

An Assessment of the Institutional Framework for Combating Human Trafficking In Nigeria

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ABSTRACT

Human trafficking stands out today as one of the gravest crimes confronting virtually every part of the globe; with African countries being the worst hit. African countries have been differently affected by the scourge either as countries of origin transit or destination. This paper reveals that Nigeria is affected in all of the different forms – it is a country of origin, a transit as well as destination. These developments, therefore, propelled the Nigerian government to join other nations of the world to fight human trafficking. This paper explores the various institutional measures employed by the Nigerian government to tackle human trafficking and assess the progress recorded so far in the circumstance. The paper contends that with a well structured and properly maintained enforcement institution on ground, human trafficking in Nigeria would be reduced to the barest minimum if not completely eradicated.

KEY WORDS: Institutional, Framework, Combating, Human, Trafficking.

INTRODUCTION

Trafficking in human beings is a violation of the human rights of the affected persons and a violation of their dignity and integrity.¹⁰³⁴ It is also a lucrative business for the globally active perpetrators.¹⁰³⁵

Government around the world are working hard to stop human trafficking – not only because of the personal and psychological toll it takes on society, but also because it facilitates the illegal movement of immigrants across borders and provides a ready source of income for organised crime groups and even terrorist through intricate money laundering schemes.¹⁰³⁶

As a result of the strong global resistance against this serious crime, Nigeria has joined other nations of the world to fight human trafficking. This, it has done, by setting up a task force on human trafficking in Law Enforcement Agencies and the National Agency for the Prohibition of Traffic in Persons (NAPTIP).

This paper aims at reviewing what these government agencies and institutions, for example, the National Agency for the Prohibition of Trafficking in Persons, the Nigeria Police, Immigration, Court, Ministry of Justice, do to curb human trafficking. This will be achieved by providing a comprehensive analysis of the extent to which they are successful in the suppression of this phenomenon and stating some of the obstacles they face.

GOVERNMENT AGENCIES

The prohibition of trafficking of human beings through national legislation for the purpose of suppression and prevention is one obligation imposed upon states. The obligation to prohibit trafficking is further strengthened when the right to life is involved. In *Osaman v. United Kingdom*,¹⁰³⁷ the European Court of Human Rights held that States have primary duty to secure the right to life include putting in place effective criminal law provision to deter the commission of offences against the person. Prohibition is not restricted to murder, but also extends to serious offences against the person.

¹⁰³⁴ Text of preamble of the Council of Europe Convention on Action against Trafficking in Human Beings of 16 May 2005, CETS No. 197, an unofficial translation available at <http://conventions.coe.int/Treaty/GER/Treaties/Html/197.htm> (accessed on 21/3/2009).

¹⁰³⁵ The ILO found that the profits achieved through trafficking in human beings per year amount to 32 billion USD <http://www.ilo.org/public/german/region/eurp.ro/bonn/aktuelles-globalreport.htm> (accessed on 21/3/2009).

¹⁰³⁶ Yaro I.D. "Human Trafficking and Money Laundering Chain". Being paper presented at the International Conference on Human Trafficking Organised by the National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP) International Conference Centre, Abuja, 1st December 2010, p. 1.

¹⁰³⁷ (App. 23452/94), Judgement of 28/10/98, para. 115. In Obokata, T., Trafficking of Human Beings from a Human Rights Perspective: Towards a Holistic Approach (Boston: Martins Nijhoff Publishers, 2006) p. 148.

Nigeria has taken a cue by enacting several laws that prohibit human trafficking and has also set up agencies charged with responsibility of enforcing these laws. Until recently, these agencies worked in isolation or as occasion demanded. Agencies charged with the responsibility of curbing human trafficking include:

- The National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP)
- Nigeria Immigration Service
- Nigeria Police
- Court
- Ministry of Justice

The Constitution is the *grundnorm* in Nigeria and an examination of the status or legitimacy of any institution in Nigeria must begin with an examination of the Constitution to see whether the institution or organ is a creation of the Constitution or derives its legitimacy from it. Does the Constitution, therefore, create or otherwise give legitimacy to Agencies that have the responsibility of prohibiting human trafficking?

The Constitution of the Federal Republic of Nigeria does not establish the National Agencies for the Prohibition of Trafficking in Persons directly; the Constitution nevertheless, made reference to it in several places and placed it as item 60(a) of the Exclusive Legislative List.¹⁰³⁸ The police and other government security services who are also charged with the responsibility of prohibiting human trafficking are also referred to in the Constitution as items 30 and 45 of the Exclusive Legislative List.¹⁰³⁹

The National Assembly has also been empowered by the Constitution to make laws for the peace, order and good government of the Federation with respect to any matter included in that Exclusive Legislative List set out in Part 1 of the Second Schedule¹⁰⁴⁰ which it has done by passing into law, the Anti-trafficking Act of 2003.¹⁰⁴¹ The Constitution also vest judicial powers on the court¹⁰⁴² to adjudicated on issues relating to human trafficking, between persons or between government or authority and to any person in Nigeria in relation to civil right and obligations of that person.¹⁰⁴³ It is thus obvious that the Constitution recognizes and provides for the fundamental rights of personal liberty and right to the dignity of the human person amongst several others.

National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP)

The creation of the National Agency for the Prohibition of Traffic in Persons in Nigeria is unique. The agency is established in Section 1(1) of the Act,¹⁰⁴⁴ charged with the responsibility of enforcing, administering and managing the law prohibiting human trafficking and other related matters. The agency is a body corporate with perpetual succession, common seal and capacity to sue and be sued in its corporate name.¹⁰⁴⁵ It is headed by the Executive Secretary,¹⁰⁴⁶ whose responsibility is the day-to-day running of the affairs of the agency. The agency also has an eight man Board whose responsibilities include the supervision of the activities of the agency and formulation of its policies.¹⁰⁴⁷

The agency currently has offices in the six geo-political zones and one office added in 2010.¹⁰⁴⁸ These offices are inadequate considering the nature of spread of the phenomenon, which is not restricted to these selected states of the federation. The politicization of this agency will constitute great hindrance to its optimal performance.

The National Investigation Task Force (NITF) under the National Agency has set up units in eleven States with the worst forms of trafficking problems. Most of the investigators are men and women on secondment from the traditional law enforcement agencies like the police and immigration service.

NAPTIP carries out the following functions:¹⁰⁴⁹

1038 Part 1 Second Schedule to the 1999 Constitution of the Federal Republic of Nigeria.

1039 *Ibid.*

1040 Section 4(2) CFRN 1999.

1041 Trafficking in Persons (Prohibition) Law Enforcement and Administrative Act 2003. The Bill was initiated by the wife of the former Vice-President of Nigeria, Nigeria, Titi Abubakar, the founder of a Non-Governmental Organisation in Nigeria. Women Trafficking and Civil Labour Eradication Foundation (WOTCLEF) which was founded in 1999.

1042 Section 6(5) (c) (d) (e) CFRN 1999 and Section 254C(1) (i) CFRN (Third Alteration) Act 2011.

1043 Section 6(6) CFRN 1999.

1044 Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 (TIPLEA).

1045 Section 1 TIPLEA.

1046 Section 6(2) and (3) TIPLEA.

1047 Section 2 TIPLEA.

1048 Lagos, Benin, Enugu, Uyo, Kano, Abuja and Maiduguri Office which was added in the year (2010) in addition to collaboration with some NGOs such as WOTCLEF and Idia Renaissance for ease of operation.

1049 Section 4(a)-(n) TIPLEA.

- (a) The enforcement and the due administration of the provision of the Act.
- (b) The agency shall be responsible for the co-ordination of all laws, on trafficking in persons and related offences and the enforcement of those laws. This section obviously may create some legal entanglement. This means that section 18 of the Immigration Act,¹⁰⁵⁰ may be taken over and be coordinated by the agency. There may be contradictory interpretation by the operators of both legislations which may lead to conflicting opinions.
- (c) Adoption of measures to increase the effectiveness of eradication of traffic in person.
- (d) The facilitation or encouragement of the presence or availability of persons including persons in custody, who consent to assist in the investigations or participate in proceeding relating to traffic in persons related matters. This question then comes to mind, what exactly are the institutional structures in place for things like witness protection that is vital to successful information, arrest and prosecution? For now the answer to this question is in the negative and more on paper.
- (e) Enhancing the effectiveness of law enforcement agents to suppress traffic in persons. This is unnecessary duplication of efforts and may slow the agency down in its bid to achieve results.
- (f) Establishing, maintaining and securing communication to facilitate rapid exchange of information concerning offences, conducting research and improving international cooperation in the suppression of traffic in person by road, sea and air. This work reveals that there is no institutional structure put in place by NAPTIP in the local communities where victims are sourced to detect trafficking cases in time to nip it in the bud. There is also the issue of investigators not going too far to investigate cases within and across Nigeria's international borders due to administrative bottle neck and lack of finance.
- (g) Reinforcing and supplementing measures in such bilateral and multilateral treaties and conventions on traffic in persons as may be adopted by Nigeria to counter the magnitude and extent of traffic in persons and its grave consequences. Most treaties and conventions on human trafficking have been ratified by Nigeria thus making Nigeria a party to them but they have not been domesticated by Nigeria. This lack of domestication of treaties and convention makes NAPTIP a toothless bulldog, it can only bark and not bite.
- (h) Taking such measures and or in collaboration with other agencies or bodies that may ensure the elimination and prevention of the root causes of the problem of traffic in persons.
- (i) Strengthening and enhancing effective legal means for international cooperation in criminal activities of traffic in persons.
- (j) Strengthening of cooperation between the office of the Attorney-General of the Federation, Ministry of Foreign Affairs, the Nigeria Police, the Nigeria Immigration Service, the Nigeria Customs Service, the Nigeria Prison Service, Welfare Officials and other law enforcement agencies in the eradication of traffic in persons. This, in our view may over burden the agency and distract it from its enforcement role.
- (k) Taking charge, supervising, controlling and coordinating all the rehabilitation of trafficked persons and participating in proceedings related to traffic in persons. During our research, we found out that NAPTIP's policy on rehabilitation of victim is at best skeletal. For now, the effort being made by NAPTIP to fulfill its mandate of rehabilitation of trafficked victim can best be described as modest. Currently, there are only seven shelters in seven States of the Federation¹⁰⁵¹ which has thirty six States and a Federal Capital Territory. These shelters are grossly inadequate considering the increase in the number of human trafficking cases. These shelters are operating below capacity. Little wonder therefore that incidents of re-trafficking remain high.
- (l) Taking charge of, supervising, controlling and coordinating all the responsibilities, functions and activities relating to current investigation, prosecution of all offences connected with or relating to traffic in persons and other related matters in consultation with the Attorney-General of the Federation.

From our research, there have been one hundred and fifty-seven (157) convictions and various sentences passed on convicted traffickers, ranging from fines to different terms of imprisonment.¹⁰⁵² Sentences given by the court fall short of those provided for in the Anti-Trafficking Act.¹⁰⁵³ There are instances where the Act provides that the sentence is without an option of fine yet, judges give options of fine and not

¹⁰⁵⁰ Immigration Act, Cap. 171, Laws of the Federation of Nigeria, 1990.

¹⁰⁵¹ Abuja, Lagos, Benin, Uyo, Maidiguri, Kano, Enugu.

¹⁰⁵² Data was gotten from a visit to the Legal Department of the National Agency for the Prohibition of Traffick in Persons (NAPTIP) on the 18th of March, 2016.

¹⁰⁵³ Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003.

imprisonment.¹⁰⁵⁴ Out of all the one hundred and fifty-seven (157) convictions secured, only one case¹⁰⁵⁵ has as its sentence the confiscation of the accused person's property into the victim trust fund. Where there should have been a life sentence, the accused was given years of imprisonment.¹⁰⁵⁶ Those who are convicted often receive limited terms of imprisonment, small fines or are sentenced merely to the time they have served during the investigation. This, we have noted is the only category of serious transnational crime to be treated with such leniency by the courts and criminal investigators. There are several reasons for this leniency. Many law enforcement agents perceive trafficking as an age old phenomenon of prostitution and do not see it as a serious problem. In many cases, they believe that the victims willingly participated in this activity and that no crime has been committed. In other cases, massive corruption undermines the capacity of the legal system to combat trafficking because police, immigration and customs officials have been bought off by the traffickers and smugglers. Under these conditions, it is certainly clear that human trafficking is growing as a crime of choice.

Our research also shows that, 2008 to 2011¹⁰⁵⁷ recorded the highest number of conviction. This could be due to increase in trafficking or due to the fact that the agency charged with the responsibility has woken up to her responsibility to monitor human trafficking in Nigeria. There are different forms of trafficking offences, ranging from prostitution, sexual abuse, forced labour, foreign travel, beating up of officers/obstruction, kidnapping, recruitment of girls for domestic servant, wide range employment, indecent assault etc. From our analysis, forms of trafficking in Nigeria do not differ from other forms of trafficking that exist worldwide. Prostitution and labour trafficking are forms of trafficking that occurred in all the years of conviction shown.

Gender analysis of convictions of persons involved in human trafficking between 2004 and 2015 show that more females have been convicted and more females are involved in trafficking of persons.¹⁰⁵⁸

Cities which were seen as cities with high rate of cases of human trafficking¹⁰⁵⁹ have secured few convictions, while cities with low rate of human trafficking cases¹⁰⁶⁰ have high number of cases of conviction. It is surprising to find out that a city like Maiduguri, which is a border town, has recorded only five convictions.

- (m) Carrying out such other activities as are necessary or expedient for the full discharge of all or any functions conferred on it under this Act; and
- (n) To institute investigations into suspected cases of trafficking as well as into the activities of suspected traffickers or persons engaged in activities related to trafficking.¹⁰⁶¹

The law does not provide any guide for the exercise of the discretion given to the agency in paragraph (m). It is hoped that the operators will allow wisdom and sound judgement to guide them. It seems, therefore, the agency has more enforcement and managerial duties than the prohibition of trafficking as suggested in its name, going by its stated functions and powers.

The Act also established different departments for the agency, comprising of investigation, legal, public enlightenment, counseling and rehabilitation and other relevant unit like technical committee and task forces, each with their specific duties.¹⁰⁶² The agency is also empowered to initiate, develop or improve specific training programmes for the relevant law enforcement agents and other personnel of the agency.¹⁰⁶³

The agency has demonstrated increased efforts to combat trafficking but has the constraints of adequate funds, insufficient staffs, undue delay in court proceedings and the unwillingness of witnesses to testify.

Nigeria Immigration Service

On August 1st, 1963 the Immigration Department was established by an Act of Parliament. The Immigration Department was extracted from the Nigeria Police Force in 1958.¹⁰⁶⁴ The Nigerian Immigration Service (NIS) is in the forefront of monitoring of Nigeria's borders and exit points from the country. It also has

¹⁰⁵⁴ *AG Federation v. Toyin Ogbemor*. Charge No. HCT/14C/06 (Unreported) Judgement was delivered on 7th July, 2006

¹⁰⁵⁵ *A.G. Federation v. Juliet Peters Ewinramen*. Charge No. B/626/2006 (Unreported) Judgement was delivered on 12th January, 2010.

¹⁰⁵⁶ *A.G. Federation v. Daniel Osaze*. Charge No. FHC/S/73C/2009 (Unreported) Judgement was delivered on 8th October, 2009.

¹⁰⁵⁷ Table 2 Appendix B.

¹⁰⁵⁸ Data collected from the Legal Department of NAPTIP on 18th March, 2015.

¹⁰⁵⁹ *Ibid*.

¹⁰⁶⁰ Sokoto.

¹⁰⁶¹ Sections 8 and 9 TIPLEA.

¹⁰⁶² <http://naptip.gov.ng/index.php?option=com.content&task=view&id=8&itemid=46>. last accessed 7/4/2015.

¹⁰⁶³ Section 10 TIPLEA.

¹⁰⁶⁴ Immigration Act 1963.

the responsibility of issuing travel documents to citizens who wish to travel outside the country. The department is also charged with the duty of regulating the entry of aliens within its territory.

A Human Trafficking Division was introduced at the Headquarters in Abuja with a task force on human trafficking in 2001. It is headed by an officer of the rank of Comptroller of Immigration. At the State Command level, officers of the rank of Assistant Comptroller head these units. The service has so far implemented the following:¹⁰⁶⁵

- a) Visited educational institutions and Youth Corps camps to preach about the negative effects of human trafficking.
- (b) Used billboard and the media to enlighten the public about the negative effects of trafficking.
- c) Exercise care in the issuance of passports, for example, it has become a policy not to issue passports to any Edo State female less than twenty years old, without a letter from the Edo State Liaison Office.
- d) Screen travellers at departure points, and prevent those suspected of going for trafficking from travelling.

This effort is like a drop in the ocean considering the magnitude of the problem. There is more that needs to be done.

During our research we found out that though the Nigeria Immigration Service is active in monitoring of activities of traffickers but only to the extent of known border points. There are so many known and unknown smuggling routes that traffickers use but which the Nigeria Immigration Service is unable to monitor effectively a result of shortage in manpower and logistics problems. Traffickers create new routes all the time because of increasing surveillance of the different routes and the service has found it increasingly difficult to keep up with the pace of the traffickers. Corrupt immigration officials also aid and abet traffickers to cross borders points legitimately or turn a blind eye to obvious smuggling routes.

At the international airports, that are subjected to heavy surveillance by immigration officers, traffickers still manage to carry on their business either because of their superior tactics or with the connivance and collusion of some corrupt officers who supply the necessary intelligence information to the traffickers to enable them beat security checks.¹⁰⁶⁶ Traffickers and victims use all kinds of tricks, for example, they change their names to get passports, they destroy passports where they have been refused visa to travel and claim that these passports are missing or stolen so that they can be given new ones to enable them apply for visa with clean passport. They also go to the extent of posing as married couple who intend to travel and join their spouses abroad. When these young men and women are deported, the Nigerian Immigration Service officials do not know if they have actually been trafficked or not. All they are told is that these deported persons have been found abroad with illegal status. Depending upon the circumstances of deportation, deportees may be detained and interviewed on their return by immigration officers. This has not helped to reduce human trafficking because those involved most of the times do not want to reveal their status and that of their traffickers. This is because of the condition of detention they face on their return. These deported girls or victims arrive almost naked. They are not allowed to bring their belongings. The screening centers at the immigration office lack needed facilities.

The use of the ECOWAS Passport/Travel Certificate and the free movement between ECOWAS countries makes it difficult to apprehend traffickers and their victims by immigration officers because they do not need visas to travel into these West African countries. Once traffickers and their victims enter these countries it becomes easy for them to get fake visas and passports to travel into these European countries.

Though the Nigerian Immigration Service has been digitalized, there is more that needs to be done to reap the benefit of this system. Most officers are not computer literate and there are not enough computers to monitor the porosity in the service. Criminals may succeed in getting passport from different State Passport Offices in the country. No fewer than 5,273 Nigerians were deported by Italy, Spain, South Africa, Saudi Arabia and Ireland between September 2009 and August 2010. A breakdown of the figure showed that 3,636 were males, 1,553 were females, while 84 were minors.¹⁰⁶⁷ The Immigration Service needs to do more to curb human trafficking in Nigeria.

The Nigeria Police

¹⁰⁶⁵ Programme of Action Against Trafficking in Minors and Young Women from Nigeria into Italy for the Purpose of Sexual Exploitation. Report of Field Survey in Edo State, Nigeria. July 2003, p. 95.

¹⁰⁶⁶ Measures to Combat Trafficking in Human Beings in Benin, Nigeria and Togo. Nigeria Interim Report, December 2003, p. 35.

¹⁰⁶⁷ '5,273 Nigerians deported within 12 months', Punch: Friday, 8 October 2010. The Comptroller General of the NIS, Mrs. Rose Ugoma gave the figure in her office in Abuja on Thursday at a meeting with National Union of Road Transport Workers to address the problem of human trafficking in Nigeria.

The Nigeria Police is established and backed up by the Constitution of the Federal Republic of Nigeria.¹⁰⁶⁸ Tribes indigenous to present day Nigeria practiced law enforcement before the advent of the British colonial masters, through the means of subcultures with privileged membership which deliberated over political, social and religious matters. These societies commanded respect and reverence through the instrumentality of fear and intimidation.

The present day Nigeria police had its origin in the colony of Lagos in 1861.¹⁰⁶⁹ In June of that year, the Consul John Beecroft, the then representative of the British Government sought permission of the Queen to enlist a Consular Guard of thirty men. The request was granted and the name “Consular Guard” was adopted for an operational force for the Colony of Lagos.

Two years later, in 1863, this small guard of thirty men was renamed “Hausa Police”; then consisting an additional enlistment of run away slaves captured at Jebba by Lieutenant Glover R.N. which blew up the number of the corps to six hundred men. In 1879 the force was renamed “Hausa Constabulary” and it was headed by an Inspector-General. Duties of the corps were mainly military, though with a few civil functions.

On the 1st of January 1896, the Lagos Police Force was created and it was armed. The force operated mainly in the Lagos area while the Hausa Constabulary operated in the hinterland.

The Fire Brigade was formed in 1901 and the Niger Coast Constabulary was also formed in 1894 which took care of the Niger Coast Protectorate which came into being in 1893 with Headquarters in Calabar.

With the proclamation of the protectorate and Colony of Southern Nigeria in 1900, majority of the men in Niger Coast Constabulary joined the Southern Nigeria Regiment (Army). The remainder of this force as well as that of the Lagos force was absorbed into the southern Nigeria police force, which came into existence in 1906.

Until 1930, Northern and Southern Nigeria maintained individual forces that operated separately. On the 1st of April 1930, the Nigeria police was formed with Headquarters in Lagos under the command of an Inspector General, Mr. Duncan. In 1937, the title “Inspector-General” was changed to “Commissioner”.

With the division of the country into East, West and Northern Region, the force was likewise divided.

Under the Nigeria Independence Constitution, Order-in-Council, the police was established for the first time as a federal force charged with the responsibility of maintaining law and order throughout the federation. The title of “force” was removed in principle in 2002. The “Nigeria Police Force” was renamed “Nigeria Police”.

The Nigeria Police is statutorily¹⁰⁷⁰ charged with the responsibility of investigating crimes; apprehend offenders; interrogating suspects; granting of bail to suspects pending the completion of investigation or prior arraignment in court, serving of summons, execution of warrants and prosecution of cases especially in the lower courts. Additionally, the police are also empowered to search and seize properties suspected to be stolen or associated with crime, organization of identification parade, the taking of measurements, photographs and finger prints impression of persons in custody.¹⁰⁷¹

The Nigeria Police has become increasingly concerned with the spate of human trafficking. Since the revelation of this problem in 1994, there have been several meetings between the Nigerian law enforcement agencies with their Italian counterparts to work out modalities for the control and reduction of the influx of Nigerian women to Italy for prostitution.¹⁰⁷² The government of Nigeria has also set up a task force on human trafficking in the Nigeria Police Department in 2001. The task force is charged with the responsibilities covered by the Protocol on Trafficking in Persons. The Anti-Trafficking Units are located at exit and entry points.

Victims are regularly repatriated to Nigeria from destination countries – particularly Europe after due consultation with Nigerian Embassies in the relevant countries. All repatriated victims are usually received at the Murtala Mohammed International Airport, Lagos by the Police and Immigration service and taken afterwards to the Police Headquarters at Alagbon, Lagos where they are interrogated by the police and immigration service. The law enforcement agencies in most cases do not actually know whether all repatriated persons are victims of trafficking or not. What is clear to them however is that they were found abroad with illegal status. In most cases, victims of trafficking are not treated like victims. They are mostly regarded as criminals and illegal aliens and treated as such by receiving countries. These victims are repatriated in the most degrading conditions, having been subjected to periods of detention in “concentration camps” and sent back home penniless, inadequately dressed, emotionally, psychologically and sometimes physically battered. Their situation is made worse by their home state where they are subjected to further humiliation in the hands of police, who detain them for days without money to buy food for themselves and have to rely on humanitarian support.

¹⁰⁶⁸ Section 214(1) Constitution of the Federal Republic of Nigeria, 1999.

¹⁰⁶⁹ https://en.m.wikipedia.org/wiki/Nigeria_Police_Force_History (Accessed on 17/6/2015) @ 8:17AM.

¹⁰⁷⁰ S. 4 of the Police Act Cap. P19 Law of the Federation 2004.

¹⁰⁷¹ Alemika E.E., “Democracy and Criminal Justice and Administration in Nigeria” in Dakas, C.J. et al. (ed.) New Vistas in Law, Vol. 2 (Jos, Faculty of Law, University of Jos, 2003) p. 307.

¹⁰⁷² Trafficking in Human Beings: Nigerian Law Enforcement Perspective, Verona Italy, 22nd-23rd October, 1999, p. 6.

When interrogation of repatriated victims are concluded, they are either released to their relatives or dumped at their state liaison offices in Lagos for onward transfer to their various states. These liaison offices do not have the facilities to accommodate or adequately cater for the needs of these victims. Consequently, they almost immediately end up on the streets and go their separate ways to wherever they please.

In a study carried out in 2003, a liaison officer revealed that some of the repatriated girls immediately go on the roads around the Lagoon area of Lagos Island to solicit for client to enable them raise enough money to either transport themselves back home or make arrangement to return to the countries from which they were repatriated.¹⁰⁷³

The police lack the will to prosecute trafficking cases. Trafficking cases cannot be tried until the police have made a concrete case for prosecution. A number of cases were struck out by court because prosecuting police officers did not show up in court. It is alleged that police sometimes collude with traffickers to “convince” complainants to settle out of court. Even when cases reach the court, it is difficult to secure conviction of these traffickers due to investigations not properly carried out by police officers who deliberately refuse to investigate because they have collected money from traffickers.

Ministry of Justice

The Ministry of Justice through the office of the Director of Public Prosecution is involved in the prosecution of cases involving the Federal Government’s interest in courts throughout the Federation. However, there are a lot of difficulties that have been discovered in the prosecution of these cases by the Director of Public Prosecution or those acting on his behalf. There is delay in the prosecution of cases, due to adjournment, lack of counsels, lack of funds and facilities required to discharge their duties.

The Ministry of Justice is involved in anti-trafficking activities. Their functions as it relates to human trafficking are:

- d) Receiving files from the Nigerian police, immigration and other law enforcement agencies, ministries and extra-ministerial departments and proffering legal opinions on the criminal aspects.
- e) Where a trafficking matter is incidental for public prosecution, the department handles the proffering of charges and arraignment for prosecution. This in our opinion is a duplication of the duty of the National Agency for the Prohibition of Trafficking in Persons.
- f) Make suggestions for review of Laws relating to trafficking to meet with global trends.

From the above, it is clear that the Ministry of Justice cannot prosecute cases until reports of investigations are forwarded to the Office of Director of Public Prosecutions.¹⁰⁷⁴ This implies that successful prosecution of traffickers rests very much on thorough and honest investigations by the Police Department.

Courts

Judicial powers in Nigeria are vested in the courts. The courts are constitutionally the arm of the criminal justice system that convict and sentence people to terms of imprisonment for offences committed by them.

The High Court shall have jurisdiction to try offences under this Act.¹⁰⁷⁵ Before December 2004 when NAPTIP secured the first conviction for trafficking, there were no human trafficking charges in court that came to a successful end under the new law. Criminal justice and law enforcement personnel are unfamiliar with the law and its specific provisions. Most times trafficking offenders were still being prosecuted under the provisions of the Criminal and Penal Codes. Courts do not have hard data on human trafficking cases, as virtually most of them knew what they knew of trafficking and the law from pages of electronic media and not their courtrooms.¹⁰⁷⁶ Although some of the judicial officers belatedly realised that cases of slave dealing, child stealing, unlawful removal from parental custody etc. that they had dealt with in the past were actually trafficking related cases, they still could not supply statistics of the number of such cases their courts had handled. Trafficking offenders were consequently still being prosecuted under the provisions of the Criminal and Penal Codes.

In August 2004 however, officials of the Edo State Zonal Office of NAPTIP filed the first case under the Trafficking Act. In *Attorney-General of the Federation v. Sarah Okoya*,¹⁰⁷⁷ an 18-count charge was proffered against the accused for *inter alia*, procuring for prostitution six girls, organizing foreign travels to

¹⁰⁷³ UNODC/UNICRI Programme of Action Against Trafficking in Minors and Young Women from Nigeria into Italy for the Purpose of Sexual Exploitation. Report of Field Survey in Edo State (2003).

¹⁰⁷⁴ *Attorney-General of the Federation v. Sarah Okaja* (Unreported) Suit No. B/15C/2004, delivered December 15, 2005

¹⁰⁷⁵ Section 33 TIPLEA.

¹⁰⁷⁶ Okojei et al, Report of Field Survey in Nigeria in Measures to Combat Trafficking in Human Beings in Benin, Nigeria and Togo, UNODC, August 2004, p. 152.

¹⁰⁷⁷ *Op. cit.*

promote prostitution for the six girls and deceitful inducement of the named six girls to travel with her from Uromi in Edo State, Nigeria to Cotonou in the Republic of Benin contrary to Sections 15(a), 16 and 19(1) (b) respectively of the Trafficking Act. In this case, the accused procured a total of six girls whom she induced to travel with her to Cotonou in the Republic of Benin under the pretext that they were going there enroute to Spain where they were to work for her as hairdressers and shop assistants in her salon and shops. She collected various sums of money from the girls supposedly to procure travelling documents and plane tickets and took them before a native doctor in a shrine to administer oaths of allegiance and faithfulness in their dealings with their “Madam” after their arrival in Spain. Upon their arrival in Cotonou however, the accused stationed them in a hotel and told them point blank that they had to prostitute themselves for their sustenance. The girls ganged up and rebelled against the accused and with the help of the hotel manager, they fled to the Nigerian Embassy in Cotonou. The Embassy thereafter repatriated the girls and the accused back to Nigeria into the waiting hands of Immigration officials and later NAPTIP investigators.

At the close of the case, the learned trial judge, found the accused guilty of the offences charged under Section 19(1) (b) but not guilty of the offences charged under Sections 15(a) and 16 of the Act; rather the court found the accused guilty of attempt to commit the offences charged under Sections 15(a) and 16, under Section 27(1) of the Act (which imposes only 12 months imprisonment) and consequently sentenced the accused to a total of 3 years imprisonment with hard labour. According to the court:

The seriousness or gravity of the offence charged under Section 15(a) of the Act is dictated by the heavy punishment of up to 14 years imprisonment imposed without an option of fine. Consequently, every ingredient of the offence must be proved to sustain a conviction under the section. In my view for the offence of procuration for prostitution to be complete, the prostitution for which the girls were procured or offered must have taken place. Since the girls repulsed and aborted the prostitution intended by the accused, the accused will only be liable for attempting to procure or use them for the act. She will therefore be liable to conviction for an attempt by virtue of Section 27(1) of the Act ... The accused endeavoured to encourage the girls to engage in prostitution, but did not succeed in promoting or encouraging the intended prostitution.

Under Section 16 of the Act, the foreign travel to Cotonou *must be shown to have actually promoted prostitution or encouraged same* in order to commit the offence under the section. The accused is shown to have organized the trip to Cotonou and to have attempted to talk the six girls into prostitution but *the trip itself is not shown to have actually promoted or encouraged prostitution*.

It is difficult to understand the interpretation given to the provision of Sections 15(a) and 16 of the Act by the learned judge. The court itself explicitly admits that the only reason why the prostitution purposes for which the accused procured the girls and organized their foreign travel to Cotonou failed because the girls refused to cooperate with the accused. It is submitted that the refusal of the girls to help actualize the purpose of the accused does not detract from the fact that the offences had been committed. The provision of Sections 15(a) and 16 of the Act do not require that the prostitution must actually take place but that the reason for procuring and organising the foreign travel be for prostitution purposes. It is hoped that the reasoning in this case would not be a precedent for future cases.

The court faces a lot of constraints, in the prosecution of cases involving human trafficking. They are: undue delays in prosecution of cases due to unwillingness of witnesses to testify due to fears of reprisal attacks or standing before the public in an open court to bare the “sordid” experience, bad treatment from law enforcement bodies etc. In the case of *Attorney-General of the Federation v. Monday Aikhomu*,¹⁰⁷⁸ the accused was arrested in Kano motor park in the company of three girls, with whom he was travelling to Niger Republic and subsequently charged for the offences of procuring the three girls for prostitution purposes, organising foreign travels to promote prostitution for the three girls and the deceitful inducement of the girls to travel with him from Edo State, Nigeria to Niger Republic, via Kano. Only the investigating officers in the case testified in court for the prosecution and tendered the statements of both the accused and the alleged victims. The girls in question refused to testify in court in support of the content of their statement. The court had no choice but to discharge and acquit the accused for insufficient evidence in proof of the alleged offences.

Undue delay in the dispensation of justice is an inhibiting factor for successful prosecutions. The machinery of justice in the regular court is ever so slow due to several adjournments caused by prosecutors or defence counsels, absence of witnesses in court, frequent public holidays, or transfer of presiding judges. When any of these occur, cases are either started *do novo* or struck out of the court list for want of diligent prosecution.

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(Unreported) Suit No. B/13C/2004, Benin High Court Judgement, delivered on December 15, 2005.

The delay in seeking redress in Nigerian courts has also been described by victims of human trafficking as inexcusable. The former Nigerian President, Olusegun Obasanjo at the All Nigerian Judges Conference described delay in our justice delivery system as:¹⁰⁷⁹

My Lords, the inexcusable delay in our justice delivery system is a great concern to me as it must be to your lordships. "Concern" is perhaps euphemistic description I can find for a most scandalously embarrassing situation where a simple case of breach of contract will endure for five or more years in the court of first instance, and last for fifteen years in the final determination in our apex court. The situation is even worse and more pathetic in criminal cases particularly when the accused person who enjoys the constitutional presumption of innocence until proved otherwise, and who stands the chance of an acquittal in the end, is in the meantime, in custody.

These delays still go unabated, our judges still take evidence in long hand as opposed to electronically, that are lacking in courts all over the federation with the exception of Lagos State.

CONCLUSION

We have identified that human trafficking is a serious violation of human rights of persons and there is a strong global resistance and Nigeria is not left behind in combating the menace of human trafficking.

An agency known as the National Agency for the Prohibition of Trafficking in Persons and Other Related Matters (NAPTIP) and other security agencies have been set up to tackle the scourge of human trafficking in Nigeria. These security agencies, for example, the police, court, ministry of justice, Nigeria immigration service have been examined in the course of our study. We assessed their effectiveness and identified a constellation of reasons why they remain unsatisfactory.

Security agencies response to trafficking in persons appear slow, but the effort in recent times is certainly repositioning its combative capabilities. This assertion stems from the quantum of activities geared towards improving the various security agencies capabilities.

The greatest challenge-faced by these security agencies is, the absence of a mechanism for the exchange of information. Security agencies still hoard information about trafficking and all sectors seem to be addressing the issue individually as if to prove that they are doing more than others, forgetting that being an organised and using multi-sectoral approach is the only key to success. Another challenge is that a lack of proper training of law enforcement or security agencies in the identification and handling of these cases, coupled with the absence of supporting equipment to conduct proactive investigation and corruption.

Communities from where these victims of trafficking are sourced from, most times are not included in the activities of the National Agency for Prohibition of Trafficking in Persons (NAPTIP) or the security agencies. These traffickers are usually from our communities made up of friends, neighbours, acquaintances, family members or local youths who engage in this act from time to time.

Combating trafficking into and from Nigeria remains a serious challenge and require the unrelenting attention of law enforcement or security agencies and the public not only in Nigeria but also in the rest of the African continent and other parts of the world.

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¹⁰⁷⁹ Obasanjo, O. "Address at the All Nigerian Judges Conference 2003" in All Nigerian Judges Conference 2003 (Ibadan: Spectrum Books Ltd., 2005) p. xxix-xxx.