provides that any person who procures or recruits any person under the age of 18 years to be subjected to prostitution or other forms of sexual exploitation with himself, any person or persons, either in Nigeria or anywhere else, commits an offence and is liable on conviction to imprisonment for a term of not less than 7 years and a fine of not less than ₦1,000,000. It is submitted that this section limits the scope of victims to persons below the age of 18 years which is narrow on the ground have shown that persons above the age of 18 years who cannot properly provide for themselves especially young persons are also very much vulnerable for this kind of procurement and recruitment.

Section 17(a) and (b) TIPLEA⁶⁹ prohibits the procurement or recruitment of persons under the age of 18 years for pornography or brothel. It prescribes a punishment of imprisonment for a term of not less than 7 years and a fine of not less than ₦1 million for any person who

⁶⁷ Section 15, TIPLEA 2015

⁶⁸ Section 16, TIPLEA 2015

⁶⁹ Section 17, TIPLEA 2015

procures, recruits, uses or offers any person under the age of 18 years for the production pornography or for pornographic performances or allows a person under the age of 18 years to be harboured in a brothel. Section 17(2) also provides for an additional punishment of not less than 1 year imprisonment where the convicted person administered or stupefied the victim with any drug substance.

Section 18 TIPLEA⁷⁰ proscribes foreign travel which promotes prostitution or sexual exploitation, it provides that any person, who organizes, facilitates 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 conviction to imprisonment for a term of not less than 7 years and a fine of not less than ₦1million.

Section 19 TIPLEA⁷¹ provides for any person who traffics another person for the purpose of forced or compulsory recruitment for use armed conflict, commits an offence and is liable on conviction to imprisonment for a term of not less than 7 years and a fine of not less than ₦1million. This provision is submitted to be commendable because of the rise in the activities of terrorists and insurgents in Nigeria, trafficked persons may be recruited into forced and compulsory engagement in the activities of Boko Haram and other militia groups.⁷²

Section 20 TIPLEA⁷³ provides for the procurement or recruitment of a person for organ harvesting. It prescribes a punishment of imprisonment for a term of not less than 7 years and a fine of not less than ₦5 million for any person who through force, deception, threat, debt bondage or any form of coercion abuses a position of power or situation of dominance or

⁷⁰ Section 18, TIPLEA 2015

⁷¹ Section 19, TIPLEA 2015

⁷²K Onu, 'An Appraisal of the EU-ACP Cotonou Partnership Agreement' *The Gravitas Review of Business & Property Law* [2018] (9) (3) 133-153, at 147

⁷³ Section 20, TIPLEA 2015

authority arising from a give circumstance; or abuses a vulnerable situation; or through the giving or receiving of payments or benefits in order to induce or obtain the consent a person directly or through another person who has control over him, enlists, transports, delivers, accommodates or takes in another person for the purpose of removing the person's organs. Section 20(2) TIPLEA⁷⁴ also provides that any person who procures or offers a person, assists or is involved in anyway removal of human organs or buying and selling of human organs, commits an offence and is liable on conviction imprisonment for a term of not less than 7 years and to a fine of not less than ₦5 million. Section 20(3)⁷⁵ prohibits any person who enlists, transports, delivers, accommodates or takes in another person under the age of 18 years for the purpose of removing the person's organs, commits an offence and is liable conviction to imprisonment for a term of not less than 7 years and a fine of not less than ₦5 million. The provisions of this section are very applaudable because the cognizance to the global trend of organ trafficking and ritual killing.

Section 20(1) TIPLEA provides for the means that can be employed in the recruitment of a person for organ trafficking and does not limit it to age while section 20(3) makes no reference to the means that can be employed for the recruitment and procurement of persons under the age of 18, it also applies to only persons under the age of 18 years. Furthermore, section 20(2) punishes persons who also assist in the removal of organs or is involved in the buying and selling of the human organs. However, it has been criticized that the punishment is not sufficient, being that organ trafficking can lead to the instant death of the victim, which

⁷⁴ Section 20(2), TIPLEA 2015

⁷⁵ Section 20(3), TIPLEA 2015

falls up with the definition of murder under the Criminal Code and the penalty being capital punishment.⁷⁶ The punishment is indeed too lenient for the gravity of the offence.

Section 21 TIPLEA⁷⁷ prohibits the buying or selling of human beings for any purpose. It provides for a punishment of imprisonment for a term of not less than 5 years and a fine of not less than ₦2 million for any person who buys, sells, hires, lets or otherwise 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.

Section 22 TIPLEA⁷⁸ prohibits any person who requires, recruits, transports, harbours, receives or hires out a person to be used for forced labour within or outside Nigeria or permits any place or premises to be used for the purpose of forced labour, commits an offence and liable to imprisonment for a term of not less than 5 years and a fine of not less than ₦1 million. This provision does not limit reference to only a particular age or gender.

Section 23 TIPLEA⁷⁹ provides for employment of child as a domestic worker and inflicting grievous harm. It states that any person who employs, requires, recruits, transports, harbours, receives or hires out a child under the age 12 years as a domestic worker, commits an offence and is liable to imprisonment for a minimum term of 6 months and not exceeding 7 years. section 23(b) further states that any person who employs, requires, recruits, transports, harbours, receives or hires out a child to do any work that is exploitative, injurious or hazardous to the physical, social and psychological development of the child, commits an offence and is liable on conviction to imprisonment for a minimum term of 2 years but not exceeding 7 years without an option of fine. Section 23(2) provides that a convicted person in

⁷⁶ K Onu & OA Kolawole, 'Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2015: An Old Wine in a New Bottle?' *Journal of Law and Criminal Justice* [2020] (8)(1)

⁷⁷ Section 21, TIPLEA 2015

⁷⁸ Section 22, TIPLEA 2015

⁷⁹ Section 23, TIPLEA 2015

addition to the prescribed punishment, will be liable to a term of not less than 2 years imprisonment where the child is denied payment or reasonable compensation for services rendered or a term of not less than 3 years where the child is defiled or inflicted with bodily harm. Section 23(1)(a) provides for the 12 years as the age limit of the child which attracts a lower minimum year of imprisonment while section 23(1)(b) does not provide any age limit for a child.

Section 24 TIPLEA⁸⁰ prohibits for any person who recruits, imports, exports, transfers, transports, buys, sells, disposes or in any way traffics in any person as a slave or accepts, receives, detains or harbours a person as a slave, is liable to imprisonment for a term of not less than 7 years and a fine not less than ₦2 million.

Section 25 TIPLEA⁸¹ prohibits slave dealing. It prescribes a punishment of imprisonment for a term not less than 7 years and a fine of not less than 2 million for any person who deals, keeps, receives or harbours any person for the purpose of holding or treating that person as slave or places, receives, harbours or holds any person as a pledge, pawn, in servitude or security for debt benefits or whether due or to be incurred or transports, transfers or in any way induces any person to come into Nigeria in order to hold, possess deal or treat such person as a slave or to be used as a pledge or security for debt or enters into any contract or agreement with or without consideration for the purpose of doing accomplishing any of the purposes enumerated in this section.

Although the Trafficking in Person Law Enforcement and Administration Act covers human trafficking comprehensively, the last time it was amended was in the year 2015. This buttresses the need for re-enactment of this law so that it can respond to the current trends

⁸⁰ Section 24, TIPLEA 2015

⁸¹ Section 25, TIPLEA 2015

and practices of human trafficking in Nigeria. The punishment should be more stringent and include both imprisonment, public apology, community service and a compulsory payment of fines.

4. International Framework for Combating Human Trafficking

Nigeria is a signatory to many conventions and treaties on human and has ratified a good number of these conventions.⁸² Some of these conventions include; Convention for the Suppression of Trafficking in Persons and of the Exploitation of the Prostitution of Others 1949, International Abolition of Forced Labour convention 1957 (No. 105), International Labour Organization (ILO) Forced Labor Convention 1930, International Labour Organization (ILO) Worst Forms of Child Labour Convention 1999 (No.182), The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984, The Convention on Elimination of all forms of Discrimination against Women 1979, The Convention on the Elimination of all forms of Radical Discrimination 1965, The United Nation Convention on the Rights of the child (CRC) 1989, United Nations Slavery Convention 1927.

Furthermore, it is important to note that these conventions cannot be a force of law in Nigeria unless these laws are domesticated. Section 12 of the constitution of the Federal Republic of Nigeria provides that before these laws can have a force in Nigeria, they must be passed into law by the National Assembly.⁸³

Recommendations

⁸² B Olateru-Olagbegi and A Ikpeme, 'Review of Legislation and Policies in Nigeria on Human Trafficking and Forced Labour' (ILO, 2006)

⁸³ibid

Therefore, the following are recommendations for the effective combating of human trafficking in Nigeria:

- i. Ensure the laws on human trafficking are regularly amended to conform to current realities.
- ii. Ensure that the offenders are publicly shamed to create deterrence.
- iii. Engage in grass-root level (focussing majorly on the rural areas and communities) of campaigns and awareness of human trafficking.
- iv. Collaborate with traditional rulers, religious leaders and community leaders for information and public awareness on human trafficking.
- v. Ensure that appropriate penalties are meted out to offenders; offenders should be made to pay fines, make a public apology and be imprisoned for a long period of time. The court should also impose a stricter punishment for second and third-time offenders.
- vi. The years of imprisonment should be increased to 20 and above.

Conclusion

As a result of the critique of the national legal framework for combating human trafficking in Nigeria, it is submitted that these laws are archaic and obsolete and the prescribed penalties available are inadequate in the prevention and curbing of human trafficking in Nigeria. Thus, there is need for amendment of the laws.

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