

**SEX TRAFICKING AND VIOLENCE AGAINST
CHILDREN IN NIGERIA: CAUSES AND LEGAL
REMEDIES****Osita Agbu & Chinyere Rita Agu****ABSTRACT**

This article examines the problem of sex trafficking and violence against children in Nigeria, focusing on the causes and legal remedies available; as often times, the public is ignorant of the existing remedies and the magnitude of the problem. It conceptually clarifies its position on who actually is a child? And what is meant when we discuss sex trafficking as this relates to children. In outlining the legal and policy remedies for the protection of children against sex trafficking and violence, the article outlines and distinguishes between national, regional and international legal frameworks and remedies, and finally discussed and espoused the possible remedies embodied in the existing frameworks in Nigeria. The challenges encountered are also discussed and recommendations proffered for addressing this serious national, as well as global problem of the 21st century.

Keywords: *Sex trafficking, Child rights, Violence against children, Child protection*

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Introduction

Every child has the right to freedom from all forms of violence. This principle is not just common sense and basic morality, it is also an international legal obligation, as defined in the convention on the Rights of the Child of 2003, which is the world's most widely ratified human rights treaty. It is noteworthy that without the threat of violence, children are free to develop their talents and skills to full potentials. The potential for positive change is enormous, in an environment bereft of violence. Violence remains a pervasive phenomenon that

blights the lives of millions of children, haunts entire communities and stifles the prospects for sustainable development and social progress in the 21st century.

According to UNICEF Global Survey on Violence against Children “violence cuts across boundaries of age, race, culture, wealth and geography. It takes place in the home, in the streets, in schools, in the workplace, in detention centres and in institutions for the care of children (UNICEF, 2013). Violence is broadly defined by the World Health Organization as “the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, which either results in or has a high likelihood of resulting in injury, death, psychological harm, mal-development or deprivation. However, it has also been defined as a pattern of behaviour intended to establish and maintain control over the family, household members, intimate partners, colleagues, individuals, or groups (Newfoundland Labrador, 2015). The elements of control and abuse are therefore inherent in the type of violence meted out to say, children and women in particular. Sexual violence, specifically refers to a situation in which a person is forced to unwillingly take part in sexual activity. This situation is further alarming when the person involved is a child, understood as a person under the age of eighteen years. Violence shows itself in many forms: physical and emotional violence, sexual abuse, rape, trafficking, torture, inhuman and degrading treatment or punishment, forced and child marriage, acid attacks, killings in the name of honour, forced begging, bonded labour and so many others. Such violence has serious and long-lasting consequences. It is often associated with poverty and deprivation, and acts as a hindrance to the fulfilment of potentials of the child.

Trafficking in human beings, especially in minors and young women, for the purpose of sexual exploitation has become an issue of major concern globally because of its rapid growth in recent years. The phenomenon has become more transnational in scope. Children, because of their naïve nature, young

age and innocence are vulnerable to trafficking. Trafficking is a heinous trans-national crime undertaken by highly organized and powerful syndicates. According to UN Report from 2012 (United Nations, 2012), there are about 2.4 million people throughout the world who are victims of human trafficking at any given moment. In 2012 the industry was worth an annual estimated sum of \$32 billion, and 80 percent of victims were being exploited as sexual slaves. The 2014 Global Report on Trafficking in persons, based on data from between 2010 and 2012, shows the share of trafficked children was 5 percentage points higher than recorded in the report, which used data from between 2007 and 2010.

Related to human trafficking is sex trafficking. This is the trafficking of persons, in this case, children for sexual exploitation. According to United States Administration for Children and Families, “sex trafficking is a modern day form of slavery in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act is under the age of 18 years.” (US Fact Sheet, 2012). Sex trafficking is composed of two major aspects: human trafficking and sexual slavery. The two represent the supply and demand side of the sex trafficking industry, respectively. This exploitation is based on the interaction between the trafficker selling a victim (the individual being trafficked and sexually exploited) to customers to perform sexual services. Sex trafficking crimes are usually defined by three steps: acquisition, movement, and exploitation. The various types of sex trafficking are Child Sex Tourism (CST), Domestic Minor Sex Trafficking (DMST) or Commercial Sexual Exploitation of Children and Prostitution.

Invariably, sex trafficking and violence against children are underpinned by exploitation. Exploitation includes at a minimum, the exploitation of the prostitution of children or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of

organs. Trafficking for the purpose of sexual or economic exploitation is considered a contemporary form of slavery, and a serious violation of children and women's human rights. Trafficking is accomplished through the use of force, coercion, and/or deception, with the ultimate intent of exploiting the victim. While the victims may have originally agreed to voluntarily live with the trafficker, they do so under conditions of deceit or fraud. Estimates show that between one and two million women and children are trafficked each year worldwide for forced labour, domestic servitude, or sexual exploitation (UNICEF, 2013). Trafficking, which is regarded as a modern form of slavery, is an affront to human dignity, often involving psychological terror and physical violence. Trafficking encompasses issues of human rights and rule of law, of law enforcement and crime control, of inequality and discrimination, of corruption, economic deprivation and migration.

Traffickers often control their victims through violence or threats of violence, which are the most common forms of coercion used against trafficked women. Traffickers or employers can lead to fines, threats, physical violence, and even death. Victims live in fear of their employers or of being discovered by the police and repatriated. Data also show that children from Togo, Mali, Burkina Faso and Ghana are trafficked to Nigeria, Ivory Coast, Cameroon and Gabon. Children are trafficked both in and out of Nigeria. Nigeria also serves as a transit hub for trafficking in West Africa and to a lesser extent, a destination point for young children from nearby West African countries (Hodges, 2001:211). There is also evidence of trafficking in women and children within Nigeria.

The number of child victims of trafficking has been on the increase - from 2003 to 2006, 20 percent of all detected victims were children, and between 2007 and 2010 this percentage rose to 27 percent, two in every three victims are

girls. Children may be trafficked for different purposes, including sexual exploitation and domestic work. They may also be trafficked for adoption, exchange of debts, recruitment into criminal activities or armed groups or, in a small number of cases, for organ harvesting. An estimated one million children are coerced, kidnapped, sold and deceived into child prostitution or child pornography each year - many of them victims of trafficking (Global Report on Trafficking in Persons 2012:11& 12).

Nigeria was adjudged by the United States of America a source, transit and destination country for women and children subjected to trafficking in persons, specifically conditions of forced labour and sex trafficking (Ejiofor, 2015). The United Nations Office on Drugs and Crime (UNODC) in its 2014 Global Human Trafficking Reports stated that the cases of human trafficking are on the rise in Nigeria and some major parts of the world (Oluwarotimi 2014:3). The report further stated that data on the gender profile of offenders in Nigeria is scarce and the involvement of females in the case is up to 50 percent (Fedotor, 2014).

As a result of the escalating nature of trafficking both internally and externally, the Federal Government of Nigeria took a giant stride against trafficking and treated it as an important justice issue. In 2003 the Federal Government of Nigeria passed the Trafficking in Persons (Prohibition) Law (Enforcement) and Administration Act 2003, which established the National Agency for Prohibition of Trafficking in Persons and Other Related Matters in 26th August, 2003. The Act is a major domestic legislation in Nigeria intended to protect women and children from violence. It made provisions for addressing sex trafficking. The Act was further amended in 2005 and recently in March 2015.

Sex trafficking in children is immoral, and it is also contrary to the stipulations of national and international instruments, which perceive sex trafficking and violence on children as an offence. Information provided by the immigration

authorities [*The Guardian* (Nigeria) 1998:9] indicate that children between the ages of seven and sixteen have been transported to Gabon and Cameroon, from various points in the east of Nigeria, in the states of Abia, Akwa Ibom, Cross River, Rivers and Imo. Between March 1994 and January 1997, at least 400 children were rescued in Akwa Ibom State, which is one of the main departure points for Gabon. This article will now focus on sex trafficking and violence on children in Nigeria, and the causes and legal regime in place to curb these crimes in the country.

Who then is a Child?

This question has remained controversial, but relevant as long as one can remember. There is no universally accepted legal definition of a child and the word 'child' may depend on the context in which it appears. There are many statutes concerning children which contain relevant definitions of the word child or cognate expressions like children but in the absence of a general definition provided by a statute of interpretation, it might be unwise to choose one as the acceptable definition of a child. The United Nations Convention on the Rights of the Child (CRC, 1989, Article 1) defines a Child as every human being below the age of 18 years, unless under the law applicable to the child, adulthood is attained earlier. Further, the OAU Charter on the Rights and Welfare of the Child 1999 defined a child as every human being below the age of 18 years. It should be noted that Nigeria is signatory to the above mentioned international instruments.

In Nigeria the Child Rights Act of 2003 defines a child as under 18 years of age and states that a child in conflict with the law must be dealt with under the Act. The Children and Young Persons law of 1943 defines a child as under 14 years (Children and Young Persons Law, 1943, Article 2). It should be noted that child legislation in states that have not yet adopted the Federal Childs' Rights

Act of 2003 apply The Children and Young Persons Law, enacted originally in 1943, and extended to the Northern Region in 1958.

In the southern states, the Criminal Procedure Act defines a child as under 14 years (Criminal Procedure Act, 1945). At least two states, in adopting the Child's Right Act of 2003, have modified the definition of the child. In Akwa-Ibom State in the South, a child is defined as age 16 years and under, (CRC/C/NGA/CO/3-4 2010:26), those aged 17 years are presumably seen as adults. In Jigawa State in the north, a child is defined with reference to puberty which suggests that a Muslim child from the age of puberty may be sentenced to death under Sharia Penal Code 2000 and the Sharia Criminal Procedures Code Law 2001, and a non-Muslim child from the age of 17 may be sentenced to death under the Penal Code and the Criminal Procedure Code 1960.

In sum, it could be generally said that "a child is someone who is not an adult, and inversely, an adult is someone who is not a child" (Agbu, 2009:12). This analogy is widely accepted if we accept that a child's age ranges from 0 – 17 years; and it includes babies, toddlers and teenagers under the age of 18 years.

The Dynamics of Sex Trafficking and Violence on Nigerian Children

Often, victims of sex trafficking and violence are deceived into travelling to African countries and beyond, such as the United Kingdom and Italy. It was recently reported that a notorious 36-year old mother of one, Franca Asemota, whose stock in trade is trafficking in under-aged girls for prostitution abroad was arrested by the National Agency for the Prohibition of Trafficking in Persons and Other Related Offenses (NAPTIP). Asemota was arrested in Benin City, the Edo State capital, and extradited to the United Kingdom. The arrest was carried out by NAPTIP who had been working with the National Crime Agency of United Kingdom since 2011. The lady is facing extradition to

Britain where she is wanted for organizing a network that trafficked 40 young girls, mostly aged 14 years and above, from remote Nigerian villages into Europe using Heathrow Airport as a transit hub (Ochoga, *Leadership Newspaper*, 2015:4). Furthermore, it was reported that:

The girls were promised education or jobs such as hairdressing in such European countries as France, Belgium, Spain but were forced into prostitution once they got there. Others were raped under oath with their traffickers using witchcraft to terrify them- that their parents would be so killed, so they would not-talk to police or attempt to escape.

Sex trafficking takes place in both public and private places. Sex trafficking has also shifted to more sophisticated dimensions like the existence of baby factories. In Imo State, Nigeria, it was reported (*Horn Newspaper*, 2013:13) that young girls were kept in an enclosed house and a 21 year old young man was contracted and paid to have sexual intercourse with 17 teenage girls to make them pregnant. The pregnancies resulted in babies from the girls that were then sold by the owner of the 'baby factory' for outrageous prices, and the teenage girls that were trafficked from the rural villages were given a little sum of money for their suffering and sexual slavery. Sex trafficking has therefore become a problem of special concern in Nigeria, both because of its scale and its role in the spread of the HIV/AIDs epidemic in the country.

In addition, Violence against children takes a variety of forms and is influenced by a wide range of factors, from the personal characteristics of the victim and the perpetrator to their cultural and physical environments. However, much violence against children remains hidden for many reasons. One is fear: many children are afraid to report incidents of violence against them. In many cases parents, who should protect their children, remain silent if the violence is perpetrated by a spouse or other family member, a more powerful member of society such as an employer, a police officer, or a community leader. Fear is

closely related to the stigma frequently attached to reporting violence, particularly in places where family “honour” is placed above the safety and well-being of children. In particular, rape or other forms of sexual violence can lead to ostracism, further violence, or death. Societal acceptance of violence is also an important factor: both children and perpetrators may accept physical, sexual and psychological violence as inevitable and normal. Discipline through physical and humiliating punishment, bullying and sexual harassment are frequently perceived as normal, particularly when no “visible” or lasting physical injury results.

Studies suggest that young children are at greatest risk of physical violence, while sexual violence predominantly affects those who have reached puberty or adolescence. Boys are at greater risk of physical violence than girls, while girls face greater risk of sexual violence, neglect and forced prostitution. Social and cultural patterns of conduct and stereotyped roles and socioeconomic factors such as income and education also play an important role. Small-scale studies reveal that some groups of children are especially vulnerable to violence. These include children with disabilities, those from ethnic minorities and other marginalized groups, “street children” and those in conflict with the law, and refugee and other displaced children (UNICEF, 2013).

Causes of Sex-Trafficking Amongst Children

The causes of sex trafficking amongst children may be categorized into push and pull factors. Push factors include; poverty, peer group influence, corruption and bad governance. Poverty is a major reason for the victims’ vulnerability to sex trafficking. In Nigeria, the economic situation is a direct cause of sex trafficking as in most cases the parents of the children trafficked are well aware of what they are entering into from the beginning but due to the unemployment rate, low standard of living and the lack of basic social amenities they become

gullible to such offers. Greed is another reason which makes parents to subject their children to sex trafficking so that they can drive exotic cars and build state of the art mansions. Peer group influence- some children who are trafficked get influenced through their peers who they believe are better than them or who they see as their role models. Other push factors are corruption, bad governance, low level of education and the increasing feminization of poverty, in the sense that the girl-child in need, find it more difficult to get out of it due to deep-seated societal encumbrances.

The Pull factors include:

- **Ignorance of Legal and Human Rights Issues**

Often parents, stakeholders and victims are ignorant of the legal and human rights issues surrounding the problem of sex trafficking and violence against children, and often these crimes are over-looked by society and offenders hardly brought to trial.

- **High Rates of Migration and Emigration**

Poor governance resulting in poor economic conditions in several countries in Africa force their youthful populations to seek greener pastures abroad at the risk of their lives. Invariably, children also become victims as several of them are trafficked to the richer parts of the world and experience all forms of violence, including sexual violence.

- **Globalisation - Especially Growth of Trans-border Sex Trade**

A negative side of globalisation is the increase in trans-national organised crime that also includes trans-border sex trade. Faster

technologies, especially aviation technology and easy movement of financial resources have made it attractive for international crime syndicates to benefit from the profits of sex trade.

- **Neglect and Abuse of the Traditional Fostering System**

Africa is a continent caught in between two worlds, a fast changing traditional system that encapsulates the extended family, and a modern world that glorifies the nuclear family. With modernization, the traditional fostering system is fast withering away and the remnants of this practice are often abused by relatives who sometimes expose the child to maltreatment and sexual violence.

- **High Value of Foreign Currency Especially the EURO and Dollars**

Global economic recession has impacted negatively on Africa but more especially those countries in Africa that rely on proceeds of hard currency from single products such as the sale of crude oil and gas and agricultural produce. The local currencies in Africa are fast losing their value to the international currencies like the Euro and the Dollar. This has made the exploitation of persons, including children who are forced into the global sex trade very lucrative in respect of the ease of recruitment. This situation therefore encourages this crime.

- **Gender Discrimination**

In African societies, it is common knowledge that the boy child is often more valued than the girl-child. It is therefore not unexpected that the girl-child who experiences this discrimination may be more easily convinced or recruited by the perpetrators or traffickers to seek for better life outside of the home environment. Invariably, they become victims of exploitation, including sexual violence.

In sum, there are diverse reasons why many Nigerian children are vulnerable to trafficking, including widespread poverty, large family size, and rapid urbanization with deteriorating public services, low literacy levels and high school-dropout rates. The demand for cheap commercial sex workers in countries of destination strongly contributes to the growth of this phenomenon and the success of this criminal network. Parents with a large family, often overburdened with the care of too many children, are prone to the traffickers' deceit in giving away some of their children to city residents or even strangers promising a better life for them. Traffickers exploit the trust of people rooted in a widespread, culturally accepted common practice in West Africa of placement and fostering as part of the extended family safety net. In some instances, desperately poor and uninformed parents willingly co-operate with the traffickers, giving away their children in exchange for a small fee. In the hands of unscrupulous guardians, these children are increasingly trafficked and exploited for cheap labour. The poor economic situation in Nigeria has led to unemployment and high rates of school dropout. These circumstances have created a large pool of inactive and unengaged children and adolescents who are much more vulnerable to trafficking than their peers who go to school. The motivation, especially of teenagers, to find work away from home is often driven by the increasing taste for material things. For many others, it is a question of bare survival.

Legal and Policy Remedies for Protection of Children against Sex Trafficking and Violence

The legal framework and policy remedies for protection of children against sex trafficking and violence is stipulated in international, regional and national instruments which Nigeria have signed and ratified. However, the legal framework for the protection of children against sex-trafficking and violence in Nigeria is weak, uncoordinated and not in line with Nigeria's obligations under

the Child Rights Convention (UN Convention on the Rights of the Child 1989) and the African Charter on the Rights and welfare of the Child. Articles 4 of the CRC and Article 1 of the African Charter on the Rights and welfare of the Child respectively require states parties to undertake all appropriate legislatures, administrative and other measures for the implementation of the rights recognized in the conventions.

Despite the fact that Nigeria has domesticated the CRC in 2003, she has not yet modernized its legal framework for the protection of children due to a number of constraining factors. The first is a federal constitutional arrangement that does not situate issues concerning children within the legislative purview of the National Assembly, but with state legislatures; thereby making it difficult to establish an adequate legal framework applicable throughout the country. A second factor is the overbearing influence of cultural tradition, which fails to recognize the individuality of children beyond seeing them as gifts from God. Poverty, illiteracy and ignorance tend to perpetuate discriminatory practices in Nigeria's traditionally patriarchal society. In these conditions, it has proven difficult for Government to introduce laws, policies and programmes to uphold the rights of children. Consequently, the broad picture is one of nominal legal and policy provisions that lack uniformity or real impact. Actual practice is driven more by cultural sentiments than by constitutional, legal or institutional obligations.

International Legal Framework and Remedies

The United Nations Convention on the Rights of the Child

The text of the convention was adopted without modifications by the General Assembly of the United Nations on 20 November 1989. It entered into force as international law on 2 September 1990 after its ratification by the required 20 states. The Convention incorporates the whole spectrum of human rights - civil,

political, economic, social and cultural and sets out the specific ways in which these should be made available to children. However the major weakness of the Convention lies in the mechanisms for its implementation (Muscroft, 1999:18). The Convention has no formal complaint mechanism and it cannot impose effective sanctions on under-performing governments. Its implementation lies in the hands of the individual governments whose attitudes vary from enthusiasm to indifference. Nigeria is a signatory of this Convention and she has ratified this convention.

Other International instruments include:

- I. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.
- II. ILO Convention 138 on Minimum Age.
- III. ILO Convention 182 on Worst Forms of Child Labour.
- IV. Additional Protocol to the UN Convention against Transnational Organised Crime to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.
- V. Convention on the Elimination of all Forms of Discrimination against Women.
- VI. International Convention on Civil and Political Rights.
- VII. International Convention on Economic, Social and Cultural Rights.
- VIII. Convention on the Rights of Persons with Disabilities.

Regional Legal Framework and Remedies

- I. African Charter on the Rights and Welfare of the Child.
- II. The African Youth Charter (2006).
- III. The Convention on Mutual Assistance in Criminal Matters of the ECOWAS (2006).

National Legal Framework and Remedies

Protection of Children under the Constitution

The 1999 constitution as amended is the most important law providing protection for children, although the applicable provisions are indirect. Chapter

II of the constitution, on the Fundamental Objectives and Directive Principles of State Policy, contains principles that are supposed to guide and direct the Nigerian state in the formulation and execution of policies. Several of these principles are important for child survival, development and protection. Similarly, there are provisions in Chapter II on the equality of sexes and the prohibition of discrimination in all forms.

Then, under Section 15(2), the government is charged with the responsibility of promoting national unity and a sense of belonging and loyalty among its citizens and accordingly discrimination on the grounds of origin, sex, religion, status, ethnic or linguistic association or ties is expressly prohibited.

Another Section of the constitution espouses the ideals of freedom, equality, justice, human dignity and the sanctity of the human person, as well as the provision of adequate infrastructure for leisure, social, religious and cultural life, medical and health facilities for all persons, and protection for children and young persons from all exploitation and from moral and material neglect (Section 17, CFRN 1999). Section 17(3) guarantees equal pay for equal work and Section 13 enjoins all organs of Government and authorities to observe and apply the provisions under chapter II.

Unfortunately, these provisions that directly address the rights of children are non-justiciable and cannot be legally enforced in a court of law, because Section 6(6) of the constitution prevents the courts from looking into whether or not the Fundamental Objectives and Directive Principles of State Policy have been implemented. This is a lacuna in the constitution that needs to be addressed.

It states:

The Judicial powers vested in accordance with the forgoing provisions of this section... shall not, except

as otherwise provided by this constitution extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this constitution” (The 1999 Constitution of the Federal Republic of Nigeria).

In the celebrated case of *Archbishop Olubunmi Okogie v. Attorney General of Lagos State* in 1981 (*Nigerian Weekly Law Review*, pt.200, 708, 1991), the court relied on Section 6 (6) and held that the provisions of chapter II of the constitution are not an obligation on the Government. This has remained a major obstacle to judicial intervention to promote the rights of children.

Nonetheless, item 60(a) of the Exclusive Legislative List does offer an avenue for the promotion and enforcement of the Fundamental Objectives and Directive Principles of State Policy. This item empowers the National Assembly to establish federal authorities with the specific purpose of promoting and enforcing observance of the Fundamental Objectives and Directive Principles, this has not yet been done in practice but offers an opportunity that should not be missed to promote and protect children’s rights.

Unlike the Fundamental Objectives, the Fundamental Human Rights spanning Sections 34-44 of Chapter IV of the Constitution are justiciable. Chapter IV covers provisions on the right to life, dignity, liberty; fair hearing, private and family life, thought, conscience and religion, expression, peaceful assembly and association, movement, freedom from discrimination etc.

Specifically, Section 33 guarantees the right to life of all citizens, children inclusive. Although the fundamental rights apply to all citizens, a child cannot invoke them directly through legal action. If an adult does not act on the child’s behalf, the child is unable to seek enforcement of his or her rights. It is suggested that there should be an insertion of specific provisions embodying

the rights of children as has been done in Ethiopia, Ghana, South Africa and Uganda.

Criminal Laws Protecting Children

Apart from the constitution, there are other laws which protect children from harm and sexual exploitation. Under the criminal law, the provisions are contained in the Criminal Code (Cap C3 Laws of the Federation of Nigeria, 2004) of Southern Nigeria and the Penal Code (CAP P3 Laws of the Federation of Nigeria) of Northern Nigeria. Examples of prohibited acts under the Criminal Code are indecent treatment of boys under 14 years (Section 215 of the Criminal Code) indecent treatment of girls under 16 years (Section 222 of the Criminal Code), abduction of girls with intent to have carnal knowledge (Section 225 of the Criminal Code). Trading in children by way of selling or barter is prohibited by Section 30 of the Children and Young Persons Act. Despite these provisions, the weakness of the mechanisms for monitoring, investigation and law enforcement mean that very few offenders are apprehended and brought to trial.

Protection of Children under the Labour Law

Likewise, laws to protect children from hazardous forms of labour have remained ineffective, because poverty drives parents to send their children to work, sometimes with little regard for the risks attached to the type and conditions of work in which they engage, and because of the non-enforcement of the Labour Act (Cap L12 Laws of the Federal Republic of Nigeria) in the formal sector, where the vast majority of these children work there are no effective mechanisms for the inspection of conditions of work, notably in the case of household employment of domestic servants, where some of the worst abuses take place, and little has been done to curb the activities of child traffickers, despite the prohibition of trading in children. Some parents perceive

children as synonymous with wealth because of the contribution they make to the productive work of the family. They are also valued as source of future security (De Boeck & Honwana 2005:4).

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

Nigeria is the first country to enact law against human trafficking fashioned along the Palermo Protocol on Trafficking Persons especially Women and Children supplementing the Convention on Transnational and Organized Crimes in Vienna in July 2000 and signed in Palermo Italy in 2000. This is the Trafficking in Persons (Prohibition, Law Enforcement and Administration) Act 2003 as amended in 2005 and recently in 2015. The law establishes an enforcement agency known as the National Agency for the Prevention of Trafficking in Persons and Other Related Offenses (NAPTIP) and its mandate is as follows:

- i. To investigate and prosecute cases of trafficking in persons.
- ii. To take charge and co-ordinate rehabilitation and counseling of trafficked persons.
- iii. To create awareness of the ills of trafficking.
- iv. To set up shelter for rescued victims of trafficking.

It should be noted that the NAPTIP Act of 2003 amended in 2005 had lapses both in terms of punishment and in terms of words of the law. The old law was reviewed and the new law became effective on March 26th, 2015 (Mannewsnigeria, 2015). However the Agency has evolved new strategies to curb the evil act of trafficking in human persons and the strategies in the new law are as follows:

- (i) Removal of organs which was not in the old law has been included in the new law.
- (ii) There are elements of smuggling of migrants which were not in the old law but now in the new law.

- (iii) In the new law also the use of trafficked children below the age of 12 years is prohibited entirely, and the punishment is now a benchmark, no more option to fine.
Previously somebody prosecuted for that kind of offence could have an option of fine in court. In law the essence of punishment is to serve as deterrent, and when the punishment is not deterrent enough it will not serve the desired purpose (Egede, 2005:12).
- (iv) The new law allows the Agency to generate funds as part of the plan to fight human trafficking in the country.
- (v) The new law empowered the Agency to confiscate assets and freeze accounts that were proceeds from human trafficking.

A few other African countries have also enacted similar legislations. These are Kenya, Uganda, Djibouti, Gambia, Senegal, Sierra Leone and Ghana (Olateru-Olagbagi, 2013:14). Some others have laws prohibiting child trafficking only (Togo, Mali, Burkina Faso and South Africa) and trafficking for sexual purposes only (Guinea and South Africa).

Protection by the Child Rights Act

The enactment of the Child Rights Act amounts to the implementation of Nigeria's commitment under international law to recognize and enforce within its territory the provisions of the Convention on the Rights of the Child. The main objective of the Child Rights Act according to its preamble is to provide and protect the rights of Nigerian children, secure the rights and interests of the Nigerian children irrespective of his or her parents, guardian's state of origin, ethnic nationality, sex, race, circumstances of birth, political opinion or religion.

The Child Rights Act of 2003 is an attempt to consolidate all laws relating to children into one single piece of legislation. In furtherance of this view, it has been argued that the Child Rights Act is also aimed at boosting and extending the frontiers of existing legislations contained in different federal and state laws protecting the interest of Nigerian children (Abubakar, 2012:209-230).

The Best Interest of a Child

The best interest of a child is of paramount importance in dealing with any issue relating to a child either by the family or the institutional bodies (like church, school, court etc.). The principle of the best interest of the Child is an age long notion in family law relating to children in general and custody in particular (Alston, 1996). Couzens (2010) argues that the principle is used in the sphere of Child protection and children's rights to influence decisions relating to children. Accentuating and clarifying on the best interest principle Joyce (2015) noted that it is a method of making decisions that requires the decision maker to think what the 'best course of action' is for the Child. She further went on to state that the principle does not presuppose the personal views of the decision maker but rather, compels the decision maker to consider both the current and future interests of the child, weigh them up and decide which course of action is on balance, the best course of action is for the child.

According to Buchanan and Brock (1998:19), the principle maximally promotes the good of the Child. It is submitted that the principle of the best interests of the Child should be considered as an elastic framework that saturates a wide range of factory like genetic, educational, environmental, financial and relational.

The normative foundation of the principle of the best interests of the Child is anchored on Section 1 of the Child Rights Act which provides that:

in every action concerning a Child, whether undertaken by an individual, public or private body, institutions of service, court of law or administrative or legislative authority, the best interest of the Child shall be of paramount consideration.

By this provision, the Child Rights Act reflects the general feelings across the globe that in the best interests of the Child, the weakness of infancy demands a

continual protection of children by the society. The principle under the Child Rights Act presupposes that in dealing with the Child, his or her wellbeing should trigger the consideration of circumstantial and non-circumstantial factors around the Child since Section 1 of the Child Rights Act articulated institutions, administrative authorities and legislative bodies that must hold fast to the best interest of the Child as the primary consideration in all matters affecting children, it is therefore trite that no agency or organ of government is protected from the pervading effects of observing the best interests principle. As formulated under the Child Rights Act, the principle applies to all children whether as a group or individually. This position is in line with the concluding observations of the committee on the Rights of the Child on the basis that using the plural “children” as opposed to the singular “Child” suggests the applicability of the principle to children as a group and not just to an individual Child (Alen, Lanotte, Berghmans and Verheyde, 2007:46).

In the same vein, Section 7(2) of the Child Rights Act made mention of the best interests of the child when it expressly enjoined guardians to direct the Child’s freedom of thought, conscience and religion with regard to his or her evolving capacities and best interests.

Another aspect of a Child’s best interest mentioned under the Child Rights Act relates to parental care and protection. Section 44 also mandates specialized police unit into whose custody a child may come, to ensure in the best interest of the child that the child establishes contact with the parents from the very first time he or she comes into contact with the officers of the law or anybody who has such responsibility (Section 44 of the Child Rights Act, 2003).

Challenges

Although the Child’s Right Act was enacted by the National Assembly and signed into law by the then President of the Federal Republic of Nigeria, its

applicability by the entire 36 states in Nigeria has been beclouded by constitutional problems. Important among these is that most of the subjects for instance, Tort, Contract, Adoption, Guardianship, Wardship etc. covered by the Act are not within the jurisdiction of the National Assembly to legislate on, but rather rests with the State Houses of Assembly. These are 'Residual Matters; in the 1999 Nigerian Constitution as Amended. This development has rendered the Act indefensible in terms of protecting the rights and interest of most Nigerian children. It is pertinent to note that some states in northern Nigeria view the contents of the Act as 'un-Islamic' and have indicated that they will not domestic the Act in their states. The solution being adopted by several states in Nigeria, apparently to circumvent the obvious constitutional difficulties the Act is entangled in is to have their State Houses of Assembly enact the Act in the shape of a Child's Rights Law applicable in such state. Several states in Nigeria have adopted this strategy.

It is important to note that Nigeria is a federation consisting of thirty-six states and a Federal Capital Territory. Each of the thirty-six states has a House of Assembly. However, the Federal Capital Abuja does not have a House of Assembly because it is not classified as a state of the Federal Republic of Nigeria. Consequently, the laws made by the National Assembly apply directly to the Federal Capital Territory. One of such laws is the Child's Rights Act which applies to Abuja, the Federal capital Territory, without any modification.

However another significant challenge in Nigeria and around the world is that violence in some places continues to be accepted as a child rearing practice within the home, as a legitimate form of discipline in schools and care institutions, and as a form of judicial sentencing. Furthermore, the gap between law and practice is wide, and enforcement of legislation remains weak, especially where it prohibits practices that are deeply rooted in society.

Conclusion and Recommendations

We have examined issues relating to sex trafficking and violence against children, more specifically, in Nigeria. In Nigeria, it is generally accepted that a child could be accepted as a person below the age of eighteen years, and that the socio-economic and cultural environment in Nigeria have combined in predisposing the 'Nigerian child' to being trafficked for sexual exploitation, as well as becoming a victim of violence.

As identified and discussed, there are undoubtedly, several legal and policy frameworks and remedies available for the protection of children in Nigeria at the national, regional and international levels. However, several challenges exist that include the political will, bribery and corruption among personnel of the security services, constitutional problems affecting the implementation of the Child Rights Act, as well as cultural practices surrounding the limits of disciplinary action on children in Nigerian societies. Some recommendations are therefore offered below aimed at addressing the problems of child sex trafficking and violence in a sustainable way.

Recommendations

- Preventing and ending violence against children requires global effort on a very high level. This effort should include political leaders of nations, as well as ordinary citizens and children.
- The promotion and protection of children's rights in Nigeria can be much enhanced through the application of item 60(a) of the Exclusive Legislative List which offers avenue for the promotion and enforcement of the Fundamental Objectives and Directive Principles of State Policy. And empowers the National Assembly to establish federal authorities with the specific purpose of promoting and enforcing observance of the Fundamental Objectives and Directive Principles.

- The Child's Rights Act which has been domesticated in Nigeria at the federal level should be adopted in all states, without modification of the definition of a Child. There should be a harmonization of minimum age and definitions.
- The Nigerian Constitution should be amended especially in respect of Section 17, which provides for social welfare policy which is not justiciable. It should be made justiciable, so that government can be serious in implementing the law.
- Whilst fundamental rights apply to all citizens, the child cannot invoke them directly through legal action. If an adult does not act on the child's behalf, the child is unable to seek enforcement of his or her rights. It is therefore suggested that there should be an insertion of specific provisions embodying the rights of children as has been done in Ethiopia, Ghana, South Africa and Uganda.
- Further to that, Government should initiate policies that will reduce the poverty level in families. In respect of NAPTIP, the Agency should be upgraded to a Commission so that it can exercise its powers adequately, and NAPTIP offices should be established in every state in Nigeria while the zonal office arrangement should be used for skeletal or minor duties.
- Adequate data and research are crucial to end the invisibility of violence against children, challenge its social acceptance, understand its causes and enhance protection for those at risk. This information is, in turn, vital to support the Nigerian government advocacy and policy, planning and budgeting for universal and effective child protection services, and to inform the development of evidence-based legislation, policies and actions for violence prevention and response.
- The Nigerian government should ensure that children's rights are disseminated and understood by adults, parents, organizations, including children. Public information campaigns should be used to sensitize the public about the harmful effect that violence has on children. Statues should encourage the media to promote non-violent values and implement guidelines to ensure full respect for the rights of the child in all media coverage.
- It is also important to note that children are growing up in a world where technology is increasingly present and accessible, and where the internet, mobile and smart phones, and virtual social networks are part of daily life. Raising awareness of the potential risks associated with the use of new technologies is becoming a significant dimension of information and mobilization efforts among young people. With this in

mind, the International Telecommunications Union (ITU) has issued important tools for children, parents and teachers on child online protection. Nigerian government should also inculcate that protection, in her cyber laws because a lot of children are deceitfully recruited and trafficked overseas as sex slaves.

References

- Abubakar, M.U (2010), "Criminal Law and the Rights of the Child in Northern Nigeria", Abiad, N. and Zia Mansoor, F. (eds.) 2010, *Criminal Law and the Rights of the Child in Muslim States: A Comparative and Analytical Perspective*, Legal Studies Research paper No. 2012-11, London, British Institute of International and Comparative Law, pp. 209-230.
- Agbu, O (2009), "Child Labour in Contemporary Africa: Issues and Challenges", Agbu, Osita (ed.), *Children and Youth in the Labour Process in Africa*, CODESRIA, Dakar, Graphilus.
- Alen A, Vande Lanotte, M. Verheyde, and E. Berghmans (2008) (eds.) "The Best Interests of the Child: A commentary on the United Nations Convention on the Rights of the Child", Leiden, Martinus Nijhoff Publishers.
- Alston, P. and Gilmour-Walsh, B (1996), "The Best Interests of the Child: Towards A Synthesis of Children's Rights and Cultural Values", UNICEF: Innocenti Studies.
- Buchanan, A.E., and Brock, D.W (1998) ., "Deciding for Others: The Ethics of Surrogate Decision Making", (Cap 1998) 10 *Buchanan and Brock Journal*.
- Child Rights Act (2003) (Nigeria). Federal Republic of Nigeria.
- Committee on the Rights of the Child (2010), "Concluding observations of the Committee on the Rights of the Child on the State Party's Third/Fourth State Party Report", Advance Unedited Version, CRC/C/NGA/CO/3-4 11th June 2010 para. 26.
- Constitution of the Federal Republic of Nigeria (1999).

- Couzens, M. (2010), "The Best Interests of the Child and its Collective Connotations in South Africa", *Journal of Contemporary Roman-Dutch Law*, Vol. 73, No.266, Retrieved from <http://ssrn.com/abstract=1824266>, accessed 8th August 2015.
- De Boeck, F., & Honwana, A., (2005), "Children & Youth in Africa: Agency, Identity & Place" in Honwana, A., & De Boeck, F., (eds.) *Makers & Breakers: Children & Youth in Postcolonial Africa*, Dakar, CODESRIA.
- Egede, S.C. (2006)(ed.), *Access to Justice for Trafficked Persons in Nigeria: A Handbook for Legal Actors and Assistance Providers*, Lagos, NAPTIP.
- Ejiofor, P. (2015) The News Agency of Nigeria (NAN) report, 5 August 2015, Retrieved from www.mannewsnigeria.com/naptip_evolves_new_strategies_stop_nigeria_transit_destiinationt, accessed 26 August 2015.
- Famakin Joseph (2015), Retrieved from www.mannewsnigeria.com/naptip_evolves_new_strategies_stop_nigeria_transit_destination_point, accessed 07/08/2015.
- Hodges, A (ed.) (2001). *Children's and Women's Rights in Nigeria: A Wake-UP Call. Situation Assessment and Analysis* Abuja, Nigeria: National Planning Commission and UNICEF Nigeria.
- Horn Newspaper*, 13th May 2013.
- ITU Guidelines (2009) "Children Online Protection", Retrieved from www.itu.int/cop, accessed 11 August 2015.
- Joyce, T (2005), "Best Interests Guidance on Determining the Best Interests of Adults who lack the Capacity to make a Decision (or Decisions) for Themselves". A Report published by the Professional Practice Board of the British Psychology Society.
- Nigerian Weekly Law Report (1991), Vol.6 (pt.200), 700.
- Muscroft, S (1999), *Children's Rights: Reality or Rhetoric?* London, Impressions.
- Newfoundland Labrador (2015), "Violence Prevention Initiative", Retrieved from www.gov.nl.ca, accessed 13 September 2016.

- Ochoga, P., "Trafficking: Child-sex Kingpin Arrested in Edo, flown to UK" *Leadership Newspaper*, 6th April, 2015, p. 4.
- Olateru-Olagbegi B. (2013), *Path to Women's Development Thoughts, Vision and Passion*, Lagos, Women's Consortium of Nigeria WOCON.
- Oluwarotimi, A (2014), "Nigeria Not Doing Enough to curb Human Trafficking- UNODC" *Leadership Newspaper*, November 24.
- The Guardian* (1998) "Sex Trafficking" Retrieved from http://en.wikipedia.org/wiki/sex_trafficking, accessed 20/08/2015.
- United Nations (1989), Convention on the Rights of the Child 1989.
- United Nations (2012), *Global Report on Trafficking in Persons 2012*, pp. 11 and 12.
- UN Women (2015), United Nations Entity for Gender Equality and the Empowerment of Women, Retrieved from www.endavvnew.org/en/articles/539_sex_trafficking_may_occur_whether_or_not_an_international_national_or_regional_border_is_crossed, accessed 07/08/2015.
- UNICEF (2013), *United Nations International Children's Emergency Fund Report 2013*, New York.
- United Nations (2012), *United Nations Annual Impact Report of 2012*, New York.
- UNODC (2014), Executive Director Yury Fedotor during the Launching of the 2014 Global Human Trafficking Reports at the United Nations Headquarters, New York.
- United States Administration for Children and Families (2012), *Fact sheet: Sex Trafficking*, August 2, 2012, Retrieved from www.acf.hhs.gov/endtrafficking/resource/fact-sheet-sex-trafficking-english, accessed 15 September 2016.
- UNICEF (2013), *Toward a World Free From Violence: Global Survey on Violence Against Children 2013*, New York, UNICEF/Office of the Special Representative of the United Nations Secretary-General on Violence against Children.