

INTERROGATING NIGERIA'S EVOLVING LEGAL FRAMEWORK FOR COMBATING INTERNATIONAL HUMAN TRAFFICKING

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Abstract

Arising from the enormity and dynamics of international trafficking in persons from Nigeria to various countries of Africa, Europe and Asia over the years, Nigeria has reviewed and enacted thrice – 2003, 2005 and 2015 – legal instruments to tackle the menace of modern day slavery that has earned Nigeria negative international image. This paper is a critical appraisal of the various legal instruments to highlight their strengths and weaknesses. The analyses showed that the Nigerian government has now deliberately withdrawn the penalty of capital punishment for high-level convicts from its statutes against human trafficking. The subsisting law has however increased the financial liabilities for all levels of offenders that are convicted in Federal and State High Courts. The paper posits that unless the pervasive corruption amongst personnel of government agencies and security outfits aiding traffickers in illegal migration of victims is tackled, and a positive synergy developed between Nigeria's Immigration Service and the anti-trafficking agency, National Agency for the Prohibition of Trafficking in Persons (NAPTIP) to address their operational conflicts and power politics in arresting, investigating and prosecuting suspects as well as NAPTIP agents empowered by law to undertake surveillance activities at the nation's borders, Nigeria's success in reducing on-going trafficking in persons may be very minimal.

Keywords: Trafficking in Persons, Legal provisions, Prosecution, Corruption, Human Smuggling, Anti-trafficking agencies

Introduction

Trafficking in persons is a serious crime in which humans, especially females, are bought and sold as commodities. It is now a global phenomenon, but more prevalent in certain countries of the world. The International Labour Office highlights the lucrative nature of the crime globally, estimating that forced labour generates \$150 billion in illegal profits yearly, and two-third of that amount, that is \$99 billion, come from sexual exploitation (ILO, 2014:20). The European Police Organization (EUROPOL) has labelled the Nigerian organized network dealing in trafficking in persons as one of the major law enforcement challenges facing many European countries (US Trafficking Report, 2014). The United Nations Office on Drugs and Crime estimates that many West African trafficking victims originate in Nigeria, and constitute 10 per cent of those forced into sexual slavery in European

countries (UNODC, 2013). The United Kingdom government reports in 2014 that Nigeria generates the second highest number of potential victims of trafficking in persons and the leading country with a higher number of potential victims was Albania (*Sunday Sun*, 2015). Nigeria's illegal female migrants are spread across the West African coastline, the North African countries held down by their financial inability to get to Europe through the Mediterranean Sea and parts of Europe, especially Italy and Spain, deceived into forced prostitution. The Nigerian government did not react to the increasing wave of human trafficking, endemic in the Southern parts of the country, especially Edo State., until August 2003 when the National Assembly passed the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, and as a corollary created, by law, the anti-trafficking agency, the National Agency for Prohibition of Traffic in Persons and other Related Matters (NAPTIP). The legal framework was in fulfillment of her obligation as a signatory to the United Nations Transnational Organized Crime Convention and its Trafficking on Persons Protocol. The Bill for the Act against trafficking in persons was actually a private member Bill sponsored by the Women Trafficking and Child Labour Eradication Foundation (WOTCLEF), a non-governmental organization sponsored by the spouse of the then Vice-President, Mrs Titi Atiku Abubakar. Since then, the incidences of trafficking in persons have not abated and the legal instrument have been amended in 2005 and 2015 to respond to the dynamics of the illegal and dehumanizing activity which could be described as modern day slavery.

The Contours of the Human Trafficking Phenomenon in Nigeria

Arising from her population size, economic potentials, political crises and geographical location, Nigeria is a source, transit and destination for trafficking in persons in the West African sub-region. The nature of trafficking is both international and within the national borders, in which the young girls are recruited and trafficked for sexual exploitation and domestic servitude, while the young males are trafficked into forced labour in stone quarrying, mining, street vending, farming and domestic service. Some Nigeria's northern states have a large population of quartered young boys known as Almajiris, who attend Qur'anic schools under the tutelage of a Mullah but are largely undernourished. They are moved around the key northern states of Sokoto, Kano, Kaduna, Borno, Yobe, Zamfara, Gombe and Katsina, and compelled to street begging, and the proceeds are remitted to the religious heads of the schools that provide daily meagre provision for their upkeep. The Nigerian trafficking situation has been compounded by the international terrorist group, Boko Haram, who have been forcefully recruiting young boys as child soldiers and abducting women and girls in the north-eastern parts of the country and subjecting them to sexual slavery though forced marriages to terrorists and domestic servitude around the neighbouring countries of Chad, Niger Republic, Sudan, and Cameroun. Young males from the West African countries of Ghana, Togo and Benin Republic are trafficked into Nigeria and forced to work in Nigeria granite mines in the South-Western region (US Trafficking Report, 2014). Nigerian women and young girls are trafficked and subjected to forced prostitution in Italy, Spain, Scotland, the Netherlands, Germany,

Ireland, Slovakia, the Czech Republic, Greece, Russia, the Middle East especially Dubai, North Africa and Malaysia. In some of these countries, the young girls also serve as hard drugs courier and mules for the trafficking network (US Trafficking Report, 2014). While trafficking in persons has created serious negative international image to Nigeria, the Almajiris phenomenon has provided easy cannons for Islami fundamentalists who recruit them for violent activities to perpetuate religious intolerance like the Maitatsine and Boko Haram groups, and criminal activities. The administration of Goodluck Jonathan had attempted to curb the menace of the Almajiris in the socio-economic and religious sphere in some northern states by setting up the free education and feeding system for them, in order to take them off the streets and offer them basic education.

Pre-2003 Efforts to Institute a Legal Framework for Combating Human Trafficking

There have been several efforts before 2003 to institute a legal framework to address the human trafficking. These efforts were incorporated into the Nigeria's Criminal Code and the Penal Code, which does not expressly address human trafficking. The most expressive of the legal instrument on human trafficking was the Edo State Anti Human Trafficking Law in 2000.

The Criminal Code and the Penal Code

While the Criminal Code is applicable in the Southern part of Nigeria, the Penal Code is applied in the Northern part of the country. The Criminal Code was promulgated on June 1, 1916 and deals with the offences relating to external trafficking for prostitution and slavery. The Criminal Code for example, makes it an offence to procure women and girls for prostitution within and outside Nigeria. Section 223(2) of the Criminal Code in this regards states that:

any person who procure 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.

There are also provisions dealing with unlawful deprivation of liberty, slave dealing, forced labour and sexual offences. Section 369 delineates 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.....

The criminalization of slavery under the Criminal Code is in tandem with international law. Under Section 369, the punishment for an offender of slave dealing is fourteen (14) years imprisonment upon conviction. For unlawful deprivation of liberty of a person by confinement or detention, Section 365 of the Criminal Code stipulates two (2) years imprisonment for the offender.

For 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, Section 224 of the Criminal Code stipulates imprisonment for two (2) years for such offender upon conviction. It is also an offence under Section 225 (a) for a male person to live on the earnings of a prostitute and stipulates two (2) years imprisonment as the punishment at the first instance and for subsequent conviction “any term of imprisonment” in addition to whipping.

The Penal Code which is applicable in Northern Nigeria was promulgated on 30th September 1960. In the Penal Code, trafficking in women is recognized as an offence with specific prescriptions according to the age of the victim. There is a world of difference between the Penal Code and Criminal Code in terms of perception and provisions in terms of human trafficking related offences. While the Criminal Code treats some of these offences as simple misdemeanours, the Penal Code provides stricter punishments as they categorized as felonies. For example, for anyone convicted of encouraging the prostitution of women and children; and importing into Northern Nigeria a girl under the age of 21 for prostitution, Sections 275 and 276 of the Penal Code provide for a maximum penalty of ten (10) years in prison and a fine. In this regard, Section 275 of the Penal Code that:

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.

While the maximum penalty of ten (10) years in prison in addition to a fine is encouraging in terms of serving as a deterrent to offenders and would be offenders, the non prescription of a minimum penalty is a major weakness as the determination of minimum penalty is left entirely to the discretion of the judge to impose. There can be no guarantee that justice will be served because of the individual differences of judges in terms of the gravity of the offence. The Penal Code under Section 276 does

not capture the offence of trafficking of women from outside Nigeria. Also, a penalty of imprisonment for a term of up to one year with the option of a fine for the offence of forced labour under Section 270 of the Penal Code is certainly not commensurate with the gravity offence to serve as a deterrent to traffickers considering the fact that human trafficking being a lucrative business.

It is fascinating that though Section 279 of the Penal Code did not expressly refer to the offence of “traffic in persons”, the provisions as it relates to slavery largely serves the cause of the offence of “traffic in persons”. Section 279 of the Penal Code in this regard provides 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.

While the Penal code provides stringent 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 not consistent with international law that make illegal the prostitution of minors (below 18 for boys and girls) under any circumstances. There is need for amendment of the relevant sections of the Penal Code relating to human trafficking (especially sections 271, 272 & 273) to ensure that persons who take young people with or without the consent of their lawful guardian are given severe punishment. When these are juxtaposed with the Constitution of the Federal Republic of Nigeria, 1999, we shall observe that trafficking in persons is a gross violation of fundamental human rights as it negates the freedom and dignity of human beings. Relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999 guarantees fundamental rights and freedom and dignity of human beings. 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.

The Nigerian Constitution also has specific provisions that safeguard the rights to movement (Section 41), personal liberty (Section 35), prohibit torture and

inhuman or degrading treatment, slavery, servitude and forced labour (Sections 34(1)(a) (b) and (c) respectively).

Edo State Anti-Human Trafficking Law

In Edo State, the incidence of trafficking of young girls abroad for prostitution got to an embarrassing level in the late 1990s. To stem the tide, the Edo State House of Assembly passed a law in 2000 to amend the Criminal Code to address the alarming human trafficking trend. The Edo State Law broadened the reach of the law to criminalize anyone who facilitates the trafficking of women and children as accomplices, be they family members, friends or religious leaders. Perhaps in the bid to uproot the practice of human trafficking, the Edo State Law against Human Trafficking also criminalizes prostitution, a position some civil society organisations have vehemently opposed. Sections 222a, 223, and 225a of the State Criminal Code have been amended to make prostitution a criminal offence and set out punishments by way imprisonment with option of fines for those who aid and abet travel abroad for prospective prostitutes.

There is the danger that the caveat of option of fines which is at the discretion of the Judge may water down the deterrent value of the punishment meted out to offenders. The ambit of the Edo State Law against Human Trafficking did not cover persons involved in the trafficking of children and young women overseas for forms of forced labour outside prostitution.

Treaties, Conventions, Bilateral and Multi-lateral Agreements

There are several treaties, conventions and bilateral and multi-lateral agreements containing provisions for the protection of the rights of trafficked persons to which Nigeria is a signatory. Specifically, Nigeria is a signatory to two critical international instruments, namely the United Nations Convention on Transnational Organized Crime (UNTOC) and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and children, on December 13, 2000. Article 3 of the Protocol defines trafficking in persons as "(a) 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 forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; (b) 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; (c) 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 sub-paragraph (a) of this article." The international economic undertone of trafficking in persons, as being predominantly emanating from poorer countries in the international system was given emphasis by

the United Nations 1994 General Assembly when it described trafficking in persons as the illegal and clandestine smuggling or "movements of persons across national and international borders, largely from developing countries (largely from African continent) and some countries in transition (largely from Eastern Europe and Asian continent) with the end goal of forcing women and girl children (especially) into sexually or economically oppressive and exploitative situations for the profit of recruiters, traffickers and crime syndicates" (UNICEF 2001:12).

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

The first attempt to develop a national legal framework to tackle the threat of human trafficking in Nigeria through legislation was taken when the Federal Government of Nigeria promulgated a specific law against human trafficking titled, the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act on July 14, 2003 (NAPTIP Act, 2003). In furtherance of the NAPTIP Act, 2003, the National Agency for the Prohibition of Trafficking in Persons (NAPTIP), to administer matters relating to human trafficking and related matters in 2004.

Section 50 of the NAPTIP Act adopts the universally accepted definition contained in Article 3 of the Palermo Protocol with some minor modifications. The Act defines "trafficking" to include:

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.

The definition in Section 50 of the NAPTIP Act, 2003 expanded the Palermo Protocol definition by inclusion of the expression "*attempted acts*". This inclusion has the enormous potential of making the prosecution of offenders who are arrested in the act of trafficking even if they have not completed the process by way of delivery. Those who knowingly aid and abet traffickers of victims by serving as commercial carriers in the process have also been criminalized by the Act.

The Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003, as amended in 2005 (and repealed in 2015) was a major platform for the efforts of the Nigerian Government against trafficking in persons in the past decade that earned Nigeria a Tier 2 rating in 2014 by the United States of America. The Anti-Trafficking Act 2003 achieved three main purposes. First, it warehoused the eight provisions in the Criminal Code Act Cap 77 (applicable to Southern Nigeria) and the eleven provisions in the Penal Code Federal Provisions Act Cap 345 (applicable to Northern Nigeria) that had been gazetted as Laws of the Federation (1990), that dealt with various offences in trafficking in women and

children for prostitution, sexual exploitation, defilement, slave dealing and forced labour, into one main law. Second, the law created Africa's first ever national anti-trafficking agency, the National Agency for the Prohibition of Trafficking in Persons (NAPTIP), under the Federal Ministry of Justice, solely dedicated to the responsibilities of prosecuting traffickers, rehabilitating victims, collaborating with other countries' agencies on trafficking issues, and creating public awareness about the scourge of trafficking in persons. Third, it gave legal bite to the quest to prosecute and put behind bars notorious traffickers that had plunged the country into international embarrassment with the unsightly crowd of young girls and women forced into prostitution, especially in Europe and other African countries.

The 2003 Anti-Trafficking in Persons Act had 65 Sections, and unlike the provisions in the Criminal and Penal Codes, increased the penalty for convicted traffickers from two to ten years imprisonment. The law also made provisions for offences like attempted trafficking and trafficking in slaves within the country and cross-border activities. Convicted traffickers were to forfeit their seized assets to the Federal Government of Nigeria, and limited prosecution of suspected traffickers to only the State High Courts. The 2005 amendment to the Law by the National Assembly was to expand the jurisdiction for cases on trafficking to include the Federal High Courts in all the 36 States of the Federation and the Federal Capital Territory. The amendment also focused on the essence of short and long term rehabilitation and reintegration of trafficking victims by creating a Victims Trust Fund which was to be built from the forfeited assets of convicted traffickers and other local and international donor organizations. The Law, as amended, has been criticized that the penalties were not stringent enough for the heinous crime of modern slave trade, and allowed judges the discretion to simply impose fines. The Law had provisions for between ten to fifteen years imprisonment or meagre fines for various trafficking for forced prostitution or sexual slavery, which traffickers could easily pay and walk away from the Court room.

Under the Anti-trafficking Law of 2003, as amended, NAPTIP (2015) reports that the agency, since its creation in 2003, has secured 271 convictions as at June 2015, and had initiated over 314 trafficking investigations, with 50 per cent (170 cases) still pending in various High Courts in the country. The Courts sentenced 28 traffickers to prison sentences without option of fine. The Nigeria Police Force, which have powers to prosecute offenders as specified in the Nigerian Criminal Code, have also prosecuted 25 suspected traffickers and secured six convictions as at 2014. The dual issues of unnecessary delays in prosecuting criminal matters in the Nigerian judicial system, and pervasive corruption in the Nigerian legal and security environment have always thwarted the efforts of the agency and good intentions of collaborating NGOs. The prosecution of the suspected traffickers by NAPTIP followed international collaboration with law enforcement agencies from Italy, Spain, United Kingdom, France, Finland, Norway, Germany, Belgium, Taiwan, and Czech Republic. The investigation activities of the Nigerian anti-trafficking agency, in collaboration with NGOs, in 2014, had led to the identification of 777 trafficking victims, including 539 victims of labour trafficking, 187 victims of sex trafficking

and 51 victims of trafficking - related crimes. NAPTIP currently operates nine official shelters nationwide in which 313 deported and traumatized victims of trafficking were kept for mandatory period of not exceeding six weeks, except on special cases. Disbursements from the Victims' Trust Fund reached about \$20,000 shared amongst 47 victims for the purposes of vocational training and educational fees (US Trafficking Report, 2014).

Trafficking in Persons (Prohibition, Enforcement and Administration) Act, 2015

In March 2015, former President Goodluck Jonathan signed into law the new Trafficking in Persons (Prohibition, Enforcement and Administration) Act 2015, and repealed the NAPTIP 2003 Act as amended. The new Act has 82 sections, and defines trafficking or traffic in persons in Section 82 as "the recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person or debt bondage for the purpose of placing or holding the person whether for or not in involuntary servitude (domestic, sexual or reproductive) in forced or bonded labour, or in slavery-like conditions, the removal of organs or generally for exploitative purposes." In the new Act, the removal of organs has been criminalized unlike the in the repealed Legislation. Besides, the definition indicates the three key elements of trafficking in persons, namely: acts (recruitment, transportation, transfer, harbouring, receipt of persons); means (threat or use of force, coercion, abduction, fraud, deception, abuse of power in vulnerability, giving payments or benefits); and purpose (sexual exploitation, prostitution of others, forced labour, removal of organs and child abuse). The Act has new provisions on smuggling of migrants as an offence, which it describes in Section 82 as "the arranging or assisting a person's illegal entry into any country of which the person is not a citizen or permanent resident, including Nigeria, either knowing or being reckless as to the fact that the person's entry is illegal, in order to obtain a financial or other material benefit." The anti-trafficking agency could also deal with such issues as illegal or irregular immigration, even though they fall within the legal competence of the Nigeria Immigration Service (NIS).

Under the Anti-Trafficking Act 2015, the operational structure of the Agency that is mandated to implement the provisions of the Law as well as lead the Nigerian Government's war against trafficking in persons; the Governing Board has been streamlined. Unlike in the repealed 2003 Law which had a Chairman and two members each from the six geo-political zones of the country recommended by the Minister of Justice to the President, the new 2015 Act in Section 3(2) provided for a nine-man team comprising a knowledgeable Chairman, two representatives civil society groups and one each from the government ministries of Justice, Women, Labour and Productivity, Nigeria Police Force, National Intelligence Agency, Nigeria Immigration Service and National Planning Commission. However, in view of the specialized and international nature that defines the 21-listed statutory functions of the anti-trafficking agency as set out in Section 5 (a-u), its operational structure seems

defective. It is strange that the agency does not have a representative of the Nigeria's lead anti-corruption agency, the Economic and Financial Crimes Commission (EFCC), or the Central Bank of Nigeria on board because trafficking in persons is an international criminal activity in which proceeds are either laundered or repatriated by the traffickers to Nigeria as home country. It is for this reality that Section 5(n) charged NAPTIP with the responsibility of "adopting measures to identify, trace, freeze, confiscate or seize proceeds, property, funds, or other assets derived from trafficking in persons." It is also imperative to point out the agency should have a representative of the Federal Ministry of Foreign Affairs in view of the serious functions in Section 5(j-l and s) which deal with high-level governmental diplomacy, international cooperation, joint operations with international organizations and government authorities, implementation of bilateral and multilateral treaties and conventions, as well as extradition and deportation of persons involved in trafficking in persons. Besides, there is a serious contradiction in Section 5(e)(r) of the new law which empowers the anti-trafficking agency "to investigate, along with all cases of trafficking in persons, other forms of exploitation like illegal smuggling of immigrants, and maintain a system of monitoring trans-border activities relating to trafficking in persons in order to identify suspicious movements and persons involved." In the first place, NAPTIP personnel are not allowed or deployed to Nigeria's border posts and patrols unlike some other security agencies like Immigration, Police, State Security, National Intelligence Agency and Customs. In the second place, this provision is repetitive of the statutory functions of the Nigeria Immigration Service (NIS) set out in the new Immigration Act 2015, which repealed the 1963 Act, and situated the tasks of monitoring trans-border movements and smuggling of migrants under the purview of the Service.

Section 8(1-3) of the new anti-trafficking Act indicate that the Office of the Chief Executive of the Agency was re-designated Director-General from its former nomenclature of Executive Secretary as it was in the repealed 2003 law. The new law imposes serious political considerations on the appointment of the chief executive, as it directs the officer could be picked from the Directorate cadre in the Public Service of the Federation or its equivalent in any law enforcement service, on the recommendation of the Minister of Justice to the President. By implication, the essence of professionalism built from periodic national and international intensive anti-trafficking training and career growth of agency management staff are sidelined for the whims and pleasure of the Minister of Justice who is usually a politician. The sensitive agency has consistently had its past Chief Executives appointed and deployed directly from amongst the political aides of former Ministers of Justice and were largely lawyers without intelligence and security training or background.

Analyses of Offences and Penalties under 2015 Anti-Trafficking Act

The 2015 Anti-Trafficking Act expunged the provisions of Section 25 of the repealed 2003 law which, in essence, dealt with the principle of double jeopardy for traffickers convicted abroad. In the old law, a convicted trafficker abroad, on his return to Nigeria after serving his sentence in the foreign country, was liable to be

tried in Nigeria for bringing the image of Nigeria into disrepute, and on conviction, forfeits his assets to the Federal Government along with serving a term of not exceeding two years in jail. Besides, under the new law 2015, the penalties of life imprisonment enshrined in the repealed law for most offences, have also been expunged and replaced with prison terms and cash fines. It would seem that the penalties in the 2015 Act are less stringent for traffickers. For instance, the old law specified life imprisonment without option of fine for offences that pertain to importation and exportation of persons with intent to force or induce into prostitution or other forms of sexual exploitation in Nigeria or while in transit. However, Section 14 of the new law 2015 rather specifies the penalty of a minimum of five years imprisonment and N1million (about \$4,000) fine for same offence. Similarly, under the old law, slave dealing which is to keep, purchase, sell, transfer any person for the purpose of treating that person as a slave as a pledge, pawn, in servitude or security for debts or benefits, whether due or to be incurred, as practiced in trafficking in persons, attracted life imprisonment without option of fine. However, for same offence, Section 25 (a-c) of the new law 2015 imposes a penalty of minimum of seven years imprisonment and N2million (about \$8,000) fine.

Unlike the old law, there are no provisions on kidnapping of persons under 18 years or persons of unsound mind from the custody of lawful guardianship, as well as kidnapping and abduction in order to commit culpable homicide, in the new law 2015. It could be assumed that the initial provisions on kidnapping were expunged from the new Act because the offence of homicide or murder arising from kidnapping, abduction or deceitful means had listed in the Criminal and Penal Code of Nigeria. The new law 2015 has no provision for life imprisonment for any offence under the Act, but several provisions for options of fine for the total of 22 penal provisions listed in Part IV (Sections 14-35). For instance, the offence of importation and exportation of persons, which in the repealed law carried life imprisonment without option of fine, in the new law has prison term of not less than five years and fine of N1million (about \$4,000); the offence of procurement of persons for sexual exploitation in the old law had a penalty of ten years imprisonment without option of fine, but in the new law, there is the provision of five years and fine of N500,000 (about \$2,000); procurement or recruitment of persons under the age of 18 years for pornography or brothel in the old law attracted 14 years imprisonment without option of fine, but in the new law, there is rather provision of seven years and fine of at least N1million (about \$4,000). Besides, in the old law, the offence of foreign travel which promotes prostitution or sexual exploitation attracted 10 years jail term without option of fine, while in the new law, the same offence has the provision of seven years imprisonment and fine of N1million (about \$4,000); procurement or recruitment of persons for use in armed conflicts had the punishment of 14 years imprisonment and no option of fine in the law, the penalty is now minimum of seven years and fine of N1million (about \$4,000); and the offence of prohibition of buying or selling of human beings for any purpose attracted 14 years without option of fine in the old law, while in the new law, it attracts five years and fine of N2million (about \$8,000). The exceptions in the new law are in two provisions; namely Section 26

which deals which deals with offences relating to fraudulent entry of persons attracts five years prison term without option of fine; and Section 33 dealing with impersonation or assumption of character of an officer of the anti-trafficking agency has a penalty of five years jail term without option of fine.

The new anti-trafficking law 2015 imposes more stringent penalty on body corporate, especially land transport companies, airline, travel agents, and tour operators involved in or encouraging trafficking in persons, as Section 31 sub-section 1-2 imposes heavier penalty of N10million (about \$40,000) and the wind up of the body corporate and its assets and properties transferred to the Victims of Trafficking Trust Fund, unlike in the old law where only the fine of just N2million (\$8,000) was imposed. Similarly, under Section 35 of the new Act dealing with responsibility of airlines, commercial carriers, tour operators and travel agents to provide information to assist in tracking traffickers and human smugglers, the penalty is still same as in Section 31.

There are certain new provisions in the anti-trafficking Act 2015 that are strategic to the fight against international trafficking in persons. Although harvesting of human organs is embedded in the definition of trafficking in persons, there were no specific provisions in the old law in that regard. Section 20 sub-section 1-3 in the new law make provision for offence of procurement or recruitment of persons for organ harvesting for financial benefits or assists in the removal of human organs, or buying, or selling, or transporting of human organs, and impose imprisonment of seven years and a fine of not less than N5million (about \$20,000). The anti-trafficking agency's efforts in combating trafficking in persons has been curtailed by the slow pace of the judicial processes in Nigeria, as prosecution of suspected traffickers could take many years. Section 37 sub-section 1-2 has responded to this challenge by stating that "in any trial for an offence under this Act, the Court shall exercise the power, notwithstanding anything to the contrary in any other enactment, to adopt all legitimate measures that it may deem necessary to avoid unnecessary delays and abuse in the conduct of the proceedings. Subject to the provisions of the Constitution of the Federal Republic of Nigeria, an application for stay of proceedings in respect of any criminal matter brought under this Act shall not be entertained." In the same vein, the new law 2015 has attempted to address the lingering issue of threats and harassment of witnesses by notorious network of traffickers in trafficking in person cases. This situation has contributed to stall many prosecutions in Nigeria, which Section 47(a-c) has dealt with by directing the Court to guarantee witness protection by holding the court proceeding at a place to be decided by the Court; avoidance of the mention of the real name and address of the witness in its order papers, judgments or records of the case, which could be accessible to the public.

There are new provisions that also addressed the educational challenges of majority of the victims of trafficking in persons from Nigeria to other African and European countries who have low illiteracy level, and unable to know their rights, especially in legal proceedings. Section 63 provides for the rights of a victim to information on relevant Court and administrative proceedings; assistance to enable the victims views and concerns to be presented and considered at appropriate stages

of criminal proceedings against the traffickers; and counseling and information as regards victim's legal rights in a language that the victim can understand. The provisions for a Victims of Trafficking Trust Fund was introduced in the repealed law 2003, amended in 2005, to be utilized to pay compensation, restitution and damages to trafficked persons; and to fund victim support services for trafficked persons. Unlike in the previous law, Section 68 of the new law 2015 provides for the establishment of a five - member Fund Committee, which is headed by the Minister of Justice, with the Director-General of NAPTIP, representatives of the Federal Ministry of Women Affairs, National Directorate of Employment, and an unnamed NGO, who will meet twice a year. The Trust Fund Committee is charged with the responsibilities of managing the fund and approving monies to such victims of trafficking, although the Director-General of NAPTIP is empowered to disburse maximum of N500,000 (about \$2,000) to a victim, subject to the expressed approval of the Minister of Justice. It is strange that the Minister of Justice, inundated with serious national legal assignments nationwide and the legendary bureaucratic bottlenecks in public governance processes could chair such Victims Trust Fund, not even the Governing Board Chairman of the anti-trafficking agency or an in-house Directorate Committee of NAPTIP. The operations of the Trust Fund was to ameliorate the pains and agony of victims of trafficking in persons, thus it is imperative that the management of the Fund should have been structured to be urgently responsive to traumatized victims.

Critical Ethical Issues in the 2015 Anti-Trafficking Law

NAPTIP as a public agency is funded by taxes paid by the citizenry, and has to be responsible in its acts in the public interest. The agency is not expected to operate as if its officials were above the laws of the land. The National Assembly which passed the law obviously did not scrutinize the provisions in Part VII of the new Law which deals with powers of search, arrest and seizure by NAPTIP officials, especially with the aid of warrants issued by a court of competent jurisdiction. Section 44 sub-section 5 states that "any officer of the Agency or a duly authorized law enforcement officer who uses such force as may be reasonably necessary for any purpose in accordance with this Act, shall not be liable in any criminal or civil proceeding, for having by use of reasonable force, caused injury or death to any person or damage to, or loss of any property." The provision is silent in defining what actually constitutes reasonable force and under what circumstances that an official could unleash terror on suspects that could lead to even death. While it is important for NAPTIP officials to carry out their duties unfettered, it is inherently wrong to grant them blanket immunity from civil and criminal prosecution when they abuse human rights of other citizens. This provision seems to give legal license and shield the agency officials to act above the levels of human decency and abuse rights of suspects. In the Nigerian legal system administration, any provision that runs contrary to the dictates of the Constitution of the Federal Republic of Nigeria that guarantees right to life and protection of human rights of the citizens, would to that extent, be

null and void when proven in Court that the NAPTIP officials were reckless in their official conducts.

Similarly, NAPTIP seems to impose limitations on those who feel aggrieved to contest any alleged abuse of its powers, by imposing pre-action notice for litigation against the Agency. Section 77 sub-section 1 states as follows: "No civil action shall be commenced against the Agency or its authorized officers before the expiration of a period of 30 days after written notice of intention to commence the suit shall have been served on the Agency by the intending plaintiff or his agent, and the notice shall clearly state the (a) cause of action; (b) particulars of claim; (c) name and place of abode of the intending plaintiff; and (d) relief sought." Besides, Section 78 states that "in any action or suit against the Agency, no execution shall be levied or attachment process issued against the Agency unless at least three months' notice of the intention to execute or attach has been given to the Agency."

The penalty for the grievous offence of procurement and removal of human organs is too mild, as indicated in Section 20 of the new law 2015. The National Assembly should have considered the serious fact that human lives are sacrosanct and should be treated as such, instead of imposing just seven years imprisonment and fine of minimum of N5million (about \$20,000). The law should seriously protect the victims, as those whose internal organs were harvested for commercial purposes sometimes die in earnest or unable to function optimally as human if they survive the post-surgery traumatic experience.

The new law is silent on penalty for the critical issue of corruption of officials of government agencies and security services that traffickers compromise in the line of duty. This was necessary to serve as deterrent to others, and reduce the conspiracy of public officers in promoting trafficking in persons for financial gains. The illegal business of trafficking in persons and smuggling of migrants have continued to thrive in Nigeria because of the endemic corruption of Immigration Service officials, especially those that issue passports to the victims for international travels, and assist them to cross the national borders. The syndicate operates within a fluid network of corrupt personnel in Immigration Service and the other security agencies, including the embassies and consular offices.

Conclusion

Trafficking in persons is glaringly an abuse of the fundamental rights of the trafficked persons to human dignity, as the victims are regarded and treated as articles of trade and subjected to the inhuman conditions by force, threats and deceit. Thus, the legal instrument should be exhaustive in provisions and fine-tuned to tackle the clandestine crime of trafficking in persons. Nigeria, regarded as a source, transit and destination country in trafficking in persons has the onerous challenge in confronting this monster of modern day slavery, and has churned out three legal processes in 2003, 2005 and now 2015. The new Trafficking in Persons (Prohibition, Enforcement and Administration) Act 2015 has been expanded to respond to the dynamic nature of the illegal trade in humans in Nigeria.

It is imperative to highlight the fact that the successful implementation of the new law would depend largely on the synergy developed and sustained between the two government agencies of Nigeria Immigration Service and NAPTIP. Trafficking in persons is a clandestine business and now more lucrative as it is trans-border. NAPTIP, the agency charged with the responsibility of implementing the new law is currently barred from the border posts of Nigeria, and depend on the Immigration Service to refer suspected trafficking cases to it. Besides, NAPTIP taking interest in issues of smuggling of migrants in the new law may be difficult with its current operational handicap and likely conflict of statutory responsibility with the Immigration Service. There is the dire need to deploy ways and means to develop a positive synergy between Nigeria's Immigration Service and NAPTIP if the current legal framework is to serve the purpose of combating trans-border trafficking in persons.

References

- Anderson J. (2003) *Public Policy Making: An Introduction*, New York: Houghton Miffling Company.
- Constitution of Federal Republic of Nigeria 1999, Abuja: Federal Government Printers.
- Federal Republic of Nigeria, Criminal Code Act: Laws of the Federation of Nigeria (1990). Abuja: Federal Government Press.
- ILO (2014) *Report on Forced Labour*, published in Sunday, August 2, 2015, p. 20.
- Laws of the Federation (1990). *Criminal Code Act, Cap.77 and Penal Code (Northern States) Federal Provision Act, Cap. 345*, Lagos: Federal Government Printer.
- Laws of the Federation of Nigeria: Penal Code (Northern States), (1959). Federal Provision Act, Lagos; Federal Government Press.
- NAPTIP (2015). Report on the Legal and Prosecution - Convictions, *NAPTIP Newsletter*, Abuja.
- Nigeria Immigration Service Act (2015). Abuja: National Assembly.
- Olateru-Olagbegi, B. & Ikpeme, A. (2008). Review of Legislation and Policies in Nigeria on Human Trafficking and Forced Labour, New York: ILO.
- Sunday Sun (2015). *Foreign Feature: Human Trafficking - The Lives Bought and Sold*, August 2, p. 20.
- Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003, as amended in 2005*, Abuja: National Assembly.
- Trafficking in Persons (Prohibition, Enforcement and Administration) Act 2015*, Abuja: National Assembly.
- UN (2000). *Protocol on the Palermo Convention* cited in the US Department of State Trafficking in Persons Report 2014, New York.
- UNICEF (2001). *Child Trafficking in Nigeria: Analysis of Nigeria's Response to the Libreville Platform of Action*, Lagos: UNICEF Nigeria Country Office.
- UNODC (2013) *Report on Human Trafficking*, Geneva: UNODC Publication.
- US Department of State (2014). *Trafficking in Persons Report 2014 – Nigeria*. (<http://www.refworld.org/docid>) Accessed on August 10, 2015.