



International  
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# Review of Legislation and Policies in Nigeria on Human Trafficking and Forced Labour

Action Programme  
against Trafficking  
and Forced Labour  
in West Africa



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**By**

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## **ABBREVIATIONS AND ACRONYMS**

AHTU	Anti- human trafficking unit
CRC	UN Convention on the Rights of the Child
CRA	Child Rights Act, Nigeria
ECOWAS	Economic Community of West African States
ILO	International Labour Organization
IOM	International Organization for Migration
MOU	Memorandum of Understanding
NAPTIP	The National Agency for the Prohibition of Trafficking in Persons and other Related Matters, Nigeria
NIS	Nigeria Immigration Service
NITF	National Investigation Task Force
NPS	Nigeria Police Service
PATWA	ILO Action Programme against Trafficking and Forced Labour in West Africa
PEAs	Private Employment Agencies
SAP-FL	ILO Special Action Programme to combat Forced Labour
TIP	Trafficking in Persons
UNDP	United Nations Development Programme
UNICEF	United Nations International Children’s Education Fund
UNODC	United Nations Office for Drug Control and Crime Prevention
WOCON	Women’s Consortium of Nigeria
WOTCLEF	Women Trafficking and Child Labour Eradication Foundation

## **EXECUTIVE SUMMARY**

An essential part of the Action Programme against Trafficking and Forced Labour in West Africa (PATWA) is to advocate for a legislative and policy framework in Nigeria and Ghana that enables the government and other national stakeholders to effectively combat trafficking in men, women and children for purposes of labour or sexual exploitation.

This review examines national legislation related to trafficking, forced labour and migration in Nigeria, regional and bi-lateral agreements on migration and/or repatriation that Nigeria has entered into and prosecutions of persons accused of the crime of trafficking with a view to:

- ✍ Determine the degree of consistency between trafficking and labour legislation at national and state levels.
- ✍ Assess the compatibility of the laws and policies with the provisions of UN and ILO Conventions and other international instruments;
- ✍ Identify the strengths and weaknesses of investigation and prosecution procedures in cases of trafficking.
- ✍ Compare existing or planned systems of licensing and regulation of private recruitment agencies with the provisions of ILO Private Employment Agencies Convention, 1997 (No. 181).
- ✍ Evaluate the extent to which agreements and policies on labour migration and repatriation with other countries within and outside the region are protective of the human and labour rights of migrant workers.
- ✍ Recommend changes required to enhance consistency with international standards and to reduce impunity of perpetrators of trafficking and related crimes.

The approach used to conduct the review comprised the collation and desk review of concerned national and state laws, international instruments and bilateral agreements with Nigeria on human trafficking, migration and forced labour. Interviews were conducted with persons who deal with trafficking and trafficking-related issues in Nigeria, including persons who have investigated and prosecuted trafficking cases. The documents and information gathered from interviews were analysed to identify existing gaps in laws and policies and recommend the necessary changes towards a more effective legislative framework to combat human trafficking and forced labour.

Nigeria, like some of its neighbouring countries in West Africa such as Benin, Togo and Ghana, has been affected by human trafficking for several years but has only recently recognized the phenomenon as an issue of concern to be given national attention. In 2003, Nigeria became the first country in the region to adopt national legislation to deal specifically with the issue of human trafficking. The Act is known as the “Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003”. In addition Nigeria has signed, ratified and domesticated the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and

Children and the United Nations Convention against Trans-national Organized crime<sup>1</sup>. Nigeria has also ratified a number of ILO Conventions that are instrumental in combating trafficking in persons and its forced labour outcomes<sup>2</sup>. Furthermore, Nigeria has signed Memoranda of Understanding (MOU), migration policies and bilateral cooperation agreements with countries within and outside the African region. Unfortunately, the lack of domestication and effective implementation of some of these laws, policies and cooperation agreements have made them ineffective and reduced their impact on the incidence of human trafficking and forced labour.

Various Nigerian laws contain provisions concerning trafficking and related offences. What they have in common is a strong focus on trafficking of women and girls abroad for purposes of sexual exploitation. Women are generally assumed to be victims and men to be perpetrators. Prostitution is prohibited in the North and Edo State, in which the incidence of trafficking for sexual exploitation is high, has recently criminalized prostitution and instituted sanctions against men who patronize prostitutes. Trafficking for labour exploitation, internal trafficking and trafficking of persons towards Nigeria have not so far received sufficient attention. There are important differences in the sanctions provided for similar offences under different laws, particularly between the Criminal Code that operates in the Southern part of the country and the Penal Code that is applicable in the North. The most recent law is the NAPTIP Act, which should take precedence over others in case of conflict.

This paper describes the various cases of trafficking being prosecuted under the NAPTIP Act and shows the difficulty in obtaining convictions due to the need for corroborating evidence by more than one witness in sex-related offences. The law lacks sufficient provisions for protection of victims, witnesses and their families against reprisals, thus making it very difficult to obtain the necessary evidence. It also reviews the various international and regional treaties that Nigeria is a party to and the bi-lateral agreements entered into with Benin, Italy, Ireland, Spain, South Africa and the U.K.

The principle recommendation is the harmonization of legislation with international standards and between the various national and State laws. This should be followed with capacity building of law enforcement and protection officers, public awareness about laws and sanctions for trafficking-related offences as well as various other measures for ensuring informed migration, protection of migrant workers as well as victims of trafficking, detection of fraudulent recruitment practices and sufficient allocation of funds for the efficient operation of NAPTIP and other concerned agencies.

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<sup>1</sup> The Nigerian domesticated laws are “The Protocol to Prevent, Suppress and Punish Trafficking in Persons especially women and children (ratification and enforcement) Act, 2003” and “The UN Convention against Trans-national Organized Crime (Ratification and Enforcement) Act, 2003

<sup>2</sup> These include the Forced Labour Convention, 1930 (No. 29), The Abolition of Forced Labour Convention, 1957 (No. 105), The Minimum Age Convention, 1973 (No. 138), the Worst Forms of Child Labour Convention, 1999 (No. 182), The Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Equal Remuneration Convention, 1951 (No. 100), the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

## 1 Background

The phenomenon of human trafficking, particularly in West Africa, has in recent years assumed alarming proportions and hence receives unprecedented global attention. Although there is a lack of accurate data, it is reported that in West and Central Africa about 200,000 children are trafficked annually, while in West Africa alone, an estimated 35,000 women and children are trafficked every year for commercial sexual exploitation.<sup>3</sup> Nigeria, the largest and most populous country (140 million) in Sub-Saharan Africa occupies a central position as a country of origin, transit and destination for the crime of human trafficking.<sup>4</sup> It is ranked as one of the seven poorest countries of the world<sup>5</sup>. Nigeria's poverty coupled with a high rate of unemployment, massive devaluation of the local currency and civil and political unrest, are some major internal factors responsible for a high rate of migration which paves the way for human trafficking. Within Africa, Nigeria is the largest single source of trafficked women to Europe and Middle East. A recent survey reveals that Nigeria is responsible for more cases of trafficking of women into Europe for forced prostitution than any other African country: Italian authorities estimate that 10,000 Nigerian prostitutes work in Italy, many of them victims of trafficking.<sup>6</sup>

Other factors responsible for trafficking are the desperate search for better opportunities, gender imbalance and discrimination, high levels of illiteracy, a taste for adventure, family instability, the breakdown in value systems and inadequate implementation of laws and policies against human trafficking and forced labour. The major external pull factor that has fuelled the trend is the high demand for cheap, submissive labour especially in the informal economies of the destination areas and the growth of the sex industry.

For several decades, human beings especially women and children have been trafficked from Nigeria mostly to countries like Cameroon, Gabon, Cote d'Ivoire, Equatorial Guinea, Benin, Togo and Ghana in the West and Central African Regions, as well as to Europe and the Middle East. Nigerians trafficked to Europe are principally trafficked to countries such as Italy, the Netherlands, the Czech Republic, Spain, France, Germany, Belgium and the United Kingdom. The major destination for Nigerians in the Middle East is Saudi Arabia, while major transit routes for Nigerians en route to Europe are via Libya, Algeria and Tunisia. Nigeria is also a receiving country for trafficked persons from neighbouring countries, particularly Benin, Togo and Ghana, for various forms of exploitative labour such as domestic work, farm labour, and use as lumberjacks in factories and quarries, for child marriages, begging and for sexual purposes. Internal trafficking from rural communities to urban centres is widespread and has only recently been recognized. The majority of internally trafficked persons, mostly women and children, are primarily trafficked for domestic labour, work on plantations and sexual purposes, while men and boys are trafficked principally for begging and farm labour.

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<sup>3</sup> Mantua, A., " *Trafficking in Women and Children*" in African Women's Journal, New People Media Centre, 2003

<sup>4</sup> The Trafficking in Persons Report, US State Department, July 2001

<sup>5</sup> UNDP Human Development Index 2003

<sup>6</sup> The Trafficking in Persons Report, U.S. State Department, July 2001

### **1.1 Trends in labour migration**

Human beings have been known to migrate from place to place from time immemorial and for various reasons including political and economic reasons. The world has witnessed an unprecedented rise in the population of migrants in recent years. According to the ILO<sup>7</sup>, by 2000 there were 175 million international migrants –equivalent in number to the world’s fifth most populous country. There is abundant evidence that the wave of migration has soared in the last decade especially towards Europe and North America. A recent survey commissioned by the United Nations Development Programme (UNDP) confirmed in the report published in Brussels in 2004<sup>8</sup> showed that immigrants constitute half of the population of Toronto and Los Angeles and about a quarter of the population of London.

The trend in migration is not limited to movement from developing countries to developed countries or from the South to the North. There is abundant evidence that a large population is moving between developing countries and this is certainly the case in West Africa. Nigeria has been the largest recipient of nationals from other West African countries in the last two decades. In 1991<sup>9</sup>, Africans constituted 84% of the population of migrants into Nigeria, a majority of them from Benin, Togo, and Ghana. It is pertinent to note that this figure represents only the number of recorded migrants whereas a large number of migrants from Nigeria’s neighbouring countries are not recorded due to lack of proper documentation at border posts and the corruption of immigration officials.

In recognition of the large volume of cross-border migration and economic activities between the West African States, the members of the Economic Community of West African States (ECOWAS) adopted the ECOWAS treaty and the Protocol relating to the free movement of persons.<sup>10</sup> While the free circulation of labour is necessary for the development of the region, one of its negative consequences has been a rise in the incidence of human trafficking. ECOWAS has also promulgated a declaration and adopted a plan of action that obliges its members States to combat human trafficking.

Nigeria as a member of the comity of nations and a strong member of ECOWAS has endorsed most of the international instruments on human trafficking and related issues as well as the ECOWAS initiatives to combat human trafficking. In addition Nigeria has entered into various bilateral agreements and memoranda of understanding with individual countries within and outside Africa that have a direct relationship with the problems of human trafficking, forced labour and migration in general.

### **1.2 Human Trafficking in Nigeria**

Women and children from Nigeria are trafficked across borders to parts of West and Central Africa, Europe and the Middle East. According to reports from the media, there is an active trade in child labourers, some of whom are “exported” to Cameroon, Gabon, Benin and Equatorial Guinea to work in agricultural enterprises or domestic service while others are coerced into the sex trade. Children and women are also trafficked for the purpose of adoption, other worst forms of child

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<sup>7</sup> ILO, “Towards a fair Deal for Migrant Workers in the Global Economy”, 2004

<sup>8</sup> UNDP, “New Wave of Immigration Requires Support for Multiculturalism, Not enforced Assimilation”, 2004

<sup>9</sup> 1991 population census

<sup>10</sup> Adopted in Dakar on 29<sup>th</sup> May 1979 and ratified by Nigeria as Protocol A/PI/5/79 on 12<sup>th</sup> September 1979.

labour (e.g. begging, mining, criminal activities like drug dealing, and participation in armed conflict). Authorities have identified a trade route for traffickers of children for labour through Katsina and Sokoto to the Middle East and East Africa<sup>11</sup> There are also incidents of young boys trafficked to Belgium for sexual purposes on the pretext of playing football, and women who are trafficked to the United States of America and United Kingdom to work as nannies. The country remains a destination point for the trafficking of Togolese children to serve as domestic or agricultural workers<sup>12</sup>, market traders, child beggars and prostitutes.<sup>13</sup>

Internal trafficking from rural areas to cities is common. In a study conducted in 1996<sup>14</sup>, it was found that children from rural communities in Cross- Rivers, Akwa-Ibom, Benue, Ebonyi, Kwara, Bayelsa, Imo and Anambra States; Shaki in Oyo State, border villages in Ogun State are trafficked for domestic service to the urban or city centres such as Lagos, Kano, Port Harcourt, Ibadan and Kaduna. Most of the domestic helps that work in the cities reported that middlemen facilitated their present jobs. Intermediaries supply children who are often less than 17 years of age to different households in exchange for their travel expenses and six months of wages. In some cases, at the expiration of six months, the employer continues to pay the girl's wages to her 'uncle or aunt' who, in reality, may not be related to her. These young children are exposed to sexual abuse from their mistress' husbands and in some cases the grown up sons of their masters.

This age-old form of internal trafficking is usually confused with the traditional practice of child fostering within the extended family. Such children are no longer cared for but rather exploited through placement for different forms of labour. Also parents and guardians (mostly in the rural communities) now give away children to non-relatives for labour in exchange for money. There are also reports of children who are kidnapped by traffickers from the villages and trafficked to cities within Nigeria. Child begging is especially widespread in northern Nigeria<sup>15</sup> and most of the people parading as deaf mutes at filling stations, mosques, churches and hospitals with envelopes asking for alms have been found to be victims of trafficking.

### **1.3 Vulnerable groups**

Women and children especially, from poor rural communities and with little or no education often constitute the larger percentage of trafficked persons in Nigeria. Traffickers exploit the vulnerability of the people in places where there is general poverty, lack of income generating opportunities and pervading ignorance, to source the victims of trafficking. The vulnerability of rural dwellers becomes more visible in cases where the children and young people are not only from poor rural communities but are orphans or come from dysfunctional homes. In some cases human trafficking is facilitated or carried out with the active connivance of members of the victims' families.

### **1.4 Who are the traffickers?**

Traffickers in Nigeria have many faces. They could be men or women members of organized criminal networks that traffic mostly women and young girls into forced prostitution. They could

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<sup>11</sup> US Dept of State, Country Reports on Human Rights Practices, February 2001

<sup>12</sup> Ibid

<sup>13</sup> WAO-Afrique, Child Trafficking in West and Central Africa, submission to the UN working Group on Contemporary Forms of Slavery, June 1999

<sup>14</sup> Oloko, S., National Concord, 2<sup>nd</sup> December 1999

<sup>15</sup> As poverty increases in Nigeria, the Almajiri system of semi-formal Koranic education has come to rely on child pupils engaging in begging to support their Mallam or Islamic teacher. UNICEF, Nigeria reports that the Nigerian government has done little to address the problem of child begging. See Ibid, p. 209.

also be ordinary people who do not belong to criminal gangs but are relatives, neighbours, or friends who are better off than the victims or their parents/guardians. They could be diplomats who “import” domestic workers and hold them in isolation and forced labour in their homes. Some of them are people who “import” foreign-born women, ostensibly for marriage but in reality for the purpose of holding them in servitude and subjecting them to sexual abuse. Others are families that “import” men, women and children to work in forced labour in farms, factories and homes, and subject them to sexual and physical assault. In effect, traffickers could be next-door neighbours, parents/relatives or total strangers.<sup>16</sup>

Most traffickers that recruit women and girls for the sex industry or domestic work are women. Such traffickers in many cases may have previously been trafficked themselves or are currently sex workers<sup>1</sup>. Recruitment could be done with the help of their families. In some cases, community leaders and teachers are also reported to be involved in trafficking. In many cases, recruiters are relatives or acquaintances of the people who are trafficked and thus in a position of trust or known to the trafficked persons. They may even be parents and guardians themselves.

#### Means used

Traffickers gain control of their victims in different ways. Sometimes the victims are kidnapped in one place and taken forcibly to another place, and in other cases they are lured with offers of well-paid jobs in foreign countries as hairdressers, restaurant attendants, domestic workers etc. or with false promises of opportunities for education or marriage. After providing transportation and fake documentation to get victims to their destination, they subsequently charge exorbitant fees for those services, creating heavy debt bondage under extreme terms and conditions.

Some of the exploitative practices used include coercion of victims through seizure of travel documents, oath taking, threats or physical violence on victims, threats to relations of victims, restriction of movement and communication, seizure of earnings of victims, and psychological pressure through guaranteeing silence and submission through ritual oaths.<sup>17</sup>

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<sup>16</sup> Osakue, G. and Okoojion, E., “*Trafficking in girls – the way forward*” Report of a research in Edo and Delta States of Nigeria by Girls Power Initiative, 2002

<sup>17</sup> Oloko, S., Mapping of existing information and materials on forced labour and trafficking in Nigeria, ILO, 2004

## 2 Concepts and Definitions

The concept of human trafficking is intertwined with those of migration and forced labour. This is not surprising because the major elements of human trafficking are “migration” or “movement from place to place” and “forced labour”. However, migration and forced labour are not necessarily related to trafficking. Indeed, most migration, whether regular or undocumented, is not the result of human trafficking. In the same vein, there are situations of forced labour that are not outcomes of trafficking. An individual could be forced into or become trapped in some form of labour without the other elements of trafficking such as movement or false promises of work.

A lack of conceptual clarity concerning the subtle differences between trafficking, smuggling and forced labour often result in inappropriate responses by governments and civil society organizations in attempts to address these issues. For example, some governments address the issue of human trafficking from the angle of human smuggling and consequently direct their policy responses towards restricting migration. Consequently, they often treat trafficked persons as illegal migrants who have committed a crime against the State. There have been situations where trafficked persons have been arrested and thrown into jail or deported as illegal migrants. A clear understanding of the nature of human trafficking, smuggling and forced labour is necessary for the formulation of appropriate strategies to combat these crimes. Confusion between these terms often leads to situations whereby the legislative framework and policies that aim at combating human trafficking actually result in restrictions on migration. Secondly, an understanding of the issues will engender societal empathy towards the protection of victims and discourage further abuse of them. Thirdly, it will facilitate comparison between assessments by researchers, advocates, activists and trainers.

### 2.1 Defining human trafficking

Admittedly a lot of controversies and debates have surrounded the definition of trafficking. These were evident at the negotiations of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), which is accompanied by several interpretative notes to clarify the meaning.

Article 3(a) of the Palermo Protocol defines trafficking as:

*“...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of 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.”*

Paragraph 3(b) goes on to state:

*“the consent of a victim of trafficking in persons to the intended exploitation set forth in sub paragraph (a) of this article shall be irrelevant where any of the means set forth in sub-paragraph (a) have been used.”<sup>ii</sup>*

Paragraphs 3(c) and 3(d) qualify the definition in the case of minors:

*“The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;”*

*“Child” shall mean any person under eighteen years of age.”*

It is pertinent to mention that the definition must be read with the interpretative notes that seek to differentiate human trafficking from “prostitution”, “illegal migration” or “human smuggling”. Moreover the definition in the Protocol specifies the elements necessary for an act to constitute trafficking in persons, the key elements being:

- ✍ **Movement (of a person):** recruitment, transportation, transfer, harbouring, or receipt.
- ✍ **Means:** threat, force, abduction, fraud, coercion, deception, abuse of power or position or vulnerability, sale etc
- ✍ **Purpose/Motive:** for sexual exploitation, forced labour or services, slavery like or practices similar to slavery, servitude or removal of organs.

The absence of any or some of these elements appears to determine whether or not an act constitutes trafficking. For example mere facilitation of another’s movement or migration from one place to another, even for monetary consideration and without lawful documents and no more, will constitute illegal migration (on the part of the victim) and human smuggling (on the part of the smuggler) but not a human trafficking transaction. In this case, there is no motive to subject such a person to forced or exploitative labour. In the same vein, an adult who seeks the assistance of another for the purpose of engaging in prostitution, may in the absence of other means such as “threat”, “coercion”, “force” and the like, also be merely a person engaged in prostitution and not a trafficked victim and the person who facilitates it is merely “a pimp” or agent not a trafficker. It will be an agreed transaction that may at worst be more profitable for one party than for the other.

Furthermore, it should be noted that a proviso to the definition, is that consent of the victim is irrelevant when there is abuse of power or a situation of vulnerability. Consequently, the notion in Nigerian society that most women and girls taken for prostitution to Europe, know that they are going to engage in prostitution and have consented to the exploitation and therefore cannot be considered as trafficked is erroneous. The consent to migrate, albeit illegally, and for prostitution does not exonerate the traffickers, neither does it make the trafficked persons any less victims. The presence of the other elements of “exploitation” and other forms of human rights abuses while facilitating the transfer of persons for the purposes of prostitution or other forms of labour makes the transaction that of human trafficking. In effect consent is vitiated once the other elements of abuse and exploitation are proved as no one can consent to exploitation.

In addition, in the definition the threshold in proving a transaction constituting human trafficking in relation to a child (any person under the age of 18 years) is less than that required to prove trafficking in adults, as it is unnecessary to prove inducement or deceit as long as there is recruitment, transportation and exploitation. This definition is particularly relevant in distinguishing the situation of trafficked children from that of adult victims. Unfortunately most of the trafficked victims either internally or externally are children especially at the time of trafficking<sup>18</sup>.

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<sup>18</sup> WOCON, Report on “Research on Trafficking in women in Nigeria” commissioned by the Netherlands Embassy, Lagos, 2000

One finds a lot of misconceptions within the Nigerian Society concerning trafficking. One is the conflation of “human trafficking” with “prostitution”. This misconception can be traced to the fact that the issue of human trafficking attracted public recognition in Nigeria as a result of the massive deportation of Nigerian trafficked women and girls (mostly indigenes of Edo State of Nigeria) from Italy in the 1990s. Most of the girls had been trafficked for sexual purposes prior to their deportation. The reaction of the public to these deportations and the subsequent sensational media coverage of the incidents is to erroneously regard all human trafficking cases as for purposes of prostitution, and worse still to stereotype victims of trafficking as women from Edo State only.

The stigmatisation of deported, trafficked Nigerians was aptly captured by the Report of Anti-Slavery U.K in which the author<sup>19</sup> referred to the Nigerian situation thus:

*“The procedures facing deported nationals in Nigeria violate basic human rights by discriminating against and stigmatising women as sex workers, forcing them to undergo STD Tests and preventing them from leaving the country legally again.”*

The equation of human trafficking with prostitution has further worsened the abuse suffered by trafficked victims who, irrespective of the form of labour they are trafficked for, on being deported are considered as sex workers or prostitutes.

This misconception has also resulted in the lack of recognition of trafficking (especially child trafficking) for other forms of labour such as domestic work or farm labour, which are rampant and have been ongoing for decades. Secondly, the equation of trafficking with prostitution creates a pattern whereby governments and some activists in an attempt to combat human trafficking advocate for the criminalisation of prostitution. This tendency to criminalise prostitution drives those engaged in sex work underground and makes them more vulnerable to trafficking and worse forms of exploitation.

In Edo State of Nigeria where the incidence of trafficking for prostitution is high, the Government amended its existing Criminal Code on the issue of trafficking<sup>20</sup> to criminalize prostitution, making trafficked victims for prostitution also subject to being penalized.

## **2.2 Human Smuggling and Illegal Migration**

Another misconception relates to the confusion of human trafficking with issues of human smuggling and illegal migration. One of the important elements of human trafficking is “transportation from one place to another” which could be internally within the same country or outside the country resulting in some form of migration. The migrant status of a person is often given precedence over their need for protection. The first enquiry by officials in the destination country is to ascertain whether the person is a regular migrant or an undocumented one. Most often immigration officials do not look any further than the entry status of the person, to examine the circumstances of his/her migration or the exploitative situation of such a migrant. This has resulted in cases of human trafficking being treated as merely that of illegal migration or at worst human smuggling. Unfortunately, the confusion between human smuggling and trafficking contributes to

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<sup>19</sup>Pearson, E., “Human Traffic, Human Rights, Redefining Victim Protection”, Anti Slavery International U.K, 2002

<sup>20</sup> A law to amend some of the provisions of the Criminal Code Cap 48 Laws of Bendel State 1976 as applicable to Edo State 2000, and will be examined below in the study.

not recognising the violations of human rights suffered by the victims of trafficking, and prevents access to the protection provided by the international instruments and bilateral agreements.

The United Nations has clearly defined the term ‘human smuggling’ in the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Trans-national Organized Crime<sup>21</sup> (henceforth referred to as “the Smuggling Protocol”)

Article 3 of the Smuggling Protocol defines the term “Smuggling of migrants” as:

*“the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”*

Many Governments indeed approach the human trafficking issue from the migration point of view and consequently adopt strict migration laws and policies to discourage migration in negation of the fundamental right to free movement and despite unfulfilled demand on the labour market. The effects of the anti-migratory laws and policies are to restrict entry of persons from developing countries to developed countries thereby denying them the benefits of trade liberalisation and globalisation. The strict migration laws and policies invariably become counter-productive as they expose potential migrants to becoming more vulnerable and create lucrative avenues for traffickers to exploit migrants. It is pertinent to note that strict migration laws, especially by the wealthier receiving countries, have put human trafficking victims into worse situations of abuse. Most of the migratory laws and bilateral agreements provide for immediate deportation of illegal or undocumented migrants without giving those that are trafficked opportunities for recovery from the trauma of abuse<sup>22</sup>. Moreover, these migration laws and policies in reality deprive the trafficked persons of the possibility of criminal or civil action against their traffickers.<sup>23</sup>

When human trafficking situations are treated as smuggling, traffickers benefit from impunity and escape the severe sanctions contained in anti-trafficking laws. The victim is criminalized and denied access to the protection to which a trafficked person is entitled. As a result of the lack of the basic understanding of what constitutes “human trafficking” therefore, a lot of misapplied and unsuccessful strategies have been employed by governments and civil society in attempts to curb the trend.

### **2.3 Forced Labour and slavery-like practices**

Another major component of human trafficking is placement in situations of forced or exploitative labour. People sometimes justify a situation of trafficking with the little wages or benefits received by the trafficked persons, while ignoring the criminality of forced or exploitative labour.

Article 2 of the ILO Forced Labour Convention (No. 29), 1930, which has been ratified by Nigeria, defines forced or compulsory labour as:

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<sup>21</sup> Adopted in Vienna in 2000 along with the Palermo Protocol

<sup>22</sup> See “*Recommended Principles and Guidelines on Human Rights and Human Trafficking*” by the Office of the United Nations High Commissioner for Human Rights, 2002

<sup>23</sup> Wijers, M. and Chew, L. “*Trafficking in women, forced labour and slavery like practices in marriages, domestic labour and prostitution*”, 1997, p. 148

*“All work or service which is exacted from a person under the menace of any penalty and for which the said person has not offered himself voluntarily.”*

Undoubtedly human trafficking transactions often result in forced labour but forced labour alone without other elements constituting human trafficking should not be equated with it.

The United Nations has through the Palermo Protocol definition linked the issue of human trafficking with slavery, slave-like practices and servitude. There are of course common elements in both the crimes of human trafficking and that of slavery.

“Slavery” has been defined<sup>24</sup> in accordance with the definition in the Slavery Convention (1927) as

*“the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”*

While “slave trade”<sup>25</sup> includes

*“all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.”*

The cultural practice in Nigeria whereby children of poor parents from rural communities are sent to their rich relatives for education and upbringing was designed to stop the cycle of poverty. It has over the years, deviated from the original purpose with some parents giving out or virtually selling their children to known people or complete strangers without fore knowledge of where the children are being taken to or the form of labour the children will be subjected to. Most of the children are transported to cities or across borders and placed in exploitative labour such as domestic servitude, thereby turning the practice into human trafficking. The children rather than get education or acquire skills that will economically empower them for the future suffer various forms of physical, mental and sexual abuses which leave them traumatized and unable to meet future challenges or change the poor economic conditions of themselves or their families.

The similarities in the traits constituting “human trafficking” with those of “slavery”, the “slave trade” and “practices similar to slavery” as shown in the various definitions has therefore led to the incidents of human trafficking being referred to as “modern slavery”. Some of the exploitative elements are explicitly highlighted in the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices similar to Slavery, 1957 which further clarifies the 1927 Slavery Convention. These elements are those of “debt bondage”, “serfdom”, “forced marriage” and “child labour” which are clearly evident in today’s human trafficking transactions.

These slavery-like practices are defined in the Slavery Convention: <sup>26</sup>

*“(a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a*

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<sup>24</sup> Article 7(a) UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and practices similar to slavery, 1957

<sup>25</sup> Article 7(c) *ibid*

<sup>26</sup> Article 1.1. *ibid*

*debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;*

*(b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;*

*(c) Any institution or practice whereby:*

*(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or*

*(ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or*

*(iii) A woman on the death of her husband is liable to be inherited by another person.*

*(d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.”*

These concepts clearly apply to human trafficking transactions.

## **2.4 Conclusion**

The issues of human trafficking, illegal migration and human smuggling and forced labour thus involve both criminal and social complexities. Human trafficking entails a number of different aspects dealt with separately by distinct legislation such as immigration laws, labour laws, criminal laws, laws on children, etc. Consequently one of the ways of combating trafficking in persons and forced labour is the institution of an adequate legal framework and policies which will ensure the prevention of trafficking in persons and forced labour, the protection of the victims and prosecution of the traffickers and those responsible for forcing others into labour.

Furthermore as a result of the Trans-national nature of trafficking in persons and forced labour, the fight has extended beyond the institution of national legislation and policies to the establishment of trans-border agreements. Therefore, the issue of human trafficking in Nigeria cannot be adequately addressed without reference to the trafficking situation in the neighbouring countries of West and Central Africa and the most frequently used destination countries in Europe and the Middle East.

There has been a global effort to meet the challenges posed by the phenomenon through the adoption of not only national laws and policies but also through international and regional instruments and bilateral agreements between the various countries affected by the phenomenon. Nigeria is one of the first countries in Sub-Saharan Africa to pass a specific law to address the issue of human trafficking and to set up an Agency to oversee the affairs of the issues relating to such matters. Nigeria is also a signatory to and has ratified several international Conventions, which prohibit and punish the crime of trafficking and other related human rights abuses.

### **3 International Instruments on Human Trafficking, Forced Labour and Migration**

With the increase in human trafficking globally and with the attendant hydra-headed problems, there was heightened international concern about the adverse effects of trafficking on the efforts of the United Nations and regional intergovernmental organizations to promote human rights and human security in the world. Consequently, the need to ensure that the issue was addressed from a human rights perspective informed the adoption of various conventions and guidelines for the protection of trafficked victims. Nigeria has signed and ratified many of these instruments and, in order to make them nationally applicable under the Nigerian Constitution has passed special laws to 'domesticate' them.

#### **3.1 The Palermo Protocol**

A major step that was taken by the comity of nations under the auspices of the United Nations to address the issue of human trafficking is the adoption of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, supplementing the Convention against Trans-national Organized Crime signed in Palermo, Italy in 2000. Nigeria signed and ratified the Palermo Protocol and the Convention on 13<sup>th</sup> December 2000 and 28<sup>th</sup> June 2001 respectively. The Nigerian Government further domesticated it by an Act of the National Assembly signed into law in 2003 and known as the "Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children (ratification and enforcement) Act 2003 and the United Nations Convention against Trans-national Organized Crime (Ratification and Enforcement Act), 2003.

The Protocol does not stand alone, but must be read and applied together with the parent Convention. The purposes of the Protocol as set out in Article 2 are:

- ✍ to prevent and combat trafficking, paying particular attention to women and children;
- ✍ to protect and assist victims of trafficking with full respect for their human rights; and
- ✍ to promote international cooperation in order to meet the above objectives.

The protection of, and assistance to victims is identified as a core purpose of the Protocol and governments are obligated to adopt domestic laws and policies to guarantee such protection and assistance in accordance with international human rights standards.

Incidentally, Nigeria is one of the first countries in Sub-Saharan Africa to ratify and domesticate the Palermo Protocol, which shows the political will of the Government to combat human trafficking in Nigeria. However, there are inherent dangers in the verbatim adoption of international instruments as domestic laws. Some of the provisions may be inappropriate in the socio-political context of the country in question. The Palermo Protocol extensively targets the relationship between State Parties, in dealing with cases of human trafficking while the national laws target the country adopting the laws. Furthermore, the Palermo Protocol focuses on law enforcement that assumes the commission of crimes by crime syndicates. In the Nigerian context however, most crimes relating to human trafficking are committed by individuals who could be close relatives or neighbours and who are not embedded in sophisticated networks. To that extent the verbatim domestication of the Protocol creates difficulties in implementation.

Nonetheless the domestication of the UN Palermo Protocol strengthens the national legal framework in combating human trafficking and forced labour. The definition in the Protocol has enabled the inclusion within the ambit of trafficking of acts committed by parents or guardians who give out their children to intermediaries who place them in exploitative labour or slavery-like conditions. In addition, as described later, since the NAPTIP Act deals mainly with trafficking for sexual purposes to the neglect of trafficking for other forms of labour, resort can be made to the domesticated Protocol to cover these. Similarly, since the NAPTIP Act does not provide for trafficking for begging or removal of organs, the domesticated Trafficking Protocol can be employed to address such offences. More importantly, the Protocol offers more protection to the victims of human trafficking than the NAPTIP Act does; hence, its domestication bridges the gaps in the NAPTIP Act concerning this vital aspect. The Protocol in fact imposes obligations on State Parties to protect and provide assistance to trafficked persons, to ensure that repatriation is voluntary (Art. 8 (2)) and in the case of children their interest and welfare should be of paramount consideration (Art. 6 (4)). It is noteworthy that the Palermo Protocol also provides for the recovery of properties from the trafficker to redress the injustices suffered by the trafficked person. This provision is replicated in the NAPTIP Act<sup>27</sup> and its implementation will in no small measure assist victims in their rehabilitation.

One of the weaknesses in the Palermo Protocol is that its language is, in certain clauses, not mandatory, particularly in the provisions for the protection and assistance to trafficked persons. The language of the Protocol gives discretionary powers to State Parties through the use of words like “*appropriate cases and to the extent possible...*”<sup>28</sup> “*Each State Party shall consider taking measures...*”<sup>29</sup> Such wording gives room to State Parties to manoeuvre and legally escape their obligations under the Protocol.

However since Nigeria is a Party to several international human rights instruments, the human rights standard approach should be adopted when dealing with cases of trafficked persons. Some of these human rights standards have been compiled in a publication “Human Rights Standard for the treatment of trafficked persons (1999)”.<sup>30</sup> The standards set out State responsibilities to provide trafficked persons with access to justice and reparation, access to the right to seek asylum, access to health and other social services, and assistance with repatriation and re-integration in their home countries.

### **3.2 ILO Conventions**

The International Labour Organization (ILO), a specialized UN Agency committed to the promotion of social justice and labour rights, has adopted several conventions related to the elimination of human trafficking and its forced labour outcomes. Adopted as early as 1930 and ratified by more than 90% of member States, the ILO Convention on Forced Labour, 1930 (No. 29) defines forced labour and commits member States to eradicate forced labour and prevent its occurrence.

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<sup>27</sup> Section 25 Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003

<sup>28</sup> Article 6(1) *ibid*

<sup>29</sup> Article 11(5)

<sup>30</sup> Compiled by Foundation Against Trafficking in Women, International Human Rights Law Group and Global Alliance Against Traffic in women (GAATW)

The ILO has a specific mandate to protect the rights of migrant workers. The Migration for Employment Convention, 1949 (No.97)<sup>31</sup> sets standards to be followed in dealing with migrants. The scope of this Convention is limited to persons regularly admitted as migrants for employment (Article 11). It requires States to provide adequate and free service including accurate information to migrants(Article 2); to take all appropriate steps against misleading propaganda relating to migration (Article 3); to ensure that immigrants are treated equally with nationals in respect of remuneration, conditions of work, accommodation and union membership (Article 6); and, where migration between countries is sufficiently large, encourages competent authorities to enter into agreements to regulate matters of common concern in the application of the Convention (Article 10). Nigeria ratified this Convention on 17<sup>th</sup> October 1960 and is bound to adhere to the commitments under the Convention.

Following the increasing demand for cheap labour and the worsening vulnerability of migrants from poorer communities, the ILO adopted the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).<sup>32</sup> It is the first ILO convention with specific provisions on trafficking, committing ratifying member States to prosecute the “*authors of manpower trafficking... whatever the country from which they exercise their activities*” and to “*systematically seek to determine whether there are illegally employed migrant workers on its territory and whether there depart from, pass through or arrive in its territory any movements of migrants for employment in which the migrants are subjected during their journey, on arrival or during their period of residence and employment to conditions contravening relevant international multilateral or bilateral instruments or agreements.*” Unfortunately, Nigeria has not yet ratified this Convention.

In order to ensure that the recruitment of domestic and migrant workers is transparent and fair, the ILO adopted the Private Employment Agencies Convention, 1997 (No. 181), that guides member States in the regulation of such agencies to ensure that they protect the rights of migrant workers who use their services and that they do not engage in fraudulent recruitment or placement in situations of debt bondage or forced labour. Nigeria would gain from the ratification of this Convention given the intention of the Ministry of Labour to institute regulation of private employment agencies.

Gender-based discrimination on the labour market is considered to be one of the root causes of trafficking. The basis for effective prevention is elaborated in ILO Conventions on Equal Remuneration, 1951 (No. 100) which promotes the principle of equal remuneration for men and women workers for work of equal value, and on Non-Discrimination (Employment and Occupation), 1958 (No.111) that defines discrimination in employment. Children being the majority of victims of trafficking in West Africa, the two core ILO conventions on child labour: the Minimum Age Convention, 1973 (No. 138) which sets the minimum age for employment at 14 or 15 years depending on the length of compulsory schooling, and the Convention on the Elimination of the Worst forms of Child labour, 1989 (No. 182) which enjoins member states to “*take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency*” have specific application to trafficking in children.

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<sup>31</sup> Has 42 ratifications to date

<sup>32</sup> Has only 18 ratifications to date

### **3.3 OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking**

The Recommended Principles and Guidelines on Human Rights and Human Trafficking, presented by the High Commissioner in 2002, were developed to provide practical, rights-based policy guidance on the prevention of trafficking and the protection of victims of trafficking. Their purpose is to promote and facilitate the integration of a human rights perspective into national, regional and international anti-trafficking laws, policies and interventions.

These principles and guidelines essentially address the prevention of human trafficking, the protection and assistance of trafficked persons including compensation and reparation and the prosecution of traffickers. They prohibit the treatment of trafficked persons as accused persons or perpetrators of offences. Unfortunately, internationally trafficked persons are often treated as accused persons because of their undocumented status. In many destination countries, trafficked persons are arrested, detained, charged to court, convicted and sentenced to terms of imprisonment under the immigration laws of these countries before they are eventually deported to their respective home countries in utter negation of the High Commissioner's recommendations.<sup>33</sup>

It should be noted that many Nigerians trafficked to Europe experience inhuman treatment in the hands of the authorities before deportation. Most of them are arrested on the streets, treated as illegal migrants, detained, criminalized and eventually deported forcefully to Nigeria. According to an impact assessment survey<sup>34</sup> conducted on the impact of the "Alnima project" for reintegration of deported trafficked persons, by Tampep<sup>35</sup> in Edo State of Nigeria, of the 24 interviewed trafficked returnees from Italy, 37.5% were forcefully repatriated, 16.3% came voluntarily while 12.5% received assistance from NGOs in Italy.

Apart from criminalizing victims, the destination countries do not assist the trafficked persons to get over the trauma of the abuse of trafficking by allowing them short or long term stay, neither are there adequate provisions for shelter and reintegration for the trafficked persons both in the countries of destination and in their home countries.

Nigeria too does not fulfil its obligations in the provision of protective shelters for victims from other countries as well as her own returned trafficked persons. This lack of shelters or reception areas was manifested in 2003 when over 100 trafficked children from neighbouring Benin Republic found in illegal stone quarries in Ogun State of Nigeria had to be in the custody of the Police without any official allocation for their upkeep.

Since the coming into operation of the National Agency for the Prohibition of Traffic in persons and other related matters (NAPTIP), the Nigerian Government in collaboration with the International Organization for Migration (IOM) has set up shelters in Benin and Lagos, but these are insufficient. This lack of facilities for trafficked victims was stressed in the report of the Anti Slavery

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33 Recommended Principle 7-11 OHCHR Recommended Principle and Guidelines on Human Rights and human trafficking

34 Conducted by Professor Hope Obianwu, Professor of pharmacology, presented at "the Global Threats, Personal Risks, local options" workshop in Abuja in 2004

35A Non-Governmental Organization with an office in Italy

International:<sup>36</sup> *“There is a stark lack of government assistance to trafficked persons who return home. The lack of any shelters for trafficked persons in Nigeria is the most pressing problem.”*

Another critical area in which the Human rights Principles<sup>37</sup> recommended by the Office of the High Commissioner for human rights is the difficulty in both source and receiving countries or communities to investigate, successfully prosecute and punish offenders for human trafficking. Despite efforts being made by NAPTIP in prosecution, very few convictions have been obtained and traffickers continue to operate with impunity.

### **3.4 ECOWAS and the free circulation of persons**

As earlier stated migration, is not only from the South to the North, but includes intra-regional migration from a developing community to a richer developing country. Sometimes it is not the wealth of a country that attracts migrants but available opportunities to trade or, for those escaping conflict situations, to take refuge in a more secure area. The countries of the West African region are characterised by essentially agrarian economies with some mineral resources and a low average per capita income below \$500<sup>38</sup>. The growth in the economic relations of the member States in the West African region in recent years has necessitated the adoption by the Economic Community of West African States (ECOWAS) of the ECOWAS treaty and the Protocol relating to the free movement of persons, Residence and Establishment.<sup>39</sup>

The Protocol for free movement provides among other things for the following rights to be enjoyed by all citizens of West African States: the right of entry and consequently the abolition of visas; right of residency and right of establishment which includes the right to employment. These rights are however conditional on the migrants' acquisition of a valid passport or identification certificate or travel documents, the possession of a valid international health certificate and the official record of the migrant's entry.

The initial grant of stay is for a period of 90 days, which may be renewed on application to the relevant authority of the host country. The Protocol also allows the free movement of vehicles, within the region and, subject to the possession of valid documents, they may remain in another country for a maximum period of 90 days and in case of commercial vehicles 15 days.

It is significant to note that in case of repatriation of a citizen of a member State the Protocol provides that the security of such a person and his/her family will be guaranteed by the host country and the person's properties will be protected and returned to him/her on departure. This provision is similar to OHCHR Recommended Principles and Guideline on human Rights and human trafficking and ought to be implemented.

The ECOWAS Protocol is designed to facilitate free movement as a pre-condition to economic growth within the region. Its unintended negative effect has however been a rise in Trans-national crime. Firstly the corrupt and inept attitude of border officials in the different States has resulted in the poor implementation of the Protocol. Thousands of nationals have crossed various borders in the

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<sup>36</sup>Anti Slavery International U.K *“Human Traffic Human Rights Redefining Victim Protection”*, 2002, p. 168

<sup>37</sup> Principle 12-17 OHCHR on Criminalisation, punishment and redress

<sup>38</sup> World Bank Report 2003

<sup>39</sup> Adopted in Dakar on 29<sup>th</sup> May 1979 and ratified by Nigeria as Protocol A/PI5/79 on 12<sup>th</sup> September 1979

region without possessing valid travel documents or any documents for that matter. There is a poor almost nonexistent mode of recording movements especially at the land border posts. In addition with as little as 100 Naira or 200 CFA (less than 1\$), paid to the border officials or immigration officials, a citizen can cross the border to another country without any documents at all.

This Protocol, apart from allowing free passage to human traffickers to traffic their victims, has also made crime detection very difficult leading to an escalation in cross border crime since the Protocol came into operation. In 2003, Interpol discovered that many of the vehicles stolen in Nigeria during armed robbery operations had been exported to neighbouring countries of Benin and Togo through the Nigerian borders. This discovery led to the closure of the Seme and Idiroko land borders which led to a substantial loss of income for the countries affected.

## 4 Nigerian Legislation and Policy Review

### 4.1 The Nigerian Constitution

In view of the fact that trafficking in persons involves the violation of fundamental human rights, it is important to consider the relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999 that guarantee these fundamental rights. Chapter IV of the Constitution contains fundamental rights whilst Chapter XI spells out the fundamental objectives and directive principles of state policy.

Human trafficking is against the freedom and dignity of human beings and is thus unacceptable under the Constitution. Section 34 of the Constitution guarantees the right to the dignity of the human person thus prohibiting the subjection of any person to slavery or servitude. It provides that:

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

*? no person shall be subjected to torture or to inhuman or degrading treatment*

*? no person shall be held in slavery or servitude; and*

*? no person shall be required to perform forced or compulsory labour.”*

These rights are fundamental rights that are enforceable in the Nigerian courts. Section 46 of the Constitution provides that any violation of its fundamental human rights provisions is remediable by the High Court in the State where the violation occurs.

Other relevant provisions in the Constitution are those that safeguard the rights to movement (Section 41), personal liberty (Section 35), and those that prohibit torture and inhuman or degrading treatment, slavery, servitude and forced labour (Sections 34(1)(a) (b) and (c) respectively).

Nigeria is a signatory to many treaties, conventions and bilateral and multi-lateral agreements, including the following treaties, which contain provisions for the protection of the rights of trafficked persons:

- ✍ United Nations Slavery Convention 1927,
- ✍ Convention for the suppression of trafficking in Persons and of the Exploitation of the Prostitution of Others (1949)<sup>40</sup>
- ✍ UN Convention against Trans-national Organized Crime and its Supplementary Protocol to Prevent, Suppress And Punish Trafficking in Persons, especially Women and Children, 2000;
- ✍ ILO Forced Labour Convention, 1930 (No. 29),
- ✍ ILO Abolition of Forced Labour Convention, 1957 (No. 105),
- ✍ ILO Worst Forms of Child Labour Convention, 1999 (No. 182).

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<sup>40</sup> This Convention purports to cover trafficking; however it contains no definition of trafficking and simply addresses prostitution and the movement of persons into prostitution.

Other international instruments to which Nigeria is party and which have provisions that can apply by extension to the protection of the human rights of trafficked persons, include the following:

- ✍ The Convention on elimination of all forms of Discrimination against Women (1979): specifically Articles 2, 6, 9, 11, 12, 14, 15, and 16
- ✍ The UN Convention on the Rights of the Child (1989): specifically Articles 7, 16, 19, 28, 31, 32, 34, 35, 36, 37, and 39
- ✍ The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000): specifically Articles 1, 2, 3, 8,
- ✍ Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984) specifically Articles 1, 3, 13, and 14
- ✍ The Convention on the Elimination of all forms of Racial Discrimination (1965) specifically Articles 2, 5 and 6
- ✍ The UN General Assembly Declaration on Violence against Women (1993) specifically Articles 2 and 3
- ✍ The UN Convention on the Protection of the Rights of All Migrant Workers and Their Families (1990) – Articles 10, 11, 16, 25 – 30, 40, 41, and 68, as well as
- ✍ ILO Conventions 97 and 143 on Migrant Workers and 181 on Private Employment Agencies

Nigeria has ratified a good number of these Conventions, but Section 12 of the Constitution of the Federal Republic of Nigeria 1999 stipulates that all treaties ratified by Nigeria have to be passed into law by the National Assembly before they can have force of law in Nigeria. This is called “domestication of treaties”. The international instruments that are yet to be domesticated therefore do not have the force of law in Nigeria.

#### **4.2 The Criminal Code:**

Prior to the promulgation of specific anti-trafficking legislation in 2003, provisions relating to human trafficking and forced labour could be found scattered in the criminal and penal codes and labour laws. It must be noted that in Nigeria, the Criminal Code is applicable in the Southern part of the country while the Penal Code is applicable in the North.

The Criminal Code, promulgated on June 1, 1916 does not define what constitutes trafficking nor does it deal with the various forms of trafficking. However, it deals with the offences which may constitute external trafficking for prostitution and slavery. For example the Criminal Code makes it an offence to procure women and girls for prostitution in or outside Nigeria. Section 223(2) of the Criminal Code states that

*“any person who:*

- ? *Procures a woman or girl to become a common prostitute either in Nigeria or elsewhere, or*
- ? *Procures a woman or girl to leave Nigeria with intent that she may become an inmate of a brothel elsewhere, or*

- ? *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”.*

In addition to these offences there are provisions dealing with offences of unlawful deprivation of liberty, slave dealing, and forced labour. There are also several provisions dealing with sexual offences.

As stated earlier, trafficking is regarded as modern day slavery. The Criminal Code prohibits slave dealing, and Section 369 punishes slave dealing with imprisonment for 14 years upon conviction of any offender. The section defines the offence to include:

- ? *“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*
- ? *Placing or receiving any person in servitude as a pledge or security for a future debt or*
- ? *Conveying, sending or receiving any person to go outside Nigeria to enable the person to be possessed, dealt or traded in, purchased as a slave or be placed in servitude as a pledge or security for debt or*
- ? *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)”*

Slavery is regarded as a crime against humanity. Under Article 7 of the Rome Statute of the International Criminal Court, ‘crimes against humanity’ are defined to include enslavement, and this is punishable irrespective of where it occurs. It is argued that punishment for enslavement has become part of customary international law. The criminalization of slavery under the Criminal Code is therefore in accordance with international law.

Section 365 of the Criminal Code deals with the unlawful deprivation of liberty of a person by confinement or detention and punishes the offender with imprisonment for 2 years.

Section 224 of the Criminal Code also punishes any person who by threats, intimidation or false pretences procures a woman or girl or administers stupefying or overpowering drugs on her to facilitate unlawful sexual relations with a man either within or outside Nigeria with imprisonment for 2 years, and Section 225 (a) makes it an offence for a male person to live on the earnings of a prostitute and prescribes the punishment of two years imprisonment at the first instance and for subsequent conviction “any term of imprisonment” in addition to whipping. The punishment for a similar offence by women is less as Section 225(4) provides as follows:

“Every female who is proved to have, for the purposes of gain, exercised control, direction or influence over the movements of a prostitute in such a manner as to show that she is aiding abetting or compelling her prostitution with any person or generally shall be liable to imprisonment for two years”

It is clear from the foregoing that the Criminal Code penalties for offences that constitute human trafficking are inadequate. Paradoxically the offences are regarded as misdemeanours, and penalties

range from fines and imprisonment of between 2-7 years that are not sufficient to serve as deterrents for traffickers. In Edo State, where the incidence of human trafficking for commercial sexual exploitation is particularly high, the Criminal code has been amended to increase the penalties substantially.

### **4.3 The Penal Code**

The Penal Code, promulgated on 30<sup>th</sup> September 1960, is the criminal law applicable in the Northern part of Nigeria. It was fashioned after the Sudan Criminal Code, which in turn was based on the Indian Penal Code. Sudan and Northern Nigeria have Shari'a law.

Trafficking in women has been recognized as an offence in the Penal Code with special provisions according to the age of the victim. In general, there are stronger provisions against human trafficking related offences in the Penal Code than the Criminal Code, and while the Criminal Code treats some of these offences as mere misdemeanours, the Penal code categorizes them as felonies and provides stricter punishments.

Under the Penal Code Section 276 a maximum penalty of 10 years in prison and a fine exists for anyone convicted of encouraging the prostitution of women and children, and it is an offence to import into Northern Nigeria a girl under the age of 21 for prostitution.

Section 275 of the Penal Code for example provides as follows:

*“Whoever by any means whatsoever induces any girl under the age of 18 years to go from any place or to do any act with intent that such 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 10 years and shall also be liable to fine”.*

Both sections above prescribe the maximum penalty in addition to a fine but do not have a minimum penalty. This is a shortcoming as it is left to the discretion of the judge to impose any minimum, which may prove to be inadequate considering the gravity of the offence.

Section 276 of the Penal Code also prohibits trafficking of women into Nigeria, but does not provide for trafficking of women from Nigeria abroad. In addition, Section 270 of the Penal Code prohibits forced labour, and imposes a penalty of imprisonment for a term that may extend to one year or a fine. Clearly this penalty is too small and the deterrent value is lost especially where the traffickers are offered the option of a fine. Human trafficking being a lucrative<sup>41</sup> business, traffickers will find it much easier and a relief to pay the fines and continue with their trade. Interestingly, it is only the Penal Code that provides for the offence of “traffic in persons” though the provision also relates the offence to slavery. This is contained in Section 279 of the Penal Code, which states that:

*“Whoever imports, exports, removes, buys, sells, disposes, traffics or deals in any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine”.*

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<sup>41</sup> See the ILO Global Report 2005: “A Global Alliance against Forced Labour” for estimates of annual profits from human trafficking and forced labour by region

Furthermore the Penal code provides<sup>42</sup> stiff penalties (maximum of 10 years and a fine) for offences relating to enticement, deceit and inducement of children (below 14 years for male and below 16 years for females) into prostitution without the consent of the guardian.

This provision is inconsistent with international law that prohibits the prostitution of minors (below 18 for boys and girls) under any circumstances. The consent of the guardian should not make it any less a crime. As this exception vitiates the offence of trafficking stipulated in sections 271, 272 & 273 of the Penal code, there is need for an amendment to punish those who take young persons even with the consent of the lawful guardian often without informing them of the unlawful purpose for which the young persons are being taken. The notion of “consent” should be simply deleted as it should not be taken into consideration, unless to punish the lawful guardian as well.

It could also be deduced that the Penal Code does not uphold the standard age of 18 years for children and also provides for unequal ages for girls and boys when it provides for offences committed against males under the age of 14 and for females under the age of 16. It is therefore recommended that the United Nations accepted standard age for children which is 18 years, also reflected in ILO Conventions 182 on the Worst Forms of Child Labour, should be the accepted age for minors stipulated in the Code, irrespective of their sex.

As far as the sanctions are concerned, the Penal Code prescribes up to a maximum of 14 years imprisonment for slave dealing, and punishes the offence of procurement with imprisonment of up to seven years. Section 280 prescribes a punishment of one-year imprisonment or a fine for the offence of forced labour, and Section 274 punishes kidnapping with a sentence of 10 years imprisonment and a fine.

In reality, the consent of lawful guardians is sought and obtained to induce children into trafficking situations. There have been cases of young girls from Northern Nigeria who were lured away with the consent of their parents and guardians ostensibly to perform the Holy Pilgrimage in Saudi Arabia, only to be trafficked for sexual purposes. According to the Nigerian Immigration Services, from March 2002 to April 2004, the Saudi Arabian authorities deported 9,952 women and 1,231 underage unaccompanied children. Investigations revealed that majority of the women deported from Saudi Arabia are from: Kano, Borno, Adamawa, Yobe, Nassarawa, Plateau, Niger, Kebbi, Kwara, Sokoto, Katsina, Zamfara, Jigawa, Gombe, Bauchi and Taraba states.”<sup>43</sup>

#### **4.4 Edo State Law against Human Trafficking:**

This legislative review on human trafficking and forced labour in Nigeria will not be complete without specific mention and reference to the Edo State Laws. In Edo State, where the incidence of trafficking for prostitution is high, the State House of Assembly passed a law in 2000 to amend the existing Criminal Code to specifically refer to the offence of human trafficking. Although the Edo State Law extended the reach of the law to criminalize accomplices such as family members, religious leaders and anyone who facilitates the trafficking of women and children, it unfortunately criminalizes prostitution as well, making trafficked victims for prostitution also subject to being penalized. There is however a recent move by civil society organizations to have the Edo State Law

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<sup>42</sup> Sections 271,272,273 of Penal Code

<sup>43</sup> Mohammed Ali Mashi, Deputy Superintendent of Immigration Services (DSI), presented this paper at a workshop in Bauchi, organized jointly by Nigerian Immigration Services and UNICEF

amended to decriminalize prostitution. The sections of the State Criminal Code that the Law has amended are Sections 222a, 223, and 225a. These amendments make prostitution a criminal offence and set out punishments for those who aid and abet overseas travel for potential prostitutes.

Section 222 (a) extended the ambit of the offence of causing or encouraging the seduction or prostitution of a girl to cover every female person in place of only “girls under the age of thirteen years”, and increased the sentence from two years to imprisonment for seven years or to a fine of N50,000 (\$385).

Section 223 treats the procurement of a woman or girl for prostitution as a felony as against the initial categorisation as a misdemeanour and increases the punishment from 2 years to 14 years imprisonment.

Section 223 (a) is a new section that makes it an offence to sponsor 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. It is also an offence punishable by imprisonment for ten years or a fine of N 500,000 (\$3,846) or both, to administer any oath on a woman or girl or perform any fetish ritual in order to enable her travel out of Nigeria for the purpose of becoming a prostitute or to have unlawful carnal knowledge with any person. The section sets out punishment for those who aid and abet overseas travel for potential prostitutes but does not address trafficking directly. Section 223(a)(2) introduces compulsory medical examination for the purpose of determining sexually transmitted diseases (STDs) for those deported from foreign countries.

Section 223 (b) makes it an offence for any female person to knowingly offer herself for the purpose of prostitution or to carry out any immoral act within or outside Nigeria punishable by two years imprisonment or a fine of N 20,000 (\$154). This makes prostitution a criminal offence and neglects the right of an adult to offer sexual services voluntarily especially in a country where it is legal, if that is her choice. There is no provision that criminalizes a male who engages in prostitution making the law discriminatory against women.

Section 223 (c) makes it an offence punishable by two years imprisonment or a fine of N10,000 (\$77) for any man who patronizes any woman in an act that can be considered prostitution and Section 223 (d) creates an offence punishable by two years imprisonment or a fine of N10,000 (\$77) or both for any woman who lures/induces any male with gratification for the purpose of having carnal knowledge of her.

A common weakness in all these sections is the fact that the prescribed terms of imprisonment can be replaced by fines and it is at the discretion of the presiding judge to impose any of them. This clearly reduces the weight of the offences and the deterrent value of the sanctions imposed.

The law addresses trafficking indirectly and does not specifically address those who actually engage in trafficking of children and young women abroad for the purpose of other forms of labour besides sexual exploitation.

#### **4.5 Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003**

On July 14, 2003, the Federal Government of Nigeria promulgated a specific law against human trafficking titled the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003 (hereinafter referred to as the NAPTIP Act) and set up a special Agency, the National Agency for the Prohibition of Trafficking in Persons (NAPTIP), to oversee matters relating to human trafficking and related matters in 2004. This law is the first attempt to develop a national legal framework to combat the menace of human trafficking in Nigeria through legislation.

The Bill was initiated by Women Trafficking and Child Labour Eradication Foundation (WOTCLEF) a non-governmental organization founded by the wife of the Vice President of Nigeria, Mrs. Titi Atiku Abubakar. A 17-person committee, inaugurated on 28<sup>th</sup> June 2000, drafted the Bill. The committee was chaired by a judge of one of the States in the country and had representatives from the Ministry of Justice, the Police, Immigration and Customs. The terms of reference of the committee included a review of existing legislation in the area of human trafficking and child labour and consideration of the provisions of relevant international conventions and treaties.

Although the NAPTIP Act is specific to trafficking and is one of the first such laws in Sub-Saharan Africa, it is not a model, but rather a mixed bag of innovative provisions in some parts and lacunae in others.

Evidently, the Palermo Protocol influenced the drafting of the NAPTIP Act and as can be seen from Section 50 that incorporates the universally accepted definition contained in Article 3 of the Palermo Protocol with some slight changes. The Act defines “trafficking” as follows:

*“Trafficking includes all acts and attempted acts involved in the recruitment, transportation within or across Nigerian borders, purchase, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion or debt bondage for the purpose of placing or holding the person, whether for or not in involuntary servitude (domestic, sexual or reproductive), in forced or bonded labour, or in slavery-like conditions.”*

This definition goes beyond the Palermo Protocol definition in some aspects. The inclusion of the phrase “... attempted acts...” makes it easier to prosecute offenders who are caught in the act of trafficking without having completed the transaction. The Act also takes an innovative step in criminalizing commercial carriers who transport potential trafficked victims with knowledge of the trafficking transaction. However, the element of “guilt due to knowledge” may be difficult to prove in order to obtain conviction of a commercial carrier. In addition, the definition includes trafficking transactions involving “...transportation within and across the Nigerian Borders...” thus recognizing internal trafficking as well.

There are, however, some weaknesses in the definition contained in the NAPTIP Act which include the omission of trafficking for the “removal of body organs” as stated in the UN Protocol and which has limited the application of the law to the extent that people are trafficked for this purpose. No sanction has been prescribed for the whole act of “Trafficking” but rather for various acts like exportation and importation of persons, harbouring, transportation, etc. The sanctions for these acts

vary from five, ten or fourteen years with or without the option of fine and even to life imprisonment<sup>44</sup>.

Examining the NAPTIP Act as a whole, one finds that the legislation is oriented more towards the prosecution of traffickers than to the prevention of trafficking and protection of trafficked persons. Another major flaw is that the offences created by the NAPTIP law focus on trafficking for sexual purposes to the neglect of offences relating to trafficking for other forms of labour.

The NAPTIP Act has, for the first time instituted severe penalties for the offence of human trafficking ranging from two years<sup>45</sup> to life imprisonment.<sup>46</sup> In addition, it provides for a series of other penalties including the option of fines and confiscation of the properties of convicted traffickers and accomplices. It is noteworthy that penalties for trafficking offences related to sexual purposes and involving minors under the age of 18 are much stiffer than other penalties<sup>47</sup>.

The deficiencies in the NAPTIP Act regarding the protection of victims and witnesses has resulted in difficulty to effectively prosecute offenders due to the lack of cooperation from victims and witnesses who fear reprisals. In its first two years of existence only two cases were successfully prosecuted to conviction under the law despite the thousands of trafficking transactions taking place in Nigeria. To the extent that the NAPTIP Act lacks victims or witness protection, it has not complied with the internationally recommended human rights standard approach.<sup>48</sup>

The Nigerian government has taken a laudable step towards strengthening the legislative framework to address human trafficking in Nigeria by the passage of the NAPTIP Act. There is, however, a need for law reform to make the Act truly comprehensive and to address the various issues and manifestations of human trafficking in Nigeria.

#### **4.5.1 Relationship between the Criminal and Penal Codes and the NAPTIP Act**

The NAPTIP Act synthesizes all the prior anti-trafficking and related offences provisions in the various criminal codes and brings them together, but there remains uncertainty as to the status of the Criminal and Penal Codes with respect to the NAPTIP Act.

The NAPTIP Act restates some of the offences in the Criminal and Penal Codes and prescribes stiffer penalties for them, but all three laws exist alongside and are equally applicable<sup>49</sup>. There is no provision in any law as yet declaring the supremacy of any of these three laws above the others or how the court should resolve differences between them. This clearly creates difficulties of enforcement and loopholes for the escape of offenders with smaller penalties.

#### **4.5.2 Victims/Witness Protection**

In combating human trafficking, most countries focus primarily on the prosecution of offenders, border interception and cross-border cooperation. Yet, the psychological trauma which victims of

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<sup>44</sup> See table on page 34

<sup>45</sup> Section 29(1) Trafficking in persons ( Prohibition) Law Enforcement and Administration Act, 2003

<sup>46</sup> Section 11 *ibid*

<sup>47</sup> See Section 19(1) (a-f) *ibid*

<sup>48</sup> Global Alliance Against Traffic in Women (GAATW), “*Human Rights Standards for the treatment of trafficked persons*”, 1999

<sup>49</sup> While the Criminal Code is applicable in Southern Nigeria the Penal Code is applicable in Northern Nigeria and the NAPTIP Act has national applicability

trafficking go through requires that proper protective assistance and support be provided for them. The existing Criminal and Penal Codes do not have provision for the protection of victims and or witnesses. The NAPTIP Act makes provision for Rehabilitation and Reintegration of victims and but not for their protection. One of the functions of the National Agency for the Prohibition of Trafficking in Persons and other Related Matters (NAPTIP) established pursuant to the Act, is to rehabilitate and reintegrate deported victims, in collaboration with relevant Federal agencies. Section 9(3) of the NAPTIP Act states:

*“The Counselling and Rehabilitation Unit shall in collaboration with the Federal Ministries of Women and Youth Development, Employment, Labour and Productivity and Culture and Tourism, be responsible for counselling, after care rehabilitation, social re-integration and education of trafficked persons; and the counselling and promotion of the welfare of convicts”*

In addition to this, some NGOs like WOTCLEF and Women’s Consortium of Nigeria (WOCON) also assist in the rehabilitation and social integration of victims. The main challenge however is lack of sufficient funds for NAPTIP and NGOs who are working in this field to effectively assist victims. Usually, on the return of victims, they are allowed to make a choice as to whether they want to go home immediately or remain in one of the few shelters<sup>50</sup> recently set up. Those who remain in a shelter can benefit from vocational skills training and the government micro credit scheme.

Section 36 of the NAPTIP Act provides for the treatment of trafficked persons. It essentially prohibits discrimination against trafficked persons on the basis of sex, race, cultural or social standing and restriction of the movements of such persons on account of having being trafficked. The section also provides for access to social services and guarantees the protection of the identity of the trafficked person. The provisions are in some respect similar to those contained in the Human Rights Standards for the treatment of trafficked persons. Section 37 of the NAPTIP Act also provides that:

*“Where the circumstances so justify, trafficked persons shall not be detained, imprisoned or prosecuted for offences related to being a victim of trafficking, including non-possession of a valid travel or stay permit or use of false travel or other documents.”*

As stated earlier, the law as it stands does not make provision for the protection of victims of trafficking and their families, which is why it is difficult to get victims to testify against traffickers. Women who are trafficked internationally for prostitution are usually sworn to secrecy through ritual oath taking that is believed to have serious repercussions on the victims or their families in case such oaths are broken. The oath taken prevents the victims or witnesses from giving testimonies or revealing the details of trafficking transactions for fear of supernatural retaliation or reprisals by the trafficker and his/her associates.

A Nigerian victim of trafficking to Italy in a national tribunal organized in Abuja in 2002 by the Civil Resource Development and Documentation Centre, an NGO based in Enugu, testified that some months after she was deported from Italy her sister was killed in mysterious circumstances. She believes it is the work of the trafficker because a threat was issued after she escaped. Such cases

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<sup>50</sup> NAPTIP with support from the International Office of Migration (IOM) set up temporary shelters in Lagos and Benin City in 2004.

highlight the need for adequate provision to be made in the laws for the protection of victims and their families against reprisals.

The return and repatriation procedures also should ensure the security of victims and their reintegration. Usually victims are sent back on chartered aircrafts escorted by security agents and sometimes with the skimpy clothes with which they were found on the streets. There are also allegations that, contrary to the human rights principles, the repatriated trafficked persons are not permitted to return with their money or properties. Victims should be allowed to stay in the host country for the period necessary to undertake penal proceedings against the traffickers and make a civil law case for recovery of unpaid wages and other compensation.

It is pertinent to mention that some form of witness protection is provided in the NAPTIP Act but this is not sufficient. Section 45 of the NAPTIP Act provides that:

*“Where a person volunteers to the Agency or an official of the Agency any information, which may be useful in the investigation of an offence under this Act, the Agency shall take all reasonable measures to protect the identity of that person and the information so volunteered shall be treated as confidential”*

It is important to note that, despite this provision, the requirement that trials be conducted in public poses a threat to victims and witnesses, creating the need for their protection.

It is recommended that provision be made in the NAPTIP Act for victims to be adequately protected including their right to earned wages during the period of their illegal residence in the destination countries. The human rights of trafficked persons should be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims. Furthermore, the identity of the victim needs to be protected<sup>51</sup>. There is usually a lot of publicity and social stigma on the victim and her family if his/her identity is made known. His/Her character and reputation are usually compromised. This has greatly accounted for the underreporting of cases of sexual offences such as rape. Persons who been trafficked for sexual purposes apart from having suffered the indignities of trafficking and all the human rights violations that go with it including rape, also have to go through a discriminatory judicial system. It is not surprising that such persons are reluctant to cooperate in giving evidence because of stigmatisation by society as well as by members of their families.

The privacy of juvenile offenders is protected throughout their trials<sup>52</sup> and publication and broadcasting of their names are specifically prohibited. Similar evidential procedure can be applied to protect the privacy of victims of trafficking and their witnesses. As a corollary, the privacy of the defendant should also be protected throughout the trial. The defendant, though, should lose this protection if and when he/she is convicted.

#### **4.6 Rules of evidence**

The evidential rules to secure convictions for offences including those relating to human trafficking have been a major hurdle for the administration of justice in Nigeria. The Evidence Act<sup>53</sup> contains the bulk of Nigerian general laws relating to evidence. It is applicable all over Nigeria and

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<sup>51</sup> See Section 36(g) Trafficking in Persons (Prohibition), Law Enforcement and Administration Act ,2003

<sup>52</sup> *Ibid* quoting section 6 (5) of The Children and Young Persons Law, 1994 of Lagos State

<sup>53</sup> Chapter 112 of the laws of the Federation of Nigeria, 1990

particularly to almost all courts of criminal jurisdiction in both Northern and Southern Nigeria. Since women and girls are more susceptible to trafficking,<sup>54</sup> the aspects of the Evidence Act, which are discriminatory against women, and which make it more difficult for women to seek redress will be specifically examined in this chapter. The burden and standard of proof required for some particular crimes, especially sexual offences in which women and girls are victims, prevent women from obtaining justice and also prevent the successful prosecution of cases relating to human trafficking.

Unfortunately the Criminal Code and the Penal Code provide that a person cannot be convicted of most sexual offences (some of which may constitute human trafficking) under the Codes upon the uncorroborated evidence of one witness. The few such cases prosecuted under the Criminal Code did not succeed for lack of corroborating evidence.

Under the Nigerian Rules of evidence, the general rule is that no particular number of witnesses is required for the general proof of any fact. A person can therefore be convicted of any offence including murder on the evidence of a single witness.<sup>55</sup> Section 179 (5) provides as an exception to the general rule to the effect that a person shall not be convicted of the following offences upon the uncorroborated testimony of one witness.

The affected offences under the Criminal Code are: defilement of girls under thirteen years of age (contrary to Section 218); defilement of girls between ages 13 and 16 and idiots (contrary to Section 221); procurement of a girl under 18 years of age to have unlawful carnal connection with any other person or persons (contrary to Section 223); and procurement and defilement of women by threats, or fraud or administering drugs (contrary to Section 224). The affected offences under the Penal Code are procurement of a minor girl (contrary to Section 275) and having sexual intercourse with a girl under 14 years of age (contrary to Section 282 (1) (e)).

It will appear that all the offences that need corroboration before conviction have in common the fact that most of the victims of these crimes are women, whether young or old. Even for sexual offences other than rape, where victims are females and the law does not as a rule require corroboration, the courts have over time determined that it is unsafe to convict on the evidence of a single witness without corroboration. The rule is so strictly followed that if a court fails to follow it, any conviction will be quashed on appeal.<sup>56</sup>

Consequently it is recommended that Section 179(5) of the Evidence Act be repealed and proof of facts and conviction on any of these offences be treated the same way as with other offences allowing the courts to convict if satisfied of the truth of the evidence, with or without corroboration.

#### **4.7 Child Rights Act 2003**

Apart from the general laws referring to trafficking, other legislative provisions which are pertinent to address human trafficking and forced labour are derived from the international conventions and

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<sup>54</sup> Confirmed by traffickers who were interviewed by Girls Power Initiative for their study "Trafficking in girls, the Way Forward - Report of a research in Edo and Delta States", 2002

<sup>55</sup> Section 179 (1) of the Evidence Act. See also *Abdu Mohammed vs. The State*, (1991) 7S.C.N.J, 114

<sup>56</sup> See T.A. Aguda, *Law and Practice relating to Evidence in Nigeria*, 2<sup>nd</sup> ed., p. 480

treaties which Nigeria has signed and ratified such as the Convention on the Rights of The Child<sup>57</sup> and ILO Convention 182 on the Elimination of the Worst Forms of Child Labour. These have been domesticated by enacting the law popularly referred to as the Child Rights Act, 2003 (CRA). In addition, some States of Nigeria have enacted their own State Laws on child rights.

Child trafficking as defined by the Palermo Protocol is the recruitment, transportation, transfer, harbouring or receipt of a child for the purposes of sexual or labour exploitation, or slavery. It is a human rights tragedy estimated to involve thousands of children in Africa. While there are different patterns of exploitation in different parts of the world, children are particularly trafficked for sexual exploitation, adoption, child labour (e.g., domestic work, begging, and criminal activities like drug dealing), participation in armed conflicts, and child marriages.

The Worst forms of Child labour are defined in Article 3 of ILO Convention 182 as comprising:

*(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;*

*(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;*

*(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;*

*(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.*

Children in Nigeria are forced or trafficked for purposes that constitute the “worst forms of labour” prohibited under ILO Convention 182. UNICEF estimates that about 8 million Nigerian children are engaged in exploitative child labour<sup>58</sup>. Such forms of labour include domestic servitude, prostitution, begging, farm labour, work in illegal mining sites and quarries. According to a recent report<sup>59</sup> there are 6,000 Nigerian child slaves in West Africa; children between 6-13 years are being used as farmhands and domestic servants. 4,000 children were trafficked from Cross River State in 1996 throughout Nigeria and West Africa. Of the children repatriated from Gabon between January 2000 to July 2001, 127 were from Imo State, 54 from Abia, 16 from Anambra, 13 from Enugu, seven from Ebonyi, and five from Taraba.

Children are usually taken out in groups traditionally by road and sometimes clandestinely by ship. It is believed that traffickers rather than risk detection and inevitable prosecution have deliberately sunk ships containing children. Between 2000 and 2001, 150 children were said to have died on the high seas in the course of being trafficked. In 1992, 400 children from Imo State died when a boat capsized.<sup>60</sup>

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57 Nigeria ratified the Convention on the Rights of the Child on 19<sup>th</sup> April, 1991

58 NAPTIP Fact sheet.

59 Fitzgibbon, K. and Neumann, S.: “*Trafficking in persons in Nigeria*”, 2003, Office to monitor and combat trafficking in persons, US State department

60 Ibid

Children who are trafficked lose contact with their families. They are taken into an entirely new situation, often to another country, to places where they do not know anyone and do not speak the language. They are vulnerable to many kinds of abuse, including sexual abuse. It is particularly difficult for children to seek help not just because they are children but also because they are often illegal immigrants and have false documents or no documents.

The cultural stereotypes, which determine the roles of male and female children in Nigeria, often play out in trafficked situations. Boys for instance, who are trafficked for the purpose of engaging in armed conflict are usually used as soldiers, while girls are usually forced to be servants who are often used sexually by the soldiers as well.

Not only are Nigerian children taken across borders, but nationals of other countries are also trafficked to Nigeria. Ogun State receives children from Benin Republic and Lagos State receives from Benin Republic and Cameroon. In 2003, hundreds of Beninese children were rescued from Ogun State where they had been forced into illegal quarries digging for stones with their bare hands, underfed and living in the open space in the thick bushes (referred to as slave camps). Studies report that Akwa Ibom receives children from Benin, Niger and Mali whilst Abia receives victims from Cameroun<sup>61</sup>

The victims of trafficking or their caregivers are often seeking escape from poverty. Some children (or their parents) are lured by promises of education, a new skill or a “good job” under the age-old African practice of child fostering. Other children are kidnapped outright, taken from their homes, villages or towns and then bought and sold like commodities. Often they are crammed into boats or trucks without proper ventilation, water or food. When the traffickers are threatened by discovery, the children may be abandoned or even killed<sup>62</sup>. If they reach their destination, they end up in situations of forced labour, forced prostitution, domestic service or involuntary marriage. They are usually treated as slaves who have been stripped of their human rights.<sup>63</sup>

Some of the provisions discussed earlier in the Criminal Code, Penal Code, Edo State Law and NAPTIP Act are relevant to the prosecution of child traffickers. There are special laws dealing with the rights of the child in addition to rights contained in other laws such as the Labour Act, which protect the rights of children.

The Child Rights Act, 2003 (CRA) is one such specific law and the most comprehensive law in Nigeria today for the protection of the rights of the child. Most of its provisions are taken from the Convention on the Rights of the Child (CRC) and the ILO Convention 182. In accordance with international norms, Section 277 of the CRA defines a child as a person below the age of eighteen years. Section 14 of the CRA states that a child must not be separated from his or her parents against their will, except where it is in the best interests of the child. Trafficking of a child for any purpose, whether with or without the consent of the parents, is a clear violation of the child’s right to parental care, protection and maintenance.

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<sup>61</sup> UNICEF, Child Trafficking in Nigeria 2000

<sup>62</sup> The case of M.V.Etinero

<sup>63</sup> UNICEF Trafficking report, 2001

Some elements of trafficking in persons such as exploitative labour and the unlawful removal of a child from the lawful custody of another are also covered under this Act. Section 28 of the CRA prohibits exploitative and forced labour of children, employment of children in any capacity except where the child is employed by a member of the family on light work of an agricultural, horticultural or domestic nature. The section is the same as Section 59 of the Labour Act, and the penalty for contravening the provisions of this section is 5 years imprisonment or N50,000 (\$385) fine. The Labour Act (Art. 49 and 59) sets the minimum age at 12 years for employment and apprenticeships, except for light agricultural or domestic work performed for the family. Art. 59 and 61 prohibit children of less than 12 years from lifting or carrying any load likely to inhibit physical development, and establish a minimum age of 15 years for industrial work and maritime employment. Art. 60 prohibits children less than 16 years from working underground, on machines, at night, more than 4 consecutive hours, or more than 8 hours a day. These provisions are not in accordance with ILO Convention on the minimum age for employment (No. 138) and the worst forms of child labour (No. 182). The law (Art. 59 and 65) also prohibits children less than 18 years from any employment that is dangerous or immoral, but it does not apply to domestic service.

It is recommended that the minimum age for employment be fixed at 14 or 15 years of age as per ILO Convention 138 and that children under 18 be prohibited from all work that is likely to harm their health, safety and morals as defined under ILO Convention 182<sup>64</sup>.

Comparing these ILO Conventions with the provisions of the CRA, one finds that Section 30 of the CRA that prohibits the buying, selling, hiring or otherwise dealing in children for the purpose of hawking or begging for alms or prostitution is in consonance with ILO Convention 182. This section is also wide enough to cover the *almajiri* system of semi-formal Koranic education which has, in some cases, come to rely on forced begging by Koranic pupils to support their *mallams* or Islamic teachers. This practice is becoming a dangerous trend in many parts of the cities of Northern Nigeria. These children are migrant scholars from within and outside Nigeria and can be seen in hundreds around the cities begging and committing nefarious acts of stealing, violence and drug peddling.

The practice of using children to assist adults with disabilities to engage in begging on the streets of major cities in Nigeria is also very common. The Worst Forms of Child Labour Recommendation 190 gives guidance to member States in legislating against hazardous work. Recommendation 190, states that the factors to be considered in determining whether or not work is likely to harm the health, safety or morals of children are: exposure of children to physical, psychological and sexual abuse; underground work; work with dangerous machines; work for long hours; night work; and work in which the child is unreasonably confined to the premises of the employer. Some of the activities listed in Section 30 of the CRA are therefore hazardous.

Sections 31 and 32 of the CRA also prohibit “*unlawful*” sexual intercourse with a child, other forms of sexual abuse and exploitation, and punish the offence with imprisonment of 14 years. This is more than that provided by in the Penal Code. Section 34 of the CRA prohibits recruitment into the armed forces in accordance with ILO Convention 182. In reality however in war-torn countries there is a growing trend of young children being forced into the military especially for the rebel army. A 12-year-old boy from Sierra Leone talked about how government soldiers burned his

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<sup>64</sup> Ratified by Nigeria on 2<sup>nd</sup> October, 2002

village during the war, killed his parents, gave him drugs and forced him to fight<sup>65</sup>. Recently in Nigeria immigration officials arrested a security man at the Banki border who was trying to traffic young secondary school boys into Chad to join the Chadian rebel army.<sup>66</sup>

Proper and effective compliance with the commitments of Nigeria under ILO Convention 182 will facilitate a drastic reduction of children being trafficked or forced into worst forms of labour to the detriment of their development and societal growth.

#### **4.8 Labour Act**

The Labour Act applies to all workers and to all employers except the armed forces, the Police, Prisons and Intelligence Agencies. The Labour Act (Section 73) and the Nigerian Constitution, (Section 31 (1) (c)) prohibit forced or compulsory labour. The NAPTIP Act also has similar provisions with much higher penalties: the penalty in the Labour Act is for 2 years imprisonment or N 1,000 (\$7.70) fine for private individuals and 6 months imprisonment or N 200 (\$ 1.55) fine for public officers, while the NAPTIP Act provides a penalty of imprisonment for 5 years or a fine of N100,000 (\$ 770) or both. The issue of conflict between both laws arises here and the penalties provided by both are largely inadequate to deter the commission of the offence of forced labour.

The Ministry of Employment, Labour and Productivity is responsible for enforcing legal provisions regarding working conditions and protection of workers and there is a department in the Ministry in charge of this, with a unit dealing with child labour. Section 78 of the Labour Act states that in addition to other powers conferred on labour officers, an authorized labour officer may for the purpose of ensuring the enforcement of the Act, enter and inspect certain premises including labour encampments, farms, hospital buildings, factories etc. Private homes are however not included and many people who are trafficked internally end up as domestic workers. Since labour inspectors have the power to do whatever is needful to ensure the proper implementation of the Act, it is implied that they have the power to prosecute offenders, and this covers issues of child labour and forced labour. It does not however cover cases of domestic work as this is in the informal sector. The problem is that there are few labour inspectors, and they need to be trained so that they can be more effective in the execution of their mandate.

Inspections are conducted only in the formal business sector where there are few occurrences of forced and child labour.<sup>67</sup> The biggest challenge of the Ministry is lack of adequate number of trained staff, and equipment needed to carry out the assignment. Because of this, inspections are not carried out regularly and have not deterred violations. Besides, inspections are not conducted specifically to check violators of child labour, and there is no recent recorded child labour inspection that resulted in fines, penalties or convictions. There is therefore need to strengthen the inspection and child labour units of the Ministry of labour, employ and train staff to carry out their functions effectively.

Section 23 of the Act prohibits recruitment by intermediaries except those under permit or license. Licenses granted by the Minister are valid for twelve months and are subject to renewal. Section 25

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65 US Dept of State Report 2003 on Abolishing Modern day Slavery: Facts, Faces and Freedom produced by Office to monitor and combat trafficking in persons.

66 Interview with –OGBOLE- ELIJAH, and M.D.MOHAMMED of the immigration anti-trafficking unit on 22nd February 2005

67 U.S. Department of State, Country Reports- 2002: Nigeria, Section 6d

states that the Minister may license fit and proper persons to recruit citizens of Nigeria for the purpose of employment as a worker outside Nigeria or as a worker in Nigeria. Section 23(3) however states that if the work to be performed is outside Nigeria a letter of recommendation from the government of that country may be required, and there has to be an existing agreement between Nigeria and that country relating to employment<sup>68</sup>, and Sections 39 and 40 lists the special terms and conditions of such employment which includes the fact that the person is of the proper age for recruitment, has not been subjected to pressure and is not being maltreated. If a trafficker wants to hide behind this provision then the terms stated in the Act with regards to country agreement and obtaining of a formal license need to have been complied with. In reality, however, there are numerous employment Agencies both formal and informal through which workers are being recruited. Many trafficked persons including children are available with traffickers and their agents running illegal recruitment agencies where prospective employers could pick and choose in negation of the Nigerian Labour Act and ILO Convention 181, the Private Employment Agencies (PEAs) Convention, 1997 prohibiting such agencies without authority and supervision of the Ministry of Labour. Convention 181 allows the operation of PEAs as well as the protection of the workers using their services, within the framework of its provisions. It calls upon member states

*“to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies.”*

The unregulated operation of recruitment agencies has created an open door for the supply of trafficked persons on the labour market. The effect is that it has provided cheap labour and prevented or reduced the power of collective bargaining of workers.

The Federal Ministry of Labour has indicated that it is in the process of establishing a licensing authority to register, provide certificates and monitor the activities of PEAs in Nigeria for domestic and foreign recruitment. This system, if combined with adequate gathering of intelligence on the operations of unlicensed agencies, should contribute to reducing the incidence of trafficking and forced labour.

The Labour Act also sets out the terms and conditions of employment.<sup>69</sup> It prescribes annual leave with pay<sup>70</sup>, and stipulates that workers must be paid extra for hours worked over the legal limit. It also states that employees who work on Sundays and statutory public holidays must be paid a full day's pay in addition to their normal wages. There is no law prohibiting excessive compulsory overtime.

The Act sets out general health and safety provisions, some of which are aimed specifically at young or female workers. It requires that the factory inspectorate of the Ministry of Labour inspect factories for compliance with health and safety standards. As stated earlier, the inspectorate is greatly understaffed, lacks basic resources and training, and consequently neglects safety oversight of many enterprises particularly construction sites and other non-factory work. The Act also requires employers to compensate injured workers and dependent survivors of those killed in

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68 Section 37 of the Labour Act which reads, “Where there is in existence a treaty, convention or other international agreement between Nigeria and any other country relating to the recruitment of citizens for employment outside Nigeria, the National Council of Ministers may by order give the force of law to all or any of the provisions of the agreement in place of or in addition to Sections 38 to 44 of this Act or any particular provisions of those sections.

69 Art 13 to 20

70 Section 18

industrial accidents, but the Ministry of Labour has experienced difficulties in identifying violators. The Labour Act does not provide workers with the right to quit dangerous work situations without loss of employment.

The Act deals with the employment of women in Sections 55 to 58. Women are entitled to maternity protection; they are not to be employed on night work in a public or private industrial undertaking, underground work in a mine (with a few exceptions). Most of these provisions for the protection of women are not adhered to leading to discrimination of women in work places contrary to ratified ILO Convention 100 on Equal Remuneration. Discriminatory conditions of work against women in general, constitute a conducive environment to trafficking of women as they, as a result, lack access to better job opportunities compared to men and are thus compelled to look for job opportunities elsewhere.

The Ministry of Labour is in the process of reviewing the Act, and efforts should be made to align the provisions with the ILO Equal Remuneration Convention, 1951 (No. 100), the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), both ratified by Nigeria, as well as other relevant Conventions.

#### **4.9 The Immigration Act**

Nigeria's immigration laws do not satisfy the demand for labour in areas like agriculture, industry and domestic work. Section 34 of the Immigration Act 1963 gives conditions under which an immigrant can seek employment in the country. It states:

*“Where any person in Nigeria is desirous of employing a person who is a national of any other country, he shall, unless exempted under this section, make application to the Director of Immigration in such manner as may be prescribed and shall give such information as to the provision to be made for repatriation of that national and his dependants as the Director of Immigration may reasonably require. No such person shall be employed without the permission of the Director of Immigration given on such terms as he thinks fit,”*

In Nigeria, illegal immigrants are usually deported. On the other hand, the legal system permits the institution of civil proceedings to claim damages against offenders convicted under the NAPTIP Act, and as such victims of human trafficking can institute civil actions to claim recovery of lost wages, compensation for unpaid work, and restitution and damage claims for human rights abuses. The situation however does not always work favourably for victims. Trafficked persons of other nationalities when identified in Nigeria are usually treated as illegal migrants and deported. The labour law of the country does not respect the rights of illegal immigrants.

Section 18 of the Immigration Act contains provision on prohibited immigrants, liable to be refused entry into the country or deported as the case may be and among those listed is:

*“A prostitute or any person who is or who has been a person trading in prostitution, a procurer, a brothel keeper, etc.”*

A victim who is trafficked into the country for prostitution will automatically be deported once the person is caught, without an attempt being made to find out the circumstances under which the person became a prostitute. The Edo State Law criminalized prostitution and the Penal code, applicable in Northern Nigeria, makes prostitution an offence. Prostitution is generally frowned on in the Southern part of the country where the Criminal Code operates but is not prohibited (except

in Edo State where it has been recently criminalized). Indecent dressing, sourcing and owning of brothels are illegal. In spite of the above provisions, if by any chance a victim is still in the country after conviction; Section 38 of the Anti- Trafficking Law gives such a person the right to institute civil action against a trafficker or any other person, and is entitled to compensation and restitution.

#### 4.10 Need for harmonization

The political will in Nigeria to tackle the problem of trafficking is evident from the battery of laws in place and the institution of an umbrella agency with responsibility for prevention, protection and prosecution. However, there is a need to harmonize the legislative framework with international standards and, in particular, to eliminate stark differences between sanctions for the same offence under various national laws.

The following table highlights some of the differences in sanctions that need to be addressed:

Offence	Law	Sanction Imprisonment/Fine
Trafficking into [Northern] Nigeria but not from Nigeria out	Penal code, 1960 Section 276	Imprisonment for up to 10 years or a fine (no amount stated)
Offences under NAPTIP Act	NAPTIP Act	
Exportation of any person from Nigeria	Section 11	Life Imprisonment
Procurement of any person	Section 12	10 years without option of fine
Causing or encouraging the seduction or prostitution of any person under eighteen years of age,	Section 13	10 years
Procurement of any person under eighteen years	Section 14	10 years
Procurement of any person for prostitution, pornography and use in armed conflict	Section 15	14 years without option of fine
Foreign Travel which promotes prostitution	Section 16	10 years without option of fine
Conspiracy to Defile	Section 17 (a)	5 years
Unlawful detention with intent to defile	Section 17 (b)	10 years
Procuring defilement of any person by threats or fraud or administering drugs	Section 18	10 years or a fine not exceeding N200,000.00
Kidnapping from guardian ship	Section 19 (a)	14 years without option of fine
Use of force or deception	Section 19 (b)	10 years or a fine not exceeding N200,000.00 or both
Deprivation of liberty	Section 19 (c)	5 years or a fine not exceeding N100,000.00 or both
Depriving the parent of guardian the possession of a child	Section 19 (e)	14 years without option of fine
Kidnapping or abducting in order to commit culpable homicide	Section 20	Life imprisonment
Buying or selling a person for a	Section 21	14 years without option of fine

Offence	Law	Sanction Imprisonment/Fine
purpose		
Traffic in slaves	Section 23	Life imprisonment
Slave dealing	Section 24	Life imprisonment
Effect of conviction abroad/Bringing the image of Nigeria into disrepute	Section 25	Forfeiture of assets and imprisonment for not more than 2 years
Offence by an Alien	Section 26	10 years and deportation
Attempt	Section 27	12 months imprisonment or affine of N50,000.00 or both
Offences by Bodies Corporate on instigation or connivance or neglect of the director, manager, secretary or any person with such capacity to act. The person shall be liable.	Section 28 (1)	3 years or a fine of N200,000.00 or both
Offences by bodies corporate	Section 28 (2)	A fine of N2 million and the court may issue an order to wind up the body and its assets and properties forfeited to the Victims of Trafficking Trust Fund
Commercial Carriers	Section 29	2 years imprisonment or a fine of N2 million
Penalties for breach by commercial carriers, tour operator or travel agent airlines	Section 32	A fine not exceeding N200, 000.00
<b>Sex-related crimes</b>		
Procurement of a woman or girl for prostitution in or outside Nigeria	Criminal Code, 1916 Section 223(2)	2 years Edo State 14 years
Sponsoring a woman to travel for prostitution outside Nigeria, administering an oath	Edo State amendment to Criminal Code Section 223 (a)	10 years or N500,000 (\$3,846) or both
Encouraging prostitution of women	Penal Code, 1960 Section 276	10 years maximum or fine
Pimping by males only	Criminal Code, 1916 Section 225 (a)	2 years at first instance and upon subsequent convictions whipping will be added to “any term of imprisonment” imposed.
Pimping by females	Section 225 (4)	2 years
Administering drugs to a woman for her to submit to sex with a man	Criminal Code, 1916 Section 224	2 years
Man patronizing a female prostitute	Edo State amendment Section 223	2 years or N10,000 (\$77)
Woman enticing a male for sex with gratification	Edo State amendment Section 223 (d)	2 years or N10,000 (\$77) or both
Offering oneself for prostitution	Edo State amendment Section 223 (b)	2 years or N20,000 (\$154)

Offence	Law	Sanction Imprisonment/Fine
<b>Sex-related crimes on minors</b>		
Enticement of girls below 16 or boys below 14 into prostitution without consent of guardian	Penal Code, 1960 Sections 271, 272, 273	10 years and a fine
Procurement of minor girls for illicit intercourse	Penal Code 1960 Section 275	10 years and a fine
Sexual intercourse with a child	CRA Sections 31, 32	14 years
<b>Abduction</b>		
Kidnapping	Penal code, 1960 Section 274	10 years and a fine
<b>Slavery and Forced Labour</b>		
Slave dealing, sale, placement in servitude	Criminal Code, 1916 Section 369 Penal Code, 1960 Section 279	14 years 14 years and a fine
Forced labour	Penal code, 1960 Section 270	1 year and a fine
Forced labour	Labour Code Section 73	2 years or N1,000 (\$7.70) 6 months or N200 (\$1.55) for public officers
Forced labour	NAPTIP Act	5 years or N100,000 (\$770) or both
Confinement, deprivation of liberty	Criminal Code, 1916 Section 365	2 years
<b>Others</b>		
Causing or encouraging the seduction or prostitution of a girl under sixteen years	Edo State Law Section 222a	7 years and N50,000 (\$384)
Employment of children under 12	Labour Act Section 59	5 years or N50,000 (\$384)

As far as sanctions are concerned, it would be useful to indicate minimum and maximum terms of imprisonment and, where there is an option, to align the amount of the fine to be comparable with the specified term of imprisonment. Surprisingly, the Penal Code provides for the same sanction for procuring an adult or a minor for prostitution. Given the grave consequences on the development of children, it is recommended that sanctions for crimes committed against minors be heavier than for those committed against adults. In defining a minor, the international threshold of 18 years for both boys and girls should be adopted.

The definition of offences is skewed towards treating women as victims and men as perpetrators. The use of more gender-neutral terms would enable the law to cover the whole range of possible trafficking offences. Similarly, more protection is afforded to Nigerians trafficked out of the country than to those who are internally trafficked or to third country nationals brought in.

It is hoped that improvements in the legislative framework will be part of the work undertaken in the context of the National Plan of Action against Trafficking.

## **5 Nigerian Agencies Involved in combating trafficking**

The National Agency for the Prohibition of Trafficking in Persons and other Related Matters (NAPTIP) is the statutory agency specifically created to combat trafficking. It cooperates with anti-human trafficking units of the police and immigration services as well as with other concerned ministries, international organizations and NGOs.

### **5.1 NAPTIP**

NAPTIP was established in 2004 pursuant to the Anti-Trafficking Act, 2003 and is mandated among other things to:

- Coordinate and enforce all laws on trafficking in persons;
- Adopt measures to increase the effectiveness of eradication of traffic in persons;
- Adopt witness protection measures;
- Enhance effectiveness of law enforcement agents to suppress traffic in persons;
- Establish and improve international cooperation in the suppression of traffic in persons by road, sea and air;
- Reinforce and supplement measures in bilateral and multilateral treaties and conventions on traffic in persons;
- Prescribe punishment for trafficking offenders;
- Strengthen and enhance effective legal means for international cooperation in criminal matters for suppressing the international activities of traffic in persons;
- Take charge, supervise, control and co-ordinate the rehabilitation of trafficked persons;
- Investigate and prosecute traffickers;
- Work in collaboration with other agencies or bodies to ensure elimination and prevention of the root causes of the problem of traffic in persons.

To enable the agency to discharge its mandate effectively, the agency has established four regional offices in Lagos, Uyo, Benin and Kano. It also instituted a National Investigation Task Force (NITF) consisting of the Nigerian Police, Immigration and the Directorate of State Services to effectively monitor, investigate and respond to distress requests of victims and their families. NITF has set up small units in eleven States of the Federation with the worst trafficking problems. The task force members were trained on the provisions of the anti-trafficking law, care of victims, Interpol standards, corruption and human rights issues.

Since the inception of NAPTIP, sixteen cases described in the following chapter have been prosecuted so far with convictions in three of them.

The task force is presently investigating six reported cases involving eight traffickers. One of the suspects being investigated was arrested when she came to collect her parcel at the post office from her partner in crime, in Spain. The parcel contained shaved pubic hair, used menstrual pads, cut finger nails and copies of the terms of engagement of the respective girls and their madam/masters. It is suspected that these items were sent for ritual purposes to subject the victims to psychological

fear and intimidation. The woman has been found to be an active local partner of the woman in Spain. Another interesting case is that of a deaf and dumb man who runs a ring of deaf and dumb kidnapers throughout the country. His mode of operation is to send his men out and find any deaf and dumb victim to be used as street beggars. Investigation into the case is on.<sup>71</sup>

The agency has investigated forty cases so far from which twenty-seven suspected traffickers were interrogated, eight have been charged to court in seven different cases. The cases being investigated vary. In the Kano axis, the most common is the trafficking of persons under cover of the Hajj for the purpose of prostitution and for the commission of crimes, and this informed the Kano State government to pass the Umrah/Hajj edict into law. The cases in the Edo State axis usually concern the trafficking of young girls for prostitution.

NAPTIP officials have also been involved in awareness creation campaigns on the issue of trafficking and, particularly, the NAPTIP Act, targeting traditional leaders, students, parents, organizations like the National Union of Road and Transport Workers, hotels, airline operators and faith based groups.

The agency has also made progress in assisting trafficked persons. They have provided shelter or referral to entities offering protection and assistance to several victims. Working with the International Organization for Migration, the agency opened two shelters for victims in July 2004, and established a 24-hour hotline for victims and those desiring to provide information.

NAPTIP is at the forefront of a national committee that has, with support from the ILO, drafted a National Plan of Action against Trafficking.

## **5.2 The Nigerian Police**

The Nigeria Police Force (NPF) is designated by Section 194 of the Constitution as the national police with exclusive jurisdiction throughout the country. The NPF performs conventional police functions and is responsible for internal security generally, for supporting the prison, immigration, and customs services and for performing military duties within or outside Nigeria as directed. The mandate of the police concerning human trafficking includes investigating, apprehending and prosecuting traffickers as well as enlightenment of the public about the phenomenon.<sup>72</sup> The NPF, which had been handling the problem of human trafficking before the establishment of NAPTIP in 2004, established specialized Anti-Human Trafficking Units (AHTU) at headquarters and Juvenile Welfare Centres in twelve States of the Federation. In the past, the AHTU has handled 120 cases of human trafficking, virtually all the victims being women or girls below the age of 12 years. The majority of the cases currently handled by the State police concern young adults, whereas few cases of child trafficking are being handled at the Federal level. Over 200 victims, mostly children have so far been handed over to Benin Republic<sup>73</sup>

The police usually assist in receiving deported victims on their arrival in Nigeria, after which they are screened and documented. Victims are also provided temporary shelter, although such facilities are limited. The United States and Italian governments offer technical assistance to the police on

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<sup>71</sup> The Nigerian Country Paper for the 11<sup>th</sup> UN Congress on Crime Prevention and Criminal Justice

<sup>72</sup> Presentation by Ms. Dorothee Gimba, Assistant Commissioner of Police at the 11<sup>th</sup> UN Congress on Crime Prevention and Criminal Justice

<sup>73</sup> The Nigerian Country Paper for the 11<sup>th</sup> UN Congress on Crime Prevention and Criminal Justice

identified areas of urgent need. The Police worked with the International Organization on Migration (IOM) to develop a training programme to build the capacity of the police in handling the victims.

The constraints encountered by the police in carrying out its mandate in this area include the complicity of parents and guardians in the trafficking of their minor children and the need for trained psychologists within the force. Some victims do not view themselves as having been exploited. Indeed, they prefer to consider their situation as one of empowerment as they had the opportunity to earn. As stated earlier, it is difficult to get people to testify as witnesses due to fear of reprisals. The biggest challenge that the police face, however, is lack of funds.

### **5.3 The Nigerian Immigration Service**

The Nigerian immigration service (NIS) works with NAP TIP and other law enforcement agencies in the prevention of human trafficking. The Service is concerned with the issuing of travel documents and controlling the country's borders. In 2003, the immigration service created anti-trafficking units to help tackle the problem of trafficking in women and children<sup>74</sup>, following the increasing number of cases of human trafficking involving Nigerians. The first three such units were established in Edo, Kano and Ogun States as these have been identified as sources/routes for trafficking. The Italian government provided some technical aid, including vehicles, equipment and materials to assist NIS in the human trafficking control programme. Several cases have been investigated since the creation of the units but they are not working at full capacity.

The following were highlighted as the various constraints affecting the services of NIS<sup>75</sup>:

- ✘ Inadequate sensitisation of relevant officers on the end results of trafficking;
- ✘ Lack of capacity to detect victims and barons;
- ✘ Inadequate training in the treatment of victims and barons;
- ✘ Inadequate training in the detection of forged documents;
- ✘ Inadequate data collection, improper documentation and lack of logistics (i.e. communication equipment, cameras, etc);
- ✘ Victims do not report their exploiters to the police;
- ✘ Lack of technical expertise due to inadequate training of field personnel;
- ✘ Constraints in inter-agency relations between Police and the Immigration Service. The need to train officers to detect and apprehend traffickers/barons with the support of the police was also pointed out.

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<sup>74</sup> Vanguard News of January 6 2003, reporting an interview with the Minister of Internal Affairs, Dr. Mohammed Shata, in Abuja,

<sup>75</sup> UNODC Report of the international workshop of the task forces on the programme of action against trafficking in young women and minors from Nigeria into Italy for the purpose of sexual exploitation 14-16 May 2003

## **6 Cases Prosecuted by NAPTIP**

### **6.1 Attorney-General of the Federation vs. Mrs. Sarah Okoya**

The accused, Mrs. Sarah Okoya was charged under various sections of the NAPTIP Act 2003 with eighteen counts of offences related to trafficking of six young women including procuring for prostitution, contrary to Section 15(a) of the said Act, organizing foreign travel to promote prostitution, contrary to Section 16 of the said Act, and deceitful inducement of the six women to travel with her from Uromi in Edo State, Nigeria to Cotonou in the Republic of Benin contrary to Section 19(1)(b) of the said Act. The charge was filed on 12th August 2004, and she pleaded not guilty to each count. Six witnesses presented the case for the prosecution at the close of which the accused gave evidence on oath in her defence.

Summary of the case:

The events that led to the arrest of the accused were given in evidence by some witnesses including two of the six victims of the offences charged against her. Miss E (aged 21 years) and Miss B (aged 24) were two of the six women the accused admittedly took abroad.

Miss B, a hairdresser by profession was in the first batch of three women that the accused took from Uromi, Nigeria to Cotonou in Benin Republic. Miss B lived in Benin, Edo State, Nigeria but visited her sister at Uromi in June 2004. Her sister informed her that a woman was looking for hairdressers to recruit for her saloon in Spain. Being a hairdresser, Miss B became interested and went together with the sister to see the accused. The accused said she had a house, a supermarket and hairdressing saloon in Spain. Miss B told the accused she was interested in taking up a job as a hairdresser in her saloon in Spain. The accused agreed and demanded passport photographs and the sum of N50,000 (\$ 385) for travel documents and other expenses. Miss B with the assistance of her sister presented the N50,000 and the passport photographs to the accused who collected them and left for Lagos. The accused returned two weeks later to Uromi and showed Miss B the passport procured for her but the accused said she would keep it herself in safe custody. She took her and two other young women also recruited by the accused to the shrine of a native doctor who performed ritual prayers on them with water and animal tails. She thereafter travelled with the three young women from Uromi after having assured them that they were going to Lagos to take the flight for Spain. She took them to Ajegunle, near the border between Nigeria and Benin Republic. There, she arranged for three motorcyclists to take them through a footpath in the forest to Benin Republic, where the accused who did not accompany them through the bush was waiting for them. She thereafter took them to Cotonou Bambo Hotel where she occupied a room and got the three young women one room.

The following morning, the accused told them that she had no money on her to sustain them and that they should go out and hustle men for money. The women refused and reminded her that they left Nigeria on the understanding that they were heading for Spain to work in her saloon and supermarket. When she could not get them to change their minds, she refused to provide them with food either and later arranged for a man who came to the hotel to take them out. They refused to go with him, informing him that they were not prostitutes. Eventually the accused became very angry and left for Lagos on the pretext of going to collect the documents and money she forgot there. While the accused was away, the hotel manager drove the three women out of the room they were occupying for non-payment of the hotel accommodation. They had to sleep in the hotel corridor for

two days before the accused returned from Nigeria on the third day, with another set of women. When asked why, she explained to them that since they refused to prostitute for money, she had to recruit substitutes. The six women however later teamed up to demand that the accused should return them to Nigeria. They reported the accused to the manager of the hotel who took them to the Nigerian embassy. After investigation the embassy made arrangements and returned them with the accused to Nigeria. The Nigerian Immigration officials alerted the office of NAPTIP in Abuja about the incident and the accused was arrested.

Following investigations by Immigration and the Police, the accused was charged for offences ranging from procuring women for prostitution to organizing foreign travel for the promotion of prostitution and deceitful inducement of the six women. The accused elected to give evidence on oath in her defence, and at the end of the trial the following sentences were imposed:

On Counts 1 to 6, a term of imprisonment for 12 months on each Count to run concurrently;

On Counts 7 to 12, a term of imprisonment for 12 months on each count to run concurrently;

On Counts 13 to 18, a term of imprisonment for 12 months to run concurrently.

**ORDER:** - Terms under (A) (B) & (C) above to run consecutively. On the whole, the accused is sentenced to serve a term of imprisonment for a total period of 36 months with hard labour.

The successful prosecution and conviction of Ms. Okoya was the first to be secured under the relatively new NAPTIP Act and represented a major victory for the Nigerian government in sending out a global message of its seriousness in the fight against traffickers. However the sentence was not harsh enough to have effective deterrent value more so as the accused had already served a large portion of the jail term in detention which would be subtracted from the 36-month prison sentence.

### **6.2 Attorney General of the Federation vs. Hussaina Ibrahim & one other**

The case of 15 Nigerian ladies deported from Saudi Arabia was reported to the Agency for investigation. In the course of investigation, Hussaina Ibrahim amongst others was identified as a trafficker by one of the girls deported to Nigeria with her. Idris Aminu – Alias VIP was identified by the said victim as the facilitator or organizer of her trip to Saudi Arabia to meet the first accused person. The accused persons were arraigned in Kano High Court on four counts for charges ranging from procurement of persons for prostitution under Section 15 to slave dealing punishable under Section 24 of NAPTIP Act 2003. On July 26<sup>th</sup> judgment was delivered where the first Accused was sentenced to 3 years on the first count and 2 years imprisonment without option of fines. Both sentences are to run concurrently i.e. 3 years imprisonment. The second Accused was sentenced to 2 years imprisonment without option of a fine.

### **6.3 Attorney General of the Federation vs. Ese Osagie<sup>76</sup>**

The accused Mr. Ese promised to help Faith<sup>77</sup> to get to Europe to get a job, but when they got to Morocco he sold her to Chidi the chairperson of the Nigerian community in Morocco for 1500 Euros. Faith's father reported the case to the police and after investigation Ese was charged for placement of a person in servitude as a security for debt owed contrary to Section 24B of the NAPTIP law. The problem is that the girl is still in Morocco and getting her to testify is not possible. Nigeria does not have a bilateral agreement with Morocco, and working underground to

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<sup>76</sup> Reported in the May 24<sup>th</sup> 2005 edition of the guardian paper and Nigerian tribune 23<sup>rd</sup> May 2005

<sup>77</sup> Fictitious name

get the chairman of the Nigerian community arrested, or to reach the girl has proved very difficult because of financial constraints.

#### **6.4 Attorney General of the Federation vs. Jean Adjai & 2 Others**

Three suspected Human Traffickers, a Nigerian and two Beninesees were charged with a 25-count charge in the High Court of Ilaro, Ogun State for importing from the Republic of Togo underage girls for purposes of prostitution in Nigeria. The hearings have been concluded and the matter was adjourned to 22<sup>nd</sup> of December 2005 for judgment.

On the 22<sup>nd</sup> of December, 2005 judgement was given on the above matter. The 1<sup>st</sup> and 2<sup>nd</sup> accused persons i.e. Jean Adjai and Gilbert Ganysiode were convicted and sentenced on five counts out of to 7 years each to run concurrently while the third accused person Mrs. Alake Iroko was discharged and acquitted.

#### **6.5 Attorney General of the Federation vs. Esther Eboreme**

The accused is alleged to have procured some girls from Nigeria, sometime in 2004, and sent them over to her collaborator in Spain for purposes of prostitution. One of the girls escaped from her “Madam” in Spain and called her parents in Nigeria to inform them of the predicament in which she found herself. In the meantime, her nude picture and those of other girls were sent along with their pubic hair strands, finger nails clippings, smeared menstrual pads etc to Mrs. E. E. in Nigeria for onward transmission to a shrine in Ekpoma for the girls to be spiritually bonded to a deity as part of the rituals to perpetually keep the girls subservient to their “madam” pending the payment of the agreed Euro 45,000 by each of the girls. The lady was arrested by a security operative at the post office. She is standing trial in Nigeria for organising foreign travel that promotes prostitution, trafficking, etc. while her collaborator in Spain is also facing trial in Madrid, Spain for exploitation of the prostitution of those girls and others. The prosecution has called three witnesses so far and the matter was adjourned to 21<sup>st</sup> December 2005 for continuation of hearing.

The prosecution is expected to call the fifth prosecution witness on 25<sup>th</sup> April, 2006 being the date to which the continuation of the hearing was adjourned.

#### **6.6 Attorney General of the Federation vs. Ekundayo Eduyemi & Another**

This is a case involving physically impaired (deaf and dumb) traffickers and victims in Jos, Plateau State. The 1<sup>st</sup> Accused Person (M) procures girls from Jos and uses them for street begging, thereafter collects the proceeds and sometimes has sexual intercourse with them. The father of one of the victims petitioned NAPTIP alleging that the 1<sup>st</sup> Accused procured his daughter with the assistance of Miss Murna (F) (2<sup>nd</sup> Accused). Both were charged with 6 counts in the Jos High Court of Plateau State. The case is adjourned to 29<sup>th</sup> November 2005 for continuation of the hearing.

On 29<sup>th</sup> November, 2005 when the case came up for hearing, the 2<sup>nd</sup> accused person declared to the court that she was induced by the investigating officers into making the statement. The court ruled that there had to be a trial within a trial to determine whether the statement was made voluntarily, without the influence of the investigators.

The trial within a trial was concluded on the 6<sup>th</sup> of March, 2006. The matter was adjourned for prosecution and defence counsels to exchange written addresses and file the same in court before 20<sup>th</sup> March 2006. The matter is fixed for the 24<sup>th</sup> and 25<sup>th</sup> April, 2006 for ruling on trial within trial and continuation of hearing of the substantive matter.

### **6.7 Attorney General of the Federation vs. Franca Edith Asiboja**

This is a trafficking case involving an ex-victim turned trafficker, who trafficked five girls to Burkina Faso for prostitution. The case was charged to court on 15<sup>th</sup> July 2005. The Accused was arraigned and pleaded not guilty to the 15 counts charge at the Benin High court of Edo State. Two prosecution witnesses have testified so far. The case is adjourned for continuation of hearing.

The defence counsel made a “no case submission” application which was repealed immediately and the court adjourned the case to 3<sup>rd</sup> May 2006 for ruling.

### **6.8 Attorney General of the Federation vs. Monday Aikhomu**

The accused was arrested in Kano in 2004 with 3 girls on their way to Zinder in Niger Republic for onward transmission to Spain. The accused was arraigned on a 9-count charge in Benin City High Court. The trial is concluded and the case adjourned for address to 9<sup>th</sup> December 2005.

The victims refused to show up to testify despite repeated efforts of the Agency. In the final analysis the prosecution was unable to produce the victims with whom the accused person was allegedly travelling to Zinder in Niger Republic. At the close of the trial the judge discharged and acquitted the accused person on the ground that the victims of the alleged offence were not brought before him.

### **6.9 Attorney General of the Federation vs. Constance Omoruyi**

The accused person was charged with procuring girls for prostitution, organising foreign travel and deceitful inducement to go from any place. The case has been at Benin High Court since 2004. The prosecution has closed its case while the defence made a ‘no case submission’. The case is adjourned to 2<sup>nd</sup> December 2005 for the prosecution’s reply on the no case submission and possibly the court’s ruling on same.

At the next adjourned date, which is 28<sup>th</sup> April, 2006 the defence will be recalling one of the prosecutions witnesses to tender a particular statement in court and probably close his case for final address

### **6.10 Attorney General of the Federation vs. Samuel Ewirovbankhoe**

This is a case of suspected human trafficking received from the Nigerian Immigration Service, Kano. The suspect was arrested with nine girls at Kofa Ruwa Motor Park on his way to Libya. A charge was proffered and filed on 26<sup>th</sup> May 2005 at High Court 5, Benin Judicial Division, Edo State. The accused was arraigned on 29<sup>th</sup> September 2005 and has since been committed to prison custody. The suspect’s counsel applied for bail on 20<sup>th</sup> October 2005. The judge heard both sides on 21<sup>st</sup> November 2005 and adjourned the ruling to 19<sup>th</sup> December 2005.

The prosecution is expected to call two of the victims and close his case at the next adjourned date that is 17<sup>th</sup> May 2006.

### **6.11 Attorney General of the Federation vs. Bibiana Ioraver**

This is a case of slave dealing where the accused person is alleged to have deceitfully procured girls from Gboko and taken them to Lagos where she handed them over to various families who paid her for their services. The accused has been arraigned on a 12-count charge before a Gboko High Court, Benue State and the plea taken. The case is adjourned for definite trial on 23<sup>rd</sup> January 2006.

On the adjourned date the Prosecution called four witnesses and is expected to call the last witness at the next adjourned date that is 4<sup>th</sup> May 2006.

**6.12 Attorney General of the Federation vs. Chioma Ogbonna**

The accused is the mistress of the victim's father. On 23<sup>rd</sup> June 2005, the Accused fraudulently and without the consent of the victim's parent, took the victim away from her parent's home at Obigbo town in Rivers State to Uyo in Akwa Ibom State, where she offered the victim for sale for a price of N400,000 (\$3,077). The Accused was arrested and after investigation, she has been arraigned before an Uyo High court on a five-count charge. Her plea has been taken and the matter adjourned to 14<sup>th</sup> December 2005 for trial.

The accused person pleaded guilty on all the counts; she was accordingly sentenced to 2 years imprisonment on 4 of the counts and 1 year imprisonment on the fifth count.

**6.13 Attorney General of the Federation vs. Ganiyu Ishola**

This is a case of trafficking involving a 13 year old school girl who was taken to a herbalist by her friend in order to get her a charm that will improve her performance in school. The herbalist unlawfully detained her in his house for 40 days and had unlawful carnal knowledge of her.

The accused person pleaded not guilty to all the counts. The case has been adjourned to the 9<sup>th</sup> & 10<sup>th</sup> of May for the commencement of trial.

**6.14 Attorney General of the Federation vs. Joseph Danley Obieche**

Some girls were deceived into travelling from Ibusa, in Delta State to Abuja. The girls were under the impression that they were going to be engaged in a moral adjustment programme but on arriving here in Abuja, they were sexually exploited routinely.

The 1<sup>st</sup> witness has testified. The case is adjourned to 22<sup>nd</sup> May 2006 for continuation of the hearing.

**6.15 Attorney General of the Federation vs. Helen Lucky**

The accused took six girls between the ages of 14 and 18 at various times to Ibadan from Benin. They were deceived into leaving their homes in Benin under the pretext of going to Italy to continue the trade of hairdressing. They however found themselves in Ibadan and were forced into prostitution after undergoing various rituals.

Prosecution has taken its first witness and the case has been adjourned to 4<sup>th</sup> May 2006.

**6.16 Attorney General of the Federation vs. Mary Lawal Adesuwa**

Three girls are alleged to have been trafficked from Benin to Ilorin by a woman under the pretext of getting salon work for them. They were introduced into prostitution instead and were flogged with horsewhips in order to comply. The woman retained their earnings.

The case has been adjourned to 25<sup>th</sup> April 2006 when the 3 accused persons will be arraigned.

### **6.17 Challenges in Prosecution**

The challenge faced by NAPTIP includes the fact that most of the victims when returned to the country hide the fact that they were trafficked and also refuse to give out the names of their traffickers. Because of this, gathering evidence from victims and getting victims to testify in the law courts has been a big problem. Funding is another major challenge for the agency especially when traffickers and victims are still outside the country as it is often too costly to send investigators to those countries and to get evidence from victims.

## 7 Regional and Bilateral Agreements to combat Human Trafficking

With the recognition of the problem of human trafficking in the West and Central African regions, a number of initiatives have been taken to address the issue through socio-economic responses as well as legal reforms. A critical analysis of these Regional Instruments and Bilateral Agreements will facilitate an assessment of their impact on human trafficking.

### 7.1 Regional Instruments

#### 7.1.1 The Libreville Declaration

The first significant efforts to organize regional collaboration to fight human trafficking in West Africa were the series of meetings and consultations facilitated by UNICEF and ILO since 1998. Incidentally the focus then was on child trafficking rather than human trafficking.

These collaborative efforts that began with a technical meeting held in Cotonou, Benin Republic culminated in the “*Libreville Common Platform for action to fight Child Trafficking for exploitative labour purposes in West and Central Africa*” signed in Libreville, Gabon on 24<sup>th</sup> February 2000 by 21 countries in West and Central Africa including Nigeria. The Libreville Consultative Meeting was attended by top officials at ministerial level of the 21 countries signatories to the Declaration. Civil society groups were also in attendance at the meeting and negotiations for the Declaration.

The Libreville Declaration identified the root causes responsible for child trafficking in West and Central Africa. Notable among the commitments under it is the call for increased sensitisation and advocacy including media campaigns on child trafficking, programmes to encourage child participation and the negotiation of bilateral repatriation agreements guaranteeing victims protection. Most significant is the commitment to have legislative and policy reviews in the participating countries as well as to ensure the implementation of the ILO Convention 182 in particular as well as the Convention on the Rights of the Child. In addition the Declaration specifically enjoined the State Parties to put in place National Plans of Action to address the issue of child trafficking and to set up National Task Forces or Committees to monitor the implementation of the National Plan of Action. Nigeria is still in the process of drafting its National Plan of Action as required by the Libreville Common Platform for Action but has set up a National committee currently chaired by NAPTIP. The plan being drafted addresses trafficking of men, women and children.

Furthermore the Libreville Declaration enjoined the Parties to hold periodic consultative meetings. One such meeting was held in March 2002 which reiterated the commitments in The Libreville Declaration.

#### 7.1.2 ECOWAS Interim Plan of Action

At its 25<sup>th</sup> session in Dakar in December 2001, the fifteen member States<sup>78</sup> of the ECOWAS adopted and endorsed the ECOWAS Interim Plan of Action to combat trafficking human beings,

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<sup>78</sup> Benin, Burkina Faso, Cape Verde, Côte d’Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

2002-2003. The meeting was organized by ECOWAS and the United Nations Office for Drug Control and Crime Prevention (UNODC).

This Interim Plan of Action essentially identifies the major causes and trends in human trafficking in West Africa. It also specifies government commitments to fight against the scourge of trafficking using methods such as:

- ✍ Advocacy and sensitisation Campaigns;
- ✍ Setting up appropriate institutional mechanisms and legal reforms to address the issue of human trafficking;
- ✍ Protection and care of trafficked persons;
- ✍ Monitoring mechanics for incidents of human trafficking;
- ✍ Collation of data, research and survey;
- ✍ Improved inter Governmental and Ministerial cooperation.

Each country was in addition enjoined to take actions during the years 2002-2003 such as:

- ✍ The passing of relevant comprehensive legislation to cover human trafficking especially criminalizing traffickers, protecting victims including compensations and reparation rights;
- ✍ The signing and ratification of international and regional instruments on trafficking;
- ✍ Exchange of information on cases of trafficking among the member States;
- ✍ The training of law enforcements agents including border police and judges;
- ✍ Intensive awareness raising campaigns;
- ✍ Monitoring the implementation of the Plan of Action;
- ✍ Regulation of border crossings;
- ✍ Setting up of National Task Force Committees to monitor the implementation of the trafficking situation and give periodic reports.

In particular, the ECOWAS Plan of Action stipulates special care of victims which should include provision of travel documents for victims, extending the validity of travel identity documents, encouraging the commercial carriers to ascertain that passengers carry valid documents and requiring minors travelling alone to hold their own travel documents.

At the expiration of the Interim Plan of Action, on 19<sup>th</sup> December 2003, the ECOWAS heads of States, at the 27<sup>th</sup> session in Accra, extended the validity of the plan to 2004-2005 for continued implementation<sup>79</sup>

### **7.1.3 Yamoussoukro, Côte d'Ivoire**

In January 2002, Ministers from West and Central African States met in Yamoussoukro, Cote D'Ivoire at an "African specialized meeting on Child Trafficking and Exploitation in West and

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<sup>79</sup> See Article 1 Decision A/DEC:12/12/03 Relating to the Extension of the ECOWAS Initial Plan of Action on the Fight Against Trafficking in Persons (2002-2003)

Central Africa”. This meeting adopted a Declaration on human trafficking. The 16-point Declaration, while acknowledging the development of child trafficking as a new form of crime in West and Central Africa, noted poverty as the main cause, stated its traumatic implications for child victims and recognized the lack of adequate legislative framework for the protection of children against trafficking and its consequences in the region. It also highlighted the need for capacity building for law enforcement and all other actors in child protection as well as the role of NGOs in providing care, support and rehabilitation for victims.

In the Declaration, ministers undertook to conduct synchronized public awareness campaigns on the phenomenon, promote the reintegration of children into their communities, adopt, amend and harmonize national legislation, promote the prompt ratification of relevant international instruments and the development of measures for their implementation, encourage government to include the protection of children in national poverty reduction strategies and provide special travel documents for the free movement of children. They also undertook to promote capacity building of key actors, exchange of information and intelligence on criminal matters, encourage States to work with international development partners to establish national databases that contain disaggregated criminal data, establish anti-child trafficking committees in each State, agree on the importance of a sub-regional agreement involving all countries in the region to combat child trafficking and establish a biennial rotating ministers’ meeting in collaboration with the international community.

#### **7.1.4 Ouagadougou, Burkina Faso**

Another plan of action was adopted in Ouagadougou, Burkina Faso on 28<sup>th</sup> November 2002 that emphasized the commitment to the Libreville Declaration and encouraged member States to increase efforts to implement it. **Bi-lateral agreements**

Apart from Regional initiatives, individual countries who share problems related to human trafficking and migration engage each other in Memoranda of Understanding (MOU). There are also bi-lateral agreements relating to immigration matters generally that may contain some specific references to situations of trafficking. All the provisions of these agreements are not mandatory. In addition, the agreements sometimes appear imbalanced as they put the foreign partners in a position of superiority to provide technical services to Nigeria without a reciprocal provision of such services to the foreign partner by Nigeria.

#### **7.2.1 Memorandum of Understanding between Benin and Nigeria**

A MOU was signed on 14<sup>th</sup> August 2003 between Benin and Nigeria to:

- ✍ Work out effective co-operation on human trafficking;
- ✍ Identify, investigate and prosecute agents and traffickers;
- ✍ Protect victims of human trafficking and return them promptly to their countries of origin.

In implementing this bilateral agreement, both Benin and Nigeria are preoccupied with repatriation without due regard to the human rights of the trafficked persons as stipulated by the OHCHR Guidelines, as in the case of the Beninese children found in illegal stone quarries in Ogun State, who were repatriated *en masse* without investigating or considering the interest<sup>80</sup> or the wishes of the children, some of whom were trafficked at tender ages and could no longer trace their families.

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80 See OHCHR Recommended Principle (No 10) on human rights and human trafficking.

Negotiations for an agreement between the two governments began in Lagos in March 2004. A second meeting has been held in Cotonou in June 2004. An inter-country commission should be created as well as other mechanisms of collaboration in the struggle against trafficking.

### **7.2.2 Agreement on immigration matters with Spain**

The bilateral agreement between Nigeria and Spain on immigration matters was entered into on 12th November 2001. It deals with issues of repatriation of illegal migrants in the countries, cooperation on immigration issues and on compliance with fundamental human rights, combat of illegal migration, facilitation of the rehabilitation of repatriated persons in a manner that guarantees their human rights, exchange of information by the two countries, observance of both the UN Convention on the Status of refugees of 28<sup>th</sup> July 1955 as amended by the Protocol Relating to the Status of Refugees of 31 January 1962.

The agreement stipulates that deported migrants should be allowed re-entry at future dates if all their documents are valid. The partners are also to destroy the information acquired during the process of repatriation when the matter is disposed of.

The Spanish Government has an obligation to provide technical assistance to Nigeria in the areas of mutual exchange of information on human trafficking networks and individuals, training of consular and immigration officers, cooperation for the control of HIV/AIDS and STDs, cooperation in the establishment of skill acquisition to facilitate resettlement of deported immigrants, legal access for Nigerian workers in Spain, reciprocal treatment of nationals. Both countries are enjoined to set up a coordinating committee to implement the terms of the agreement. More importantly the observance of the human rights of illegal migrants is guaranteed. To this end, there should be unrestrained access to the illegal migrants in the custody of the partner country before deportation.

### **7.2.3 Agreement between Nigeria and Italy**

The agreement between Nigeria and Italy was signed on 12<sup>th</sup> September 2000 and is similar to the Spanish agreement. It also compels Italy to render technical assistance to Nigeria on immigration matters and other areas stipulated in the Spanish agreement. Both countries are also enjoined to control the spread of HIV/AIDS and STDs.

Nigerian nationals, especially trafficked persons, should also benefit from Article 18 of the Italian Legislative Decree No. 286, 1998. Article 18 provides for the provision of protection for victims of trafficking that denounce their traffickers or are prepared to provide information that will lead to the prosecution of the traffickers. Many of the Nigerian victims have not been able to access these benefits because of the fear of reprisal that prevents them from divulging the identity of the traffickers and details of the trafficking transaction. This situation is compounded by the traditional oaths these victims have been subjected to where they deposit personal objects in shrines to enter into oaths of secrecy. The repercussion for breaking the oaths could be death or madness<sup>81</sup>.

Despite this agreement, most of the Nigerian deported victims from Italy testified to being found on the streets and detained until they have a plane load of victims and security escort before deportation without access to judicial redress to claim for lost wages or compensation for the human

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81 See WOCON's Research report on trafficking in women and children in Nigeria commissioned by the Netherlands's Embassy in Lagos.

rights abuse by their traffickers. Most of the victims are deported with just what they were wearing at the time of arrest and are denied the opportunity to retrieve their belongings as provided in the agreement.

#### **7.2.4 Agreement between Nigeria and South Africa**

This agreement was signed on 28<sup>th</sup> March 2002 and makes no reference to the issue of trafficking but deals extensively with the situation of illegal immigration expressly providing for issues like the deportation/repatriation of respective nationals who so qualify under the national laws of the contracting parties.

#### **7.2.5 MOU with the United Kingdom**

The MOU between Nigeria and the United Kingdom, signed in London on 17<sup>th</sup> November 2004, was based on “cooperation to prevent, suppress and punish Trafficking in Persons”. The preamble to the MOU specifically reaffirms the commitments of the Parties to international instruments such as the UN Convention on the rights of the Child (1989), the Optional Protocol to the Convention on the rights of the Child, on the sale of the children, child prostitution and child pornography (2000), ILO Conventions 138 and 182, Convention on the Elimination of All forms of Discriminations (CEDAW) and the Palermo Protocol. The MOU clearly states that it is made in pursuance of efforts to combat human trafficking unlike many of the other MOUs that are of general applicability. This MOU is also similar to the Spanish agreement except that the provision of technical assistance to Nigeria extends to assistance for the provision of basic needs and addressing poverty reduction.

The crux of the objectives of the Nigeria-U.K agreement is in the area of cooperation to develop common strategies in the efforts to combat human trafficking. These strategies are to involve the protection of the trafficked persons and the provision of technical and institutional capacity building and mutual cooperation to prevent trafficking, protect victims and prosecute offenders. It also stresses the need to allow the deported migrants to take their belongings with them when deported.

A comprehensive programme for the assistance of trafficked persons is laid out in the Agreement. This programme includes counselling for the physical, psychological and social recovery of the victim, while specifically providing for the commitment to treat trafficked person and witnesses with humaneness and protection from abuse or intimidation. More importantly the MOU provides for the safe return of trafficked victims having regard to the human rights and safety of the victims. In line with the Palermo Protocol and the human rights standard a victim should be allowed his/her property when being deported just as the victims should be allowed to claim compensation and reparation suffered as a result of the abuse and the trauma of trafficking. In reality however the human rights standards are hardly applied during the process of repatriation of Nigerian trafficked victims from the United Kingdom. The right of the trafficked person to his/her property is subject to the legislation relating to proceeds of crime.

The U.K. agreement like the Spanish agreement makes provision for technical assistance but in this case the assistance should be mutual between the parties. Moreover both parties according to their capabilities can strengthen each other, in the area of enforcement, prosecution, administrative research, public enlightenment and rehabilitation. This MOU is less condescending than other MOU’s that provide for the one-sided provision of technical assistance with Nigeria always at the receiving end. There is no information yet on the practical implementation of this MOU.

### **7.2.6 Agreement between Nigeria and Ireland on immigration matters**

Ireland and Nigeria also entered into an agreement similar to the Spanish agreement except that the provision of technical assistance to Nigeria extends to assistance for the provision of basic needs and addressing poverty reduction. It also stresses the need to allow the deported migrants to take their belongings with them when deported.

While Ireland will cooperate with the NGOs and relevant institutions to address issues of migration, the committee set up will identify and coordinate with the NGOs for counselling, training of law enforcement agents, employment creation for persons identified or repatriated as illegal immigrants. The coordinating committee to be set up is to meet every year.

## **8 Conclusions and Recommendations**

Stakeholders at the international, regional and national levels have recognized the importance of a comprehensive legal framework as a first step towards combating trafficking, and Nigeria in recognition of this enacted the NAPTIP Act. Nigeria also has several international and regional instruments, as well as bilateral agreements that adequately cover the issue of human trafficking and forced labour.

The NAPTIP Act is an excellent legislation on the problem of trafficking into forced labour, slavery and servitude within and outside Nigeria. The National Agency for the Prohibition of Trafficking in Persons and other Related Matters (NAPTIP) established pursuant to the Act is doing a lot in the area of investigation, prosecution, rehabilitation of victims and there is now more focused attention being paid to the problem. There is however a need to amend the trafficking law to make it more effective. It does not for example clearly incorporate all the international obligations contained in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and falls short of the various international human rights obligations and standards for the treatment of trafficked persons. The Act is also deficient in its coverage of the offence of trafficking in the sense that it is preoccupied with the situation of women and girls and sexual offences and ignores the wider problem of trafficking in men, women and children for other purposes (such as cheap labour) and boys for sexual purposes. It is also lacking in provisions for the protection of victims of trafficking.

In the past, alleged traffickers were charged using the Criminal Code, Penal Code and other related laws under offences such as procurement, kidnapping, sexual exploitation, slave dealing. Such cases were not included in computing the statistics on trafficking cases and some of the penalties for breach are inadequate. More so, the Criminal Code treats these offences as mere misdemeanours. It is recommended that the relevant local laws like the Criminal and Penal codes be reviewed critically in order to harmonize and strengthen and make them more effective instruments for addressing the issue of trafficking.

With regard to the international and regional instruments, lack of domestication and effective implementation of these laws and policies have made them ineffective in Nigeria. Admittedly some of the terms of the bilateral agreements are not mandatory which makes adherence in the absence of political will difficult. Often times the human rights of the deported Nigerian trafficked persons are infringed. Most of the deported persons are not allowed to even carry their belongings with them. Some are deported in degrading circumstances with the skimpy clothes found on them at the time of arrest. There have been reports of various forms of physical abuse while in the custody of the destination countries, which need investigation there.

Although most of the destination countries have ratified the Palermo Protocol on trafficking, the various ILO Conventions against forced labour and indeed have local laws which criminalize the acts of human trafficking and forced labour and provide redress for victims, these legal provisions are not adhered to when dealing with foreign trafficked persons or victims of forced labour. Invariably these victims are arrested detained, prosecuted for illegal migration and then deported.

The recent clamour for a shift of focus to the demand side of human trafficking will hopefully contribute to reaching meaningful solutions. This need is buttressed by the recent United Nations

Resolutions at the 49<sup>th</sup> Session of the Commission on the Status of women (CSW) March 11th 2005, entitled “eliminating demand for trafficked women and girls for all forms of exploitation”.

Having a law is the first step, and effective implementation is the next. Law enforcement agents such as the police, immigration, and customs should be trained on the provisions of the law, and in prevention of trafficking, apprehension and prosecution of traffickers. In addition to the harmonization of legislation, the following measures are recommended:

- Training of judges, prosecutors and police officers on the legal framework for trafficking and practical means of implementation;
- Enlightenment of citizens about the realities of human trafficking, the offences constituting it and sanctions envisaged against violators. Laws should be made accessible through simplification and translation into local languages;
- Providing reliable information on job opportunities at home and abroad for men and women and ensuring that potential migrants are well informed of conditions in the destination country;
- Monitoring labour recruitment practices;
- Proper and thorough investigation to prosecute traffickers and perpetrators of forced labour;
- Tracking and monitoring the indices of successful prosecution of offenders under the anti trafficking law, as well as the general implementation of the provisions of the law. This can be done by NAPTIP;
- Strengthening the provision for witness protection, victim and family protection in the law so that more people will be willing to testify;
- Putting in place a more comprehensive rehabilitation, reintegration programme for victims;
- Putting in place a more favourable, human rights based policy for illegal immigrants and unorganised labour;
- Providing incentives for formalisation of informal activities so as to bring them within reach of labour inspection and ensure the fundamental rights of workers.

The government should increase funding for NAPTIP, to enable the agency carry out its mandate more effectively and implement the National Plan of Action against Human Trafficking being developed.

It should ratify ILO Convention 143 on migrant workers to further guarantee the protection of migrant workers and trafficked victims. Implementation of this convention will ensure the protection of the human rights of migrants as well as guarantee equal wages for work done irrespective of the migration status. In addition, efforts must be made to regularize occupations that are vulnerable to exploitation such as the domestic labour to formalize the contractual relations between the employers and employees and ensure respect for their labour rights, including that of freedom of association and non-discrimination. In this respect, implementation of the relevant ILO conventions which Nigeria has ratified will facilitate better protection of not only migrant workers but also women who are usually discriminated against and are sometimes not paid equally for equal work done by their male counter parts.

Some of the Memorandum of Agreements provide for capacity building of the police. This will ensure that the police are better equipped to deal with the human trafficking and forced labour cases. The need to train the police, immigration officers and prosecutors on the gathering of information investigation techniques and prosecution of offences on human trafficking and forced labour cannot be overemphasized.

Provision of shelters and reception centres are necessities for protection of the victims. The lack of shelters and assistance to trafficked victims has been a major set back to the efforts at combating human trafficking and forced labour.