

AN ANALYSIS OF THE CONCEPT OF VICTIMS OF CRIMES IN NIGERIA

BY

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**A PROJECT REPORT SUBMITTED TO THE SCHOOL OF POSTGRADUATE
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DECLARATION

I declare that the work in this Project Report entitled: **An Analysis of the Concept of Victims of Crimes in Nigeria** has been carried out by me in the Department of Private Law. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this project report was previously presented for another degree or diploma at this or any other Institution.

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CERTIFICATION

This project report entitle: “**An Analysis of the Concept of Victims of Crimes in Nigeria**” by Salaha HARUNA-SOBA meets the regulations governing the award of master of art in Law of the Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This project is dedicated to my loving and understanding husband, Ibrahim Alfa Abu, Oh Allah shower your mercy and blessings on him and forgive all his mistakes.

AKNOWLEDGEMENTS

I thank Allah (S.W.A) for his guidance and who gave me the strength, health and wealth to complete this work. My warmest, special thanks and gratitude goes to my supervisor, Prof. J. A. M. Audi not only for giving her time to supervise this work, but for being the conceiver of the whole idea of the work and also for her patience, support, contribution, useful advice and for her suggestion during the research. To you I say jazakil Allah Khairan. I also warmly appreciate the contribution and advice of my lecturer Dr. I. F. Akande may Almighty Allah reward her.

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ABSTRACT

It is not exaggeration that despite the effort of NAPTIP and other bodies like the ILO, there are still cases and reports of women and child trafficking in Nigeria. There are occasions where hospitals take in young pregnant girls, offer them money for their babies ranging from N20,000-N25,000, which they in turn sell between N150,000-N30,000 depending on the gender of the baby. Regrettably, many Nigerian children in particular and Africa in general are prone to the whims and caprices of human traffickers at a very astronomical rate. Some of the problems of trafficking in persons are; the past and present military and political leaders lack political will of the states to deal with the current issues despite large budgetary amount that was earmarked to deal with the issue of all sorts of criminal activities, parents and relations of trafficked persons are never interested in helping law enforcement officials to discourage their children or alert the officers responsible for the prohibition of trafficking in persons, The absence of reliable records in the offices of NAPTIP, various ministry of justice and some police departments on crimes and victimization has hindered the understanding of crime pattern and trend of human trafficking, the lack of enforcement mechanisms in to search arrest and prosecutions of the suspects of trafficking and deal with them in accordance with provisions of the law is another problem. Some of the objectives are; to examine the laws on trafficking, to examine the application of the law on the offence of trafficking, also to establish findings on the application of those laws on the offence of trafficking and to provide recommendations. The findings are; the judiciary and administrative mechanisms for the prevention of human trafficking is ineffective, illiteracy contribute a lot to backwardness of combating human trafficking, Nigerian anti-trafficking law in itself does not provide a serious punishment that is commensurate with the gravity of the offences, it has been observed that there has been a problem of lack of coordination between international agencies and the Nigerian domestic agencies, i.e. NAPTIP and other law enforcement agencies that are meant for protection of trafficking. The recommendations are; Judicial and administrative mechanisms should be strengthened where necessary to enable victims to obtain prompt and adequate redress through formal and informal procedures that are expeditious, fair, inexpensive and accessible, Need to educate the public about the rights and duties of suspects, offenders, victims and the state as stakeholders in the criminal justice system, Need to further re-examine our criminal justice administration with a view to addressing the problems created by our inheritance of a colonial system which extols the theory of law and state to the point that recognizes only the state and the offender as the “parties” to criminal proceedings, and to the attendant neglect of the rights and welfare of the victim.

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LIST OF ABBREVIATIONS

CEDAW - Convention on the Elimination of All Forms of Discrimination Against Women

CRC - Convention on the Rights of the Child

ICC - International Criminal Court

ICCPR - International Covenant on Civil and Political rights

ICESCR - International Covenant on Economic, Social and Cultural Rights

ICTR - International Criminal Tribunal for Rwanda

ICTY - International Criminal Tribunal for Yugoslavia

ILO - International Labour Organization

IOM - International Organization for Migration

NAPTIP - National Agency for the Prohibition of Trafficking in Persons

OSCE - Organization for Security and Cooperation in Europe

STDs - Sexually Transmitted Diseases

UNDP - United Nations Development Programme

UNHCHR - UN High Commissioner for Human Rights

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

It is not exaggeration that despite the effort of National Agency for the Prohibition of Trafficking in Persons (NAPTIP) and other bodies like the International Labour Organization (ILO)¹, there are still cases and reports of women and child trafficking in Nigeria. There are occasions where hospitals take in young pregnant girls, offer them money for their babies ranging from N20,000-N25,000, which they in turn sell between N150,000-N30,000 depending on the gender of the baby². Regrettably, many Nigerian children in particular and Africa in general are prone to the whims and caprices of human traffickers at a very astronomical rate. This however, truncates their chances of being exposed to proper and standard education and/or training that is expected to transform them into becoming part of the available human capital resource in Nigeria and the entire Africa. If human capital development centres on the education and training of human beings within a society and human trafficking involves the movement of human beings illegally from one location to another for the purposes of exploitation and money making, then trafficking in persons should be considered as a serious impediment to the development of human capital of any nation. As a matter of regret, it is unfortunate to disclose that the women and children who are trafficked from Nigeria to other nations for

1. Adenekan, A. (N.D.) **Human trafficking - the 21st century slavery** in: *a journal Of The Pan-African Reconciliation Centre*, pp 56-89.

2. Pharoah, R. An unknown quantity: Kidnapping for ransom in South Africa. *South African Crime Quarterly*, No. 4, (2005), pp. 23 – 28.

the development of such destination countries would have been the same people who ought to have been developed and used in Nigerian nation³. Train up a child well, and he or she would become a functional future adult member of society, bound with the responsibility of developing the nation⁴.

The act of women and child trafficking in Nigeria and West Africa in general has become a common phenomenon, which involves young boys and girls on the average age of 15 years, which are mainly girls. 60%- 80% of them are sent to Italy for sex trade and the common routes are west coast of Nigeria to Mali, Morocco, boat to Spain or west coast of Nigeria to Libya and Saudi Arabia. It has been estimated that about 15 million children are engaged in child labour in Nigeria and 40% of them are of the risk of being used for entertainment, pornography, armed conflict, rituals and forced labour⁵.

Adenekan further revealed that traffickers lure children to leave their homes promising them education and training abroad, though due to poverty some go willingly. Sometimes officials at borders and traffickers conspire to smuggle women and children out for selfish interest⁶.

Ignorance and poverty are central reasons why some parents allow their children to be taken away from them for menial works. Parents with large families too willingly give out their wards to strangers for money to enable them cater for the rest of the family.⁷

Traffickers prey on the vulnerability of such poor parents who are mostly illiterates to

3. Adenekan, A op cit ,p. 58

4. Ibid

5. Ibid

6 Ibid

7. Pharoah, R. op cit p. 25

exploit them, since they are desperate for financial succor and therefore give out their children to strangers who give them money with promise to give the children quality education. Ironically the children are maltreated, physically and psychologically abused. Those that are taken as domestic servants stand the risks of being sexually exploited which invariably, exposed them to deadly diseases like HIV/AIDS⁸. Unfortunately, some of them are used for ritual. Majority of the people trafficked, ranging from children to girls, young women and men are usually engaged in forced labour⁹. Such assignments include: domestic services, agricultural activities, prostitution and extraction of some parts of their body such as kidney and at the extreme, using them for rituals. The implication of this is that the human capital strength of the country is jeopardized as the resources in human persons are being wasted sometimes very prematurely. It is germane to note that even at the local and international fronts; victims of human trafficking are mostly subjected to carrying out odd job¹⁰. These include assignments like; nannies, house helps and some other domestic works as well as street trade (hawking) which would never allow them to develop any reasonable low manpower skills, let alone middle or high level manpower skills and knowledge. Even when such victims are exposed to good education and other forms of training, they would only be withheld to make them use their skills and knowledge within their countries of destination. Furthermore, the monies made by the traffickers are sometimes used to import illegal arms and ammunitions which are used by politicians and criminals to eliminate people within the

8. Adenekan, A. op cit, pp 56-89

9. Ibid

10. Pharoah, R. op cit, pp. 23-28

country. Consequently, this gesture reduces the number of existing human capital in Nigeria¹¹.

Apart from the inconsiderate treatment meted out on these women and children they neither feel at home in the hands of their captives, nor could they escape as the route are extremely risky. Stories abound on how women and children who are victims of traffickers have been rescued at border posts. Some rescued from refrigerated trucks severely dehydrated. Regardless of their age or sex; the women and children try to survive in a cruel environment. If we believe that children are the leaders of tomorrow, what type of future do we anticipate for a nation where child trafficking remains a lucrative business in our country¹².

The effects of trafficking are devastating therefore having negative consequences on our children. Isolated from their families, as well as communities and culture, most of these children find it difficult to trace their roots as a result of long wasted years or the influence exerted by their masters. Those women and children are denied their rights to in rare cases, some that managed to return to their villages finds it thorny to adjust to the new environment. The act of child trafficking is inhuman using our children as objects of transaction and its effects on the Nigeria include loss of lives, violence and crime, school drop outs, impaired children, poor national image, massive deportation of Nigerian girls. This, in addition, has worsened the regions growing AIDS crises because of the sexual exploitation of the victims¹³. It seems some parents do not help the matter as they

11. Ibid

12. Adenekan, A. op cit, pp 56-89

13. Ibid

occasionally defended traffickers after the arrest claiming they have their consents. Trafficking in child labour occurs along numerous routes in West Africa¹⁴.

Nigeria is a source, transit, and destination country for women and children subjected to trafficking in persons, specifically conditions of forced labor and forced prostitution. Trafficked Nigerian women and children are recruited from rural areas within the country's borders – women and girls for involuntary domestic servitude and forced commercial sexual exploitation, and boys for forced labour in street vending, domestic servitude, mining, and begging. Nigerian women and children are taken from Nigeria to other West and Central African countries, primarily Gabon, Cameroon, Ghana, Chad, Benin, Togo, Niger, Burkina Faso, and the Gambia, for the same purposes¹⁵. Children from West African states like Benin, Togo, and Ghana – where Economic Community of West African States (ECOWAS) rules allow for easy entry – are also forced to work in Nigeria, and some are subjected to hazardous jobs in Nigeria's granite mines. Nigerian women and girls are taken to Europe¹⁶, especially to Italy and Russia, and to the Middle East and North Africa, for forced prostitution¹⁷. Traffickers sometimes move their victims to Europe by caravan, forcing them to cross the desert on foot, and subjecting them to forced prostitution to repay heavy debts for travel expenses. During the reporting

14. Ibid

15. Ibid

16. Awopegba, P. "Human capital development in Nigeria," A Socio-Economic Analysis, *Nigerian Journal of Clinical and Counselling Psychology*, Vol. 7, No. 1 and 2: (2001), pp. 157 – 167.

17. Ricco, V. "Modern Slavery: Human bondage in Africa, Asia and the Dominican Republic." (2001), Available at <http://www.infoplease.com/spot/slavery1.html>, Accessed on 06/-8-2014.

period, Nigerian girls were repatriated from Libya and Morocco, where they were reportedly held captive in the commercial sex trade¹⁸.

The Government of Nigeria fully complies with the minimum standards for the elimination of trafficking. It demonstrated sustained progress to combat human trafficking during the reporting period. In 2009, the government convicted 25 trafficking offenders and provided care for 1,109 victims, increases over the previous reporting period¹⁹. It also continued to undertake strong efforts to raise awareness of human trafficking. In addition, its National Agency for the Prohibition of Trafficking in Persons (NAPTIP) ensured the practice of interrogating trafficking suspects at the same Lagos facility housing its shelter for trafficking victims. To better ensure victims' rights are respected, NAPTIP formed a committee in mid-2009 to review victim care policies, aiming to strike a balance between ensuring victims' safety in shelters and promoting their freedom of movement. The Nigerian government in 2009 pledged over \$7 million in annual funds for NAPTIP's operation and activities; all government programs received partial payment pending budget approval by legislative and executive branches. Due to a four-month delay in approval of the 2010 national budget, funds were distributed to all federal agencies in April 2010²⁰.

The Government of Nigeria sustained law enforcement efforts to combat trafficking in 2003. The 2003 Trafficking in Persons Law Enforcement and Administration Act, amended to increase penalties for trafficking offenders, prohibits all forms of human

18. *ibid*

19. Attoh, F. "Trafficking in women in Nigeria: Poverty of Values or Inequality?" *Journal of Social Sciences*, Vol. 19, No. 3, (2009), pp. 167 – 171.

20. *Ibid*

trafficking. The law's prescribed penalties of five years' imprisonment and/or a \$670 fine for labor trafficking, 10 years' imprisonment for trafficking of children for forced begging or hawking, and 10 years to life imprisonment for sex trafficking are sufficiently stringent and commensurate with penalties prescribed for other serious crimes, such as rape. Nigeria's 2003 Child Rights Act also criminalizes child trafficking, though only 23 of the country's 36 states, including the Federal Capital Territory, have enacted it. According to the Nigerian constitution, laws pertaining to children's rights fall under state purview; therefore, the Child Rights Act must be adopted by individual state legislatures to be fully implemented. NAPTIP reported 149 investigations, 26 prosecutions, and 25 convictions of trafficking offenses during the reporting period under the 2003 trafficking in Persons Act.²¹ Sentences ranged from two months to 10 years, with an average sentence of 2.66 years' imprisonment; only two convicted offenders were offered the option of paying a fine instead of serving prison time. Together with international partners, the government provided specialized training to officials on how to recognize, investigate, and prosecute instances of trafficking. Police and immigration officials, including those who work at border posts and airports, at times allegedly accepted bribes to overlook trafficking crimes. NAPTIP dismissed two staff members from public service who were found to have diverted victims' funds; they were made to refund the money back.

Nigeria continued its efforts to protect trafficking victims in 2009. Police, customs, immigration, and NAPTIP officials systematically employed procedures to identify

21. Adenekan, A. *op cit*, pp 56-89

victims among high-risk persons, such as young women or girls traveling with non-family members. Data provided by NAPTIP reflected a total of 1,109 victims identified and provided assistance at one of NAPTIP's eight shelters throughout the country during the reporting period; 624 were cases of trafficking for commercial sexual exploitation and 328 for labor exploitation. Various government agencies referred trafficking victims to NAPTIP for sheltering and other protective services: immigration referred 465; police referred 277; Social Services referred 192; and the State Security Service referred nine. Shelter staff assessed the needs of victims upon arrival and provided food, clothing, shelter, recreational activities, and instruction on various skills, including vocational training; psychological counseling was provided to only the most severe cases. While at NAPTIP's shelters, 70 victims received vocational training assistance provided by government funding. NAPTIP estimated the government's 2009 spending on its shelter facilities to be \$666,000. The 2003 trafficking in Persons Law Enforcement and Administration Act provides for treatment, protection, and non-discriminatory practices for victims²². The law specified no trafficking victim could be detained for any offense committed as a result of being trafficked. During the reporting period, the government took steps to relocate victims' quarters a considerable distance from detention areas for trafficking offenders, greatly reducing the possibility traffickers could exert undue influence over their victims. Victims were allowed to stay in government shelters for six weeks. If a longer time period was needed, civil society partner agencies were contacted to take in the victim. Officials encouraged victims to assist with the investigation and

22. Ibid

prosecution of traffickers, and victims served as witnesses in all of NAPTIP's successful cases. Victims could theoretically seek redress through civil suits against traffickers, or claim funds from a Victims' Trust Fund set up in 2009 through which assets confiscated from traffickers are transferred to victims. The Trust Fund committee is chaired by the Minister of Justice and meets four times per year. The government provided a limited legal alternative to the removal of foreign victims to countries where they face hardship or retribution – short-term residency that cannot be extended.

The Government of Nigeria sustained strong efforts to raise awareness of human trafficking over the last year. NAPTIP's Public Enlightenment Unit worked throughout the reporting period on national and local programming to raise awareness. For example, in rural Benue, Kogi, and Edo States, NAPTIP introduced grassroots programs and held its first annual race against human trafficking in Edo State with 5,000 runners²³. On the national level, it convened the 2009 Model UN Conference for secondary students with a theme of combating human trafficking. Furthermore, a nine-state tour was launched to establish state working groups against human trafficking. The objective of these and several related programs was to sensitize vulnerable people, sharpen public awareness of trends and tricks traffickers used to lure victims, warn parents, and share ideas among stakeholders. Audiences ranged from 50 to 5,000 persons. NAPTIP worked with Immigration Services to monitor emigration and immigration patterns for evidence of trafficking. The long-established Stakeholder Forum continued quarterly meetings in

23. Extracted from <http://www.punchng.com/Articl.aspx?theartic=Art2008101-52335195> retrieved on October 19, 2014.

Abuja to foster collaboration among agencies. In August 2009, NAPTIP held a stakeholders' workshop in Kaduna to set program priorities and cost estimates for implementing the National Plan of Action, which was established in 2008²⁴. Nigerian troops undergo mandatory human rights and human trafficking training in preparation for peacekeeping duties abroad. The government did not take major action to reduce the demand for commercial sex acts, though officials moved to shut down two brothels in Lagos during the first quarter of 2010. At these brothels, authorities rescued 12 females, including six underage victims of trafficking. One property owner was convicted, sentenced to two years in prison, and required to forfeit his hotel; his case remained under appeal at the end of the reporting period. The second brothel owner's trial was ongoing and he remained totally free on bail²⁵.

Women and children have become the victims of crimes in many part of the country²⁶. Serious crimes like sexual violence²⁷, domestic violence against women²⁸, human-trafficking²⁹, cultural and religious crimes against women³⁰, child labour, unnecessary killings by different groups³¹, kidnapping³², etc. Children become vulnerable to being trafficked for a number of reasons, with the root causes being poverty and lack of opportunities, corruption and instability and/or armed conflict. Their parents may pay for

24. Ibid

25. Ibid

26. Ibid

27. Becker, J. V., Skinner, L. J. Abel, G. G. & Chicon, J. Level of Post Assault Sexual Functioning in Rape and Incest Victims. *Archive of Sexual Behaviours*, 15, (1996), pp. 37 –49.

28. Ibid

29. Ibid

30. Becker, et el op cit, pp. 37-49

31. Sunday Isuwa, Gunmen Attack Sanga Killed four, in: *Weekly Trust* Saturday 9, (2014), p.14

32. Pharoah, R. An unknown quantity: Kidnapping for ransom in South Africa. *South African Crime Quarterly*, No. 4, (2005), pp. 23 – 28.

them to be taken to another country, in the hope that they will gain employment and a better life abroad. Alternatively, children may be sold to traffickers by their parents, or kidnapped by such groups. Street children are particularly susceptible to becoming trafficking victims, as are children who suffer from other forms of discrimination. In the Niger Delta, children who have been stigmatized as ‘witches’ are extremely at risk as they are usually rejected by their families and communities, and often live on the streets with no-one to care for them³³.

However, the unending issue of human trafficking still exists in the 21st century. Governments, international organizations and civil society are devoting considerable efforts to counter it, but there is still an information deficit about the extent of this tragedy. Only by understanding its depth, breadth and scope can we design policies to fight it. This understanding still eludes us; efforts to counter trafficking have so far been uncoordinated and inefficient. The above problems compelled the current research work to make an analysis of the concept of trafficking on women and children generally, with a view of providing workable recommendations to the identified problems.

1.2 The Statement of Research Problem

The problems for study are as follows:

- i. In the last few decades, humanity has witnessed the emergence of several patterns of crimes of human trafficking. Nigeria has not been exclusive as it is confronted with pervasive crime waves, issues of “Boko Haram” officially called “*Jama’atulAhlusSunnah lid Da’awatiwa Jihad*” but named *Boko Haram* or

“Western Education is sacrilege or a sin”³³, in the North-East and some North-Western states, for example, attacks by “Boko-Haram” in Baga, Gwoza and other parts of Borno State that caused massive displacement³⁴, for example, the Book Haram group has abducted school girls at Chibok. Some of the girls were raped, some were allegedly sold to unknown persons, while some were forced into compulsory marriage at N10, 000: 00 dowry. even if the taking away of Chibok girls does not amount to human trafficking, their constitutional right to education, personal liberty, right to associate with their family members, development and right not to be subjected to force labour and or any degrading or inhuman treatment as enshrined in the Constitution³⁵ has been violated. Loss of thousand of lives, destruction of houses and taking hostage of student girls, small children and their mothers, kidnapping in the Southern part of the country, which has compounded the problem of insecurity in the country. In the cities, hoodlums unleash terror on unsuspecting citizens, and bandits are reported to man many Nigeria link roads. There is also the problem of identification of criminals and those who train, fund, and harbor them. Upon all these criminal activities there has rarely been an instance where the criminals are prosecuted by the relevant authorities and the victims of such crimes are left unprotected. Another problem is also that in many occasions, women and children who are among the most

33. Abdallah, U. A. insurgency in Nigeria , The Northern Nigerian Experience in : papers for the emirate persons And Exports Group Meeting on Complex insurgencies in Nigeria, National Institute for policy and strategic studies, Kuru, Nigeria, (2012), p. 56

34. Hamza Idris, et el, Uprooted by Boko Haram, Ravaged by Diseases, uncertainties in Camps, in : Daily Trust Saturday 9, (2014), p.10

35. Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria, (2010) As Amended.

vulnerable group of the society are mostly affected as victims of such crimes, whether of a primary or secondary degree, and whether in time of war or not. Women and children are always victims of sexual harassments like gang-rape, rape, defilement, all in the course of trafficking. Women and children are left handicap by the government, by not paying much attention to their predicaments. Women and children only end up getting meager donation from both the Federal and States governments, as if there are no laws or judicial arm to deal with the perpetrators of such crimes.

- ii. The past and present military and political leaders lack political will of the states to deal with the current issues despite large budgetary amount that was earmarked to deal with the issue of all sorts of criminal activities like human trafficking in the country³⁶, they are not willing to put an end to the commission of such crimes and insecurity issues in the country neither are they showing any deep concern about the current position of the victims of those crimes, despite the country's police, civil defence and military personnel that are stationed in all angles of the country.
- iii. The absence of reliable records in the offices of NAPTIP, various ministry of justice and some police departments on crimes and victimization has hindered the understanding of crime pattern and trend of human trafficking in the country. Apart from identifying human trafficking trends, victim surveys help to elicit a clearer picture of levels of human trafficking victimization as well as the opinion

36. "Jonathan not Serious about Tackling Insecurity": an interview with Rep. Suleiman Kawu Sumaila, Deputy Minority Leader, in: Daily Trust Monday August 11, (2014), p.21

of a cross-section of society on matters relating to human trafficking and punishment, their perception of the criminal justice agencies and the methods of handling offenders and victims of human trafficking. Such information collected from victims also covers their experience before, during and after the offence has occurred. It constitutes a better indicator of the level of crime than the number of crimes reported to and recorded by the police. As Mueller³⁷ argues, gathering information about crime victims would not only help analyzing victim-offender relationships, but also in planning crime prevention and control³⁸.

- iv. Another problem lays in the lack of enforcement mechanisms in to search arrest and prosecution of the suspects of trafficking on women and children and deal with them in accordance with the provisions of the law. For example, Boko Haram abducted more than 200 Chibok girls in Borno State. But since then, nothing has been done to deal with the issue apart from propaganda by the authorities concerned in the Medias.
- v. Lastly, parents and relations of trafficked persons are never interested in helping law enforcement officials to discourage their children or alert the officers responsible for the prohibition of trafficking in persons.

The above problems of study are still in the increase in Nigeria, which needs urgent intervention and control.

37. Mueller, G. O. W. Crime as Interaction in: F. Adler, G.O.W. Mueller & W. S. Laufer(Eds.). Criminology, 2nd Edition, McGraw-Hill, New York,(1995), pp. 45 - 50.

38. Ibid

1.3 Objectives of the Research

The objectives of this research are:

- ii. To examine the laws on trafficking on women and children in Nigeria.
- ii. To examine the application of the law on the offence of trafficking on women and children.
- iii. To establish findings on the application of those laws on the offence of trafficking.
- iv. to provide recommendations.

1.4 Scope of the Research

The research examined international and municipal literatures that are relevant to the offence of trafficking in Nigeria, with particular emphasis on women and children as victims, being the most vulnerable groups in the society.

1.5 Justification of the Study

It is justifiable to conduct research on the topic from time to time in order to provide a current finding on the above problems. It also improved the existing literatures on the knowledge of the concept of trafficking on women and children in Nigeria, both at national and international levels. It further contributed positively to the legal knowledge of regulations and procedures for the protection of human trafficking and victims of such crime in Nigeria and at international parlance, particularly to lecturers and students as well as provided materials for future research on the topic.

1.6 Literature Review

In order to explain the meaning, nature and the concept of trafficking on women and children as it affects the Nigerian populace, study has been made of literary from the municipal and foreign sources. For example, statutes, case laws, textbooks, articles, journals, seminar papers, internet sources, etc. were used and acknowledged. The foundation for the research is based on contributions of writers on the field of criminology and criminal victimization as well as victims of crimes in Nigeria. The following existing literatures were used in the course of this research.

According to Adenekan, A.³⁹ The phenomenon of slavery, no doubt, dates back to the ancient times when victorious armies and tribes in Europe and Asia found it more profitable to use as slave, people they caught in wars than to murder them just like that. In many Asian countries, likewise in Israel, slaves were bought and used for various domestic and farm labour. In the 14th century Europe, these unfortunate men and women caught at wars were known as serfs, a title that classified them as members of the lowest order and are “owned”, in most cases, by the lords of the manor. They attended to his mundane wishes, work in farms and depended solely on him for their livelihood⁴⁰.

The above author maintains that going by the history, the Portuguese started kidnapping and poaching human beings as far back as 1442 in the west coast of Africa particularly in countries like the Gold Coast (the present Ghana), Togo, Benin, and Nigeria while in 1517, they encouraged Spain to embrace the “lucrative” inhuman market. The English

39. (N.D.) **Human trafficking - the 21st century slavery** in: *a journal Of The Pan-African Reconciliation Centre*, pp 56-89

40. *ibid*

followed in 1553, France in 1624 and soon after the Dutch, the Danes, and America. Africa, in 1650, had a population of about 100 million (20 per cent of the then existing world), 90m million in 1800, 95 million in 1850 and 120 million in 1900⁴¹.

The author further views that taking into account the high profitability of the illicit trade in which human beings were the fiscal wares, many crude methods were employed for the security of the diabolical ventures. Cases were reported whereby houses in villages and hamlets were irrationally set ablaze in the middle of the nights just in order to catch hapless individuals including women and children for sale in open market like common household commodities⁴². According to the above author, the illicit trade was always a subject of many crude channels. European ships were chartered by the merchants to take manufactured goods to the coast of Africa and on reaching the destination, the commodities were exchanged for slaves who would be later taken to the West Indies and sold for huge profits. In this place, their merchants used their money to buy commodities like sugar, coffee and tobacco which would be later taken back to Europe. Since the ultimate intention of the trade is to make huge profit, the ship captains loaded as much as healthy slaves for the lowest possible price. They normally had a system whereby the captains would bring a fewer number of slaves in their ships so that the chance of disease and death would be reduced to the barest minimum. It is quite apparent that hundreds of thousands of African men, women and children are forced by ever worsening environmental, economic and social circumstances into situations of labor and sexual

41. Ibid

42. Ibid

exploitation both within and outside the continent every year. Trafficking in persons – the modern day slavery is evidently a serious threat to human security and development.

Right now, awareness of trafficking increases gradually because of the vigilance on vehicles conveying child laborers to markets and plantations in different places. In Nigeria for example, an International Labour Organization (ILO) report found that 40% of the street children and street hawkers were victims of trafficking. In March 2002 for example, it was said that eight million Nigerian children undergo the worst forms of child labour serving as domestic servants, street beggars, hawkers, agricultural laborers and prostitutes.⁴³ He maintains that at least 60% of foreign prostitutes in Italy are from African countries with the most of them from Nigeria. Nigerian and Italian authorities estimate that there are from 10,000 to 15,000 Nigerian prostitutes in Italy alone. Trafficking of foreign women into South Africa for commercial sexual exploitation from other areas of Africa, Europe and South East Asia is not only growing but appears to be controlled by organized criminal gangs from Bulgaria, Russia, Thailand, China, and Nigeria⁴⁴.

It is very clear that without serious and sustained political will at the top levels of governments and throughout societies; intervention will remain limited compared to the scope and magnitude of the problem. Traffickers will continue to victimize African men, women and children, depriving them of their basic human rights, depriving countries of critical human capital to compete in the global economy and also governments of the ability to establish law and order within their own borders.

43. Ibid

44. Ibid

According to Ricco, V.⁴⁵ and Attoh, F.⁴⁶ majority of the people trafficked, ranging from children to girls, young women and men are usually engaged in forced labour. Such assignments include: domestic services, agricultural activities, prostitution and extraction of some parts of their body such as kidney and at the extreme, using them for rituals. The implication of this is that the human capital strength of the country is jeopardized as the resources in human persons are being wasted sometimes very prematurely⁴⁷. It is germane to note that even at the local and international fronts; victims of human trafficking are mostly subjected to carrying out odds jobs. These include assignments like; nannies, house helps and some other domestic works as well as street trade (hawking) which would never allow them to develop any reasonable low manpower skills, let alone middle or high level manpower skills and knowledge. Thus the people trafficked are usually under-developed while, it would also amount to Nigerian nation remaining at the developing stage. Ricco⁴⁸ simply sees human trafficking as a modern or contemporary slavery. Such victims are forcefully or deceptively, collected and sold to others whom in most cases; mutilate their bodies in the name of branding or guarding against possible escape of such persons, and engaging them in all sorts of inhuman jobs including prostitution. Perhaps the basic distinction between the traditional slavery and the contemporary “human trafficking”, could be the sophisticated means of transportation

45. “Modern Slavery: Human bondage in Africa, Asia and the Dominican Republic.” Available at <http://www.infoplease.com/spot/slavery1.html>, (2001), Accessed on 06/-8-2010.

46. “Trafficking in women in Nigeria: Poverty of Values or Inequality?” *Journal of Social Sciences*, Vol. 19, No. 3, (2009), pp. 167 – 171.

47. Ibid

48. Ricco, op cit.

and communication systems which the latter utilizes in the delivery of trafficked human beings to various destination ports⁴⁹.

Attoh⁵⁰ defines human trafficking though, with emphasis on the female sex as “the illicit movement of young women across international borders for certain exploitative purposes.” She affirms that such unlawful movements usually take a bottom-top dimension. That is, it involves the exploitation of victims from the developing and underdeveloped countries to the developed nations. Which ever angle one looks at trafficking in persons, it is quite glaring that it has to do with taking people or someone away from his or her environment to a different location to do some work and other very odd things which ordinarily he or she would not accept doing. Whether the consent of such a person was sought and approval given before the said movement is immaterial. What most likely qualifies a victim as a trafficked person is that the fellow would be in another environment where he or she would be subjected to doing things against his or her volition. In other words, the fundamental rights of freedom of movement, association and even expression may have been denied such victims in question.

Awopegba, P.⁵¹ opines that Nigeria remains under-developed partly because of unplanned efforts towards the development of human capital; it could be argued further that, the state of under-development in the country may be attributed to the reduction of the human beings who ought to have been developed as human capital through

49. Ibid

50. Attoh, F. “Trafficking in women in Nigeria: Poverty of Values or Inequality?” *Journal of Social Sciences*, Vol. 19, No. 3, (2009), pp. 167 – 171.

51. “Human capital development in Nigeria,” A Socio-Economic Analysis, *Nigerian Journal of Clinical and Counselling Psychology*, Vol. 7, No. 1 and 2: (2001), pp. 157 – 167.

trafficking in persons. According to the author trafficking in persons mostly, takes place from the South (developing countries) to the North (developed countries) and makes way for the transfer of human resource elements from the under-developed and developing countries to the developed countries of the world. This could be further explained as a conscious attempt by the North to further under-develop Africa and some other nations in Asia and other continents of the world. Some people may also contend that trafficking in persons satisfies their utilitarian needs since, they can afford to make immediate financial gains but the long term effect would always be felt by the dearth of human capital in Nigeria. The number of Nigerians trafficked to Europe since the late 1990s were only able to generate fund for the traffickers to invest in other illicit trades and activities like drug trafficking and other mafia related businesses such as oil bunkering and exportation as well as importation and proliferation of arms and ammunitions. One may describe human trafficking as a cyclic process of evil against the development of human capital of Nigeria and many other nations where it thrives. Even when such victims are exposed to good education and other forms of training, they would only be withheld to make them use their skills and knowledge within their countries of destination. Furthermore, the monies made by the traffickers are sometimes used to import illegal arms and ammunitions which are used by politicians and criminals to eliminate some group of people within the country. Consequently, this gesture reduces the number of existing human capital in Nigeria and creates tension by eliminating people or group of people.

As pointed out by Dave-Odigie, C.⁵² “human trafficking deprives Nigeria of her human resources.” Although, she observes that majority of those trafficked are semi-literate and non-literates, the point remains that such people would have become part of human capital base of the country, were they conserved, educated and trained. The author further explains that human trafficking also reduces the population of human resource to death. For example, a good number of the trafficked persons especially, those who are used for prostitution, are more often vulnerable to the contraction of HIV/AIDS and other Sexually Transmitted Diseases (STDs) because they are compelled to engage in unprotected sex. This in most cases results in premature death of such victims. Ironically, those who patronize the prostitutes too, become prone to the contraction of HIV/AIDS and subsequently face sudden deaths, even though they were not direct victims of human trafficking. Regrettably, trafficking in human beings certainly reduces the life expectancy of both the victims of the illicit business and that of normal persons in Nigerian society. This affects the country’s human capital base adversely. However, apart from pushing talents and human resources out of Africa through human trafficking as he submits, the locally consumed trafficked victims are subjected to personal under-development and further reduction in human capital development of Nigeria and other affected nations of Africa and the World in general.

52. “Human trafficking trends in Nigeria and Strategies for combating the crime,” *Peace Studies Journal*, Vol. 1 Issue 1, (2008), pp. 63-75.

Jegede, S.⁵³ suggested that a nation should have at least 65 per cent literacy level in development. Thus, there is need to shift a pragmatic attention to the promotion of literacy programme or even design further programmes in that direction so as to reduce the high percentage of illiteracy in Nigeria and that of other developing African countries. Since illiteracy leads to poverty and poverty escalates human trafficking, which ostensibly jeopardizes the development of human capital in Nigeria, there is an urgent need to objectively, implement all the policies that relate to the advancement of Adult literacy and Non-formal education programmes and improve the general standard of education in the country.

According to Dalaker, J. and Proctor, B.⁵⁴ farmers are more likely to be victims of poverty than people who live and work in cities. As a result, since the greater percent of Nigerians reside in the rural areas and engage in farm works, poverty is more pronounced there. This makes the poor people in the rural areas more prone to trafficking. Even in cities, there is the “underclass,” that is, the persistently poor, unemployed and dependent people who dominate the inner city. This class of individuals can voluntarily surrender themselves to be trafficked. Young girls are compelled to joining trafficking due to the inability of families to meet their primary responsibilities.

Butegwa, F.⁵⁵ capture unemployment and poverty, as the major push for women participation in trafficking in persons. The authors maintain that trafficking in women in

53. “Adult Basic Education”, in ‘L. Adewale (Ed.) *Elements of Adult Education*, Lagos: Benja print Limited, (2003), p. 36.

54. Poverty in the United States: 1999, US Census Bureau, Current Population Reports, Washington, D. C.: US Government Printing Office, (2007), p. 49.

55. Trafficking in women in Africa: A Regional Report. Mimeographed, (1997), p. 63.

Nigeria is necessitated by unemployment, low socio-economic status and perhaps ignorance of the long term effect of the act on victims and society.

According to Aghatise, E.⁵⁶ Poor implementation of laws that apply to the issue of human trafficking appears to be a contributing factor to the rapid growth and development of the illicit trade. For example, how many of the traffickers and their agents caught are prosecuted, let alone giving appropriate punishment? Thus, human traffickers tend to take undue advantage of the gap in the judicial system to perpetrate such heinous crimes against humanity and society. The author states that the law enforcement agents in Nigeria investigated 209 trafficking cases and convicted 23, the figure remains very infinitesimal when compared with the rate at which people are trafficked as reported in the media. High rate of illiteracy in developing countries is also responsible for people becoming vulnerable to human trafficking. It is quite easy to deceive illiterates into being trafficked than the educated persons. At least, an educated person would be conscious of getting involved in the crime unlike the illiterate who is more likely to believe false stories without asking logical questions.

Joseph, U.⁵⁷ maintains that Juju is another major factor that “lubricates the wheel of human trafficking” in Nigeria. From the accounts of repentant traffickers, it was revealed that victims are usually mandated to seal their agreement with oath in shrines of voodoo or juju priests. The fear of losing their lives to oaths compels them to conceal the

56. Trafficking for Prostitution in Italy, Concept Paper Presented at the Expert Group Meeting on Trafficking in Women and Girls, Glen Cove, New York, (2002), p. 42.

57. “Tortuous journey to Europe”. In NAPTIP News, News Magazine of National Agency for the Prohibition of Traffic in Persons and Other Related Matters, Maitama, Abuja: NAPTIP, (2005), p. 28.

identities of traffickers from authorities. This claim is evident in the assertion of Abdulrahim Shaibu⁵⁸, The Deputy Director of NAPTIP's Prosecution and Legal Services, who maintains that the agency had problems prosecuting traffickers because victims are afraid of coming out in court to expose the supposed culprits due to the juju oaths they were forced to take.

John Egwu a retired Assistant Comptroller General of Immigration Service, as quoted by Nwagbo, N.⁵⁹ states that, "victims of human trafficking are the main reason why the business thrives". In his words, "the people who are being trafficked are willing tools and they are never willing to cooperate with the officials". According to him, parents and relations of trafficked persons are never interested in helping law enforcement officials to discourage their children or alert the officers responsible for the prohibition of trafficking in persons. In the case of people trafficked into Nigeria from other countries, the retired Assistant Comptroller General of Immigration maintains that officials of those countries do not cooperate with Nigerian Immigration officials in most cases.

Kidnapping is another form of trafficking that affects the development and well being of women and children in Nigeria. According to Hiscox Insurance Group, as quoted by Pharoah, R.⁶⁰, in Nigeria, kidnapping for ransom started in 1992 with a single incident. By the end of 1999, the figure had grown to 34, but government did not raise alarm until 26 February 2006 when the Niger Delta militants kidnapped foreign oil workers to press

58. Extracted from <http://www.punchng.com/Articl.aspx?theartic=Art2008101-52335195> retrieved on October 19, (2014).

59. "Main problem of human trafficking is the victim", Saturday Sun, October 16, (2010), p. 47.

60. op cit pp. 23 – 28.

home their demand. Since then kidnapping has become ubiquitous and a commercialized venture. It has spread from the Niger Delta to virtually all nooks and crannies of the country, with some states of course being hotspots. Kidnappers now make victims not only of foreign oil workers but also of Nigerians suspected to be closely related to the wealthy including parents, grandparents, and toddlers from whom they hope to get some ransom. Those behind the recent wave of the despicable act have also changed from being exclusively Niger Delta militants to dodgy elements from different walks of life - armed robbers, unemployed, fraudsters and gangsters. In a survey report rendered by Eboh, C.⁶¹, more than 1,500 persons were said to have been kidnapped in Nigeria in 2009. This was against 512 persons in 2008 and 353 in 2007. The growing incidence of kidnapping in the country suggests its profitability. Kidnapping can be classified into two: criminal and political. While criminal kidnapping has the motive of obtaining ransom from the family or business of the victims, political kidnapping has the objective of furthering the political aim of the group or movement. In this case, a monetary ransom is demanded for the group to fund their activities. This type of kidnapping differs from holding individuals against political ends, such as the release of comrades from prison. Judging by this differentiation, one can conclude that most of the kidnapping in Nigeria are criminally motivated. When the Movement for the Emancipation of the Niger Delta (MEND), started kidnapping foreign oil workers in 2006, the emphasis was largely political: to gain a share of the region's wealth. Presently, many criminal gangs have taken to kidnapping and have made ransom payment their main source of income.

61. *Kidnappings on the rise in Nigeria*. Available at <http://www.selfdefender.net>. (2010). Accessed 12. 7. 2014.

The above literatures used in the course of this research are found resourceful to this study. The literatures reviewed above have addressed topical issues of concern on trafficking on women and children. However, this research aims at contributing current findings and recommendations.

1.7 Research Methodology

One principal method was the use of data and information. The doctrinal method of research was used, using library materials such as books, articles, journals, periodicals, seminar papers, as well as internet/websites, etc.

1.8 Organizational Layout of the Study

This research has five chapter basis.

Chapter one deals with the general background of the research work, statement of problem, objective of the research, scope of the research, and the Justification of the research. It also consists of the literature review of the existing literatures, research methods adopted and the organizational plan of the project.

Chapter two contains the clarification of words and definitions of relevant concepts, such as, “trafficking”, “human rights violation”, and “victims of crime”.

Chapter three provides an overview of the concept of the offence of human trafficking, its history and effects.

Chapter four highlighted the concept of victims of the offence of human trafficking and abduction in Nigeria. Women and children are perceived as the most vulnerable group in the society, by virtue of which they are exposed to becoming victims of trafficking.

Chapter five of the study provided the conclusion which contains the summary, findings and recommendations.

CHAPTER TWO

CLARIFICATION OF KEY CONCEPTS

2.1 Definition of the Term “Trafficking” as a Crime and a Human Rights

Violation

In the course of this study, certain concepts such as human rights, trafficking, abduction and such other relevant terms were used. One cannot appreciate and understand this work unless those terms are clarified. Therefore, this chapter clarifies the key concepts used.

Article 3 (a)¹ contains three separate elements in its final definition of “Trafficking in Persons” namely:-

1. An action, consisting of recruitment, transportation, transfer, harboring or receipt of persons;
2. By means of: Threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or position of vulnerability, giving or receiving payments or benefits to achieve consent of a person having control over another;
3. For the purpose of Exploitation (including, at a minimum, the exploitation of the prostitution of others, or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs).

All three elements must be present for the protocol to become operational within a given fact- situation. The only exception is for children for whom the requirements relating to means are waived.

1. UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Particularly Women and Children

In its final version, the protocol does not define the terms slavery, forced labour, practices similar to slavery, or servitude. In relation to the first three of these, it may be assumed that accepted definitions contained in other international legal instruments will be applicable.

The concept of servitude has not been so defined and the final text of the protocol inexplicably omits a definition negotiated by the Ad-Hoc Committee and included in the draft right up to October 2000. A proposal to include organ removal as end purposes of trafficking was made very late in the negotiations; and survived despite rather curious objections that the protocol was dealing with trafficking in persons, not organs.

The UN Anti-Trafficking Protocol (otherwise known as the Palermo Protocol), with its definition of trafficking, considered above, provides useful guidance for law reform and the criminalization of this practice as part of state Parties' obligations there under.

2.2 Definition of g Human Trafficking

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

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

...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for

the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

Paragraph 3(b) goes on to state, “the consent of a victim of trafficking in persons to the intended exploitation set forth in sub paragraph (a) of this article shall be irrelevant where any of the means set forth in sub-paragraph (a) have been used.”

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

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

The most admissible definition of human trafficking is the one offered by the United Nations. According to UNESCO:

human trafficking is the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another persons, for the purpose of exploitation².

Exploitation here, is meant to capture prostitution, forced labour, slavery related activities or extraction of human organs (parts) from persons, including baby harvest (taking newly born babies from their mothers with their consent or through manipulative means).The

2. UNESCO “Human trafficking, especially of women and children in West Africa (Benin, Togo, Nigeria),” *Research Study* Coordinated by Bisi Olateru Olabegi, Executive Director of WOCON, (Unpublished),(2006).

organization further explains that if a child is recruited, transferred harboured or received for the purpose of exploitation, such child should be seen as being trafficked.

Attoh³ defines human trafficking though, with emphasis on the female sex as “the illicit movement of young women across international borders for certain exploitative purposes.” She affirms that such unlawful movements usually take a bottom-top dimension. That is, it involves the exploitation of victims from the developing and underdeveloped countries to the developed nations. Which ever angle one looks at trafficking in persons, it is quite glaring that it has to do with taking people or someone away from his or her environment to a different location to do some work and other very odd things which ordinarily he or she would not accept doing. Whether the consent of such a person was sought and approval given before the said movement is immaterial. What most likely qualifies a victim as a trafficked person is that the fellow would be in another environment where he or she would be subjected to doing things against his or her volition. In other words, the fundamental rights of freedom of movement, association and even expression may have been denied the victim/s in question.

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

3. Attoh, op cit.

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

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

Furthermore, it should be noted that a proviso to the definition, is that consent of the victim is irrelevant when there is abuse of power or a situation of vulnerability. Consequently, the notion in Nigerian society that most women and girls taken for prostitution to Europe, know that they are going to engage in prostitution and have

consented to the exploitation and therefore cannot be considered as trafficked is erroneous. The consent to migrate, albeit illegally, and for prostitution does not exonerate the traffickers, neither does it make the trafficked persons any less victims. The presence of the other elements of “exploitation” and other forms of human rights abuses while facilitating the transfer of persons for the purposes of prostitution or other forms of labour makes the transaction that of human trafficking. In effect consent is vitiated once the other elements of abuse and exploitation are proved as no one can consent to exploitation. In addition, in the definition the threshold in proving a transaction constituting human trafficking in relation to a child (any person under the age of 18 years) is less than that required to prove trafficking in adults, as it is unnecessary to prove inducement or deceit as long as there is recruitment, transportation and exploitation. This definition is particularly relevant in distinguishing the situation of trafficked children from that of adult victims. Unfortunately most of the trafficked victims either internally or externally are children especially at the time of trafficking.

2.3 The meaning of the word “victim” and Victims of Crime

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (otherwise known as Victims Declaration)²⁵ defines as “Victims of Crime:-

Means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in

violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power⁴.

In Article 18 of the Victims Declaration, a definition of “Victims of abuse of power” is given:-

Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

The Declaration further states that a person may be considered a victim regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the relationship between the perpetrator and the victim⁵. The notion of victim is subsequently extended to the immediate family or dependants of the victim, as well as to persons who suffered harm intervening on the victim’s behalf⁶. The victims Declaration does not distinguish between male and female victims, nor does it address the specific vulnerabilities and needs of female victims of crime and abuse of power.

This definition covers many categories of harm sustained by people as a consequence of criminal conduct, ranging from physical and psychological injury to financial or other forms of damage to their rights, irrespective of whether the injury or damage concerned was the result of positive conduct or a failure to act. Quite importantly, according to paragraph 2 of the U.N. Declaration a person may be considered a victim “regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless

4. Paragraph 1 of the U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

5. Adopted by UN General Assembly Resolution 40/34 of 29 November, (1985).

6. Section 13 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

of the familial relationship between the perpetrator and the victim”⁷. According to the same article: The term ‘victim’ also include, where appropriate, the immediate family or dependants of the direct victims and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”

Lastly, as pointed out in sub-section 2.1.1 above, the provisions of the Declaration, in full consistency with the principle of equality and the prohibition of discrimination under international human rights law dealt with in Chapter 13 of this Manual, are, according to paragraph 3, applicable to all, without distinction of any kind on the grounds enumerated in the paragraph or on other grounds. The European Convention on the Compensation of Victims of Violent Crimes contains no explicit definition of the notion of “victim” and, as made clear by the title, its framework is somewhat limited in that it obliges the State to provide compensation to victims of crime only when “compensation is not fully available from other sources”. Moreover, only the following two categories of victim may qualify for compensation: “those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence”, and “the dependents of persons who have died as a result of such crime”.⁸ However, a victim for the purposes of the Convention may be a person who has been injured or killed when trying to prevent an offence or when “helping the police to prevent the offence, apprehend the culprit or help the victim”. As made clear by article 2, the Convention does not provide a right to compensation in respect of criminal conduct in general but only in respect of violent

7. Ibid

8. Article 2(1)(a) and (b) *ibid*.

crime, nor does it foresee other kinds of help and assistance for victimized persons. This somewhat restrictive framework seems to limit the impact that the Convention might have in terms of providing constructive support to victims of crime, support that should be available throughout the criminal justice system. However, the 1985 Recommendation of the Committee of Ministers on the Position of the Victim in the Framework of Criminal Law and Procedure, while not legally binding, adopts a more holistic approach to the problems faced by victims of crime, a victim-oriented approach that covers all stages of criminal proceedings, from the police level to the enforcement stage, and takes into account the possible need for special protection for the victim.

It is important for members of the legal professions to be aware that the impact on victims of crime is not necessarily limited to physical injury and loss of property, but may also include “loss of time in obtaining financial redress and replacing damaged goods”. Moreover, at the psychological level, victims may be afflicted by a sense of disbelief, a reaction that may be followed by a state of shock, disorientation or even fear and anger. Indeed, when seeking a reason for the crime, victims may experience guilt themselves for what occurred. Although people react differently to crime and do not all suffer serious or long-lasting effects, emotional reactions can affect everybody and a failure to respond or an inadequate response to such emotions on the part of the responsible authorities may exacerbate feelings of anger and fear. As noted in the Guide for Practitioners, “A peaceful and orderly resolution of conflicts depends upon showing compassion and respect for the dignity of victims by meeting their perpetrators. The notion of victim is

subsequently extended to the immediate family or dependants of the victim, as well as to persons who suffered harm intervening on the victim's behalf.

The victims Declaration does not distinguish between male and female victims, nor does it address the specific vulnerabilities and needs of female victims of crime and abuse of power.

2.4 Definition of Human Rights

It is a claim which one person can bring against another to the extent that by exercising that right, he or she is not preventing someone else from exercising theirs. "Human rights" are legal entitlements which every person, as a human being possesses. They are universal and belong to everyone, rich or poor, male or female. Such rights may be violated but they can never be taken away.

Human rights are legal rights because they are part of the various international legal instruments which guarantee civil, political, economic, social, cultural, environmental and developmental rights and which provide for redress should such rights be violated. It is also important to note that human rights are, in addition, protected by the constitutions and domestic laws of most countries of the world, Nigeria inclusive.

In principle, there are two ways to address the issue of violations of human rights. From the victim's standpoint, the Declaration of Basic Principles of justice for Victims of Crime and abuse of power proposes two definitions for such violations. The first characterizes them as "a violation of criminal law operative within Member States, including those laws proscribing criminal abuse of power". Central to such violations is the individual or collective harm and suffering caused to persons, including physical or

mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that can be imputed to the State. The second definition concerns those “acts and omission (imputable to the State) that do not constitute violations of national criminal laws but of internationally recognized norms relating to human rights.”

The word “recognized” must be understood to refer to norms contained in human rights treaties, norms that form part of international customary law, or norms that form part of principles of law as recognized by civilized nations.

In the context of international humanitarian law, the need to recognize the right of the victim is informed by the belief that human persons have inviolable rights even during armed conflict⁹. The rationale of international humanitarian law is to go beyond the interstate levels of states and [to reach] for the level of the real beneficiaries of humanitarian protection, i.e. individuals and group of individuals¹⁰. The victim’s right to a remedy in the first place is dependent on his or her right under international law being violated¹¹. It is a secondary right which is derived from a primary substantive right that has been infringed¹². Nevertheless, there is a world of difference between recognizing the existence of such a right and enforcing such a right through a claim. States have so far been unwilling to entitle explicitly and in general, victims of violations of international humanitarian law claiming reparation¹³. In the case of *Gouriet v. Union of Post Office*

9. Zegveld, op citp.502

10. Abi-Saab, op cit p.234

11. Zegveldop cit p.503

12. Ibid

13. Ibid

Workers the House of Lords acknowledged that, “a right without a remedy is no right at all”¹⁴.

Thus, there is a need to afford this remedy to victims of international crimes particularly to the victims of the Darfur conflict. Such remedies will at least give them a sense of fairness, qualifying them as members of the human family. The interests of victims of human rights violations have been recognized by the General Assembly¹⁵. This resolution established the basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law. Principle 8 and 10 provides that states must afford appropriate remedies to victims of violations of international humanitarian law, including access to justice.¹⁶ According to principle 11, the content of this right include access to justice, reparation for human suffering and access to factual information concerning violations. These UN Principles have been backed up by other initiatives. For example, the Hague Agenda for Peace and Justice for the 21st century defined the implementation of international law as a dominating theme and recommended that, “The Hague Appeal will advocate changes in the development and implementation of the laws in both fields (international humanitarian law and human rights law), in order to close critical gaps in protection and to harmonize these vital areas in international law”¹⁷.

Articles 7 and 8 common to the four Geneva conventions of 1949 clearly affirms the rights granted to protected persons. An investigation into these conventions demonstrated

14. *Gouriet v. Union of Post Office Workers*, 1978

15. Resolution 60/147 (Basic Principles and Guidelines on Reparation, 2005)

16. *Ibid*

17. UN Doc A/54/98

that a number of rules refer explicitly to concept such as “right”, “entitlement” or “benefit”. Additional Protocol II to the Geneva Conventions presupposes the existence of such rights¹⁸. Case law also provides for an inference that the Law of The Hague also bestows individuals with rights to reparation. In the case of *Dedovic v. Kok et al*, the Amsterdam District Court (Netherlands) implicitly recognized the idea of individual rights in the field of international humanitarian law.¹⁹

However, there are hurdles for the realization of remedies for victims of war crimes provided by international criminal tribunals. The key emphasis on these tribunals has been on panel sanctions, and focus on victims and their remedies have been restricted. Nevertheless, some degree of attention has been given to victims and their remedies. In Resolution 827 of 1993 that adopted the Statute of the International Criminal Tribunal for the Former Yugoslavia (ICTY), the UN Security Council decided that, “The work of the Tribunal shall be carried out without prejudice to the right of victims to seek, through appropriate means, compensation for damages incurred as a result of violations of international humanitarian law”²⁰.

Both the International Criminal Tribunal for Rwanda (ICTR) and ICTY statutes, and the Rules of Procedure and Evidence of the Special Court for Sierra Leone provide for the restitution of property or the proceeds thereof to victims and in this context, a trial chamber may determine the rightful owner of the property at issue. The Rules of

18. Art.6(2) of the Protocol Additional to the Geneva Convention of 1949, (1978).

19. Judgement of the Amsterdam District Court, (2000), para.5.5.22 .

20. (United Nations Security Council Resolution 827, (1993)

Procedure and Evidence of the Special Court for Sierra Leone embodies a similar provision. Rule 105 on compensation to victims states that:

The Registrar shall transmit to the competent authorities of the states concerned the judgment finding the accused guilty of a crime which has caused injury to a victim. Pursuant to the relevant national legislation, a victim or person claiming through him may bring an action in a national court or other competent body to obtain compensation. For the purposes of a claim made under sub-rule (b), the judgment of Special Court shall be final and binding as to the criminal responsibility of the convicted person for such injury.

From this analysis, it can be concluded that the victims of human right violations depend on the availability of national remedies. In the absence of a national court with the power and the will to award reparations, victims are left without a legal recourse. Thus, the UN Principles on the Right to a Remedy aim to fill this existing domestic gap. Principles 4 and 5 deals with violations of international humanitarian law that constitute crimes under international law. The establishment of the ICC was aimed at achieving similar goals²¹. Thus, concerned by lack of attention given to victims by ICTY and ICTR statutes, the Statute of the International Criminal Court (ICC) contains more possibilities of redress. Article 75(1)(2)²² stipulates that:

1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting.

21. Zegveld, op cit p.506

22. Art.75(1)(2)of the Rome Statute of the International Criminal Court

2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation.

The ICC Statute goes further to explain that a Trust Fund shall be established by a decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims²³. It also remarks that nothing contained in it shall be interpreted as prejudicing the rights of victims under national or international law. Thus, the Rome Statute goes beyond the treatment of victims under the ICTY and ICTR statutes, as it gives the victim *locus standi* his or her own. This argument therefore seeks to justify reparation as a remedy under international law.

2.5 Victim initiated criminal process

Although the criminal process is victim initiated, and there can be no determination of guilt and conviction without victim participation, the punishment of the offender pays very little regard to the inherent dominant participation of the victim. According to Karibi-Whyte, J.S.C,

The sentencing policy in both the Criminal Procedure Act, and the Criminal procedure Code, pays very little and indeed less than marginal emphasis on the participation of the victim. The sentencing policy demonstrates a tendency towards deterrent, retributive and little rehabilitative punishment. The punishment attached to the offence by the Criminal and Penal Codes are determined by its nature and gravity and its effect on the political and economic fortunes of the society.

23. Rome Statute of the International Criminal Court, Art.79(1)

The participation of the victim in our criminal process is limited to his/her role as a witness for the State in the prosecution of the offender. This passive role has been criticized as unsatisfactory and not sufficiently demonstrative of the interest of the victim in the prosecution of the offender. The view is that victims, offenders and their communities should be involved at the earliest stage and to the fullest extent possible in the administration of the criminal Justice process. It has also been suggested that victims who along with the state have suffered injury from the conduct of the offender, should be allowed to file separate criminal or civil actions in respect of the injury. Individuals of course have suffered more from such injuries than the state. In Austria, Belgium, Denmark, France, Portugal, Spain and Germany and in most civil systems of administration of Justice, victims are allowed to join civil claims for damages with criminal prosecutions. In Russia, the victim is allowed to initiate criminal prosecutions in minor cases, such as minor assault and battery and defamation. Apart from the fact that victim participation in the above described methods results in speediest criminal process, and are considerably less expensive than civil process, it accords the victim an official role. It is also recognition of the interest of the victim in the prosecution of the criminal offender. This is an affirmation of the fundamental principle that crime is an act against the individual, the community and the state. But more important, it accentuates and clearly distinguishes the interest of the individual victim from that of the state.

The nature of victim participation will depend upon the nature of the Judicial process, the cultural and social content of the subject population and most important of the

observance of the fundamental requirements of the principles of Justice. According to Karibi-Whyte, J.S.C. (as he then was):

It seems to me that in considering provisions from victims' participation, the essential elements of Justice in the prosecution of the accused should still remain dominant. The special interest of the victim should only be a relevant factor after the offender had been adjudged culpable and guilty. Hence in our adversary system it will be clearly inconsistent with our concept of Justice and fairness to make the victim of the offence a co-operator. Strictusensu, there is only the victim in respect of who the offender is liable thereafter and not before there had been a determination of guilt. It is therefore obfuscating the criminal process and polluting the pure stream of Justice by the assumption of his guilt before he was so adjudged after due process of the law.

The above perception of limited victim's role in our adversarial system has prompted the argument that the rights and legal position of victims of crime and abuse of power are very poorly protected, especially in comparison with the range of rights which are extended to offenders (in theory at least).

CHAPTER THREE

THE GENERAL CONCEPT AND HISTORY OF HUMAN TRAFFICKING AND VICTIMS OF CRIMES

3.1 Introduction

This chapter analyses the general concept of human trafficking and victims of crime, to which the current research viewed women and children as the most vulnerable. It discusses history and concept of human trafficking and concept and meaning of victims of crimes.

3.2 Concept of Human Trafficking

The phenomenon of human trafficking, particularly in West Africa, has in recent years assumed alarming proportions and hence receives unprecedented global attention. Although there is a lack of accurate data, it is reported that in West and Central Africa about 200,000 children are trafficked annually, while in West Africa alone, an estimated 35,000 women and children are trafficked every year for commercial sexual exploitation¹Nigeria, the largest and most populous country (140 million) in Sub-Saharan Africa occupies a central position as a country of origin, transit and destination for the crime of human trafficking. It is ranked as one of the seven poorest countries of the world². Nigeria's poverty coupled with a high rate of unemployment, massive devaluation of the local currency and civil and political unrest, are some major internal factors responsible for a high rate of migration which paves the way for human trafficking. Within Africa, Nigeria is the largest single source of trafficked women to

1. Mantua, A., "Trafficking in Women and Children" in African Women's Journal, New People Media Centre, (2003)

2. UNDP Human Development Index (2003)

Europe and Middle East. A recent survey reveals that Nigeria is responsible for more cases of trafficking of women into Europe for forced prostitution than any other African country: Italian authorities estimate that 10,000 Nigerian prostitutes work in Italy, many of them victims of trafficking³.

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

For several decades, human beings especially women and children have been trafficked from Nigeria mostly to countries like Cameroon, Gabon, Cote d'Ivoire, Equatorial Guinea, Benin, Togo and Ghana in the West and Central African Regions, as well as to Europe and the Middle East. Nigerians trafficked to Europe are principally trafficked to countries such as Italy, the Netherlands, the Czech Republic, Spain, France, Germany, Belgium and the United Kingdom. The major destination for Nigerians in the Middle East is Saudi Arabia, while major transit routes for Nigerians en route to Europe are via Libya, Algeria and Tunisia. Nigeria is also a receiving country for trafficked persons from neighboring countries, particularly Benin, Togo and Ghana, for various forms of exploitative labour such as domestic work, farm labour, and use as lumberjacks in

3. The trafficking in Persons Report, U.S. State Department, July (2001)

factories and quarries, for child marriages, begging and for sexual purposes. Internal trafficking from rural communities to urban centers is widespread and has only recently been recognized. The majority of internally trafficked persons, mostly women and children, are primarily trafficked for domestic labour, work on plantations and sexual purposes, while men and boys are trafficked principally for begging and farm labour.

3.3 Trends in Labour Migration

Human beings have been known to migrate from place to place from time immemorial and for various reasons including political and economic reasons. The world has witnessed an unprecedented rise in the population of migrants in recent years. According to the ILO⁴, by 2000 there were 175 million international migrants –equivalent in number to the world’s fifth most populous country. There is abundant evidence that the wave of migration has soared in the last decade especially towards Europe and North America. A recent survey commissioned by the United Nations Development Programme (UNDP) confirmed in the report published in Brussels in 2004⁵ showed that immigrants constitute half of the population of Toronto and Los Angeles and about a quarter of the population of London.

The trend in migration is not limited to movement from developing countries to developed countries or from the South to the North. There is abundant evidence that a large population is moving between developing countries and this is certainly the case in West Africa. Nigeria has been the largest recipient of nationals from other West African

4. ILO, “Towards a fair Deal for Migrant Workers in the Global Economy”, (2004)

5. UNDP, “New Wave of Immigration Requires Support for Multiculturalism, Not enforced Assimilation”, (2004)

countries in the last two decades. In 1991⁶, Africans constituted 84% of the population of migrants into Nigeria, a majority of them from Benin, Togo, and Ghana. It is pertinent to note that this figure represents only the number of recorded migrants whereas a large number of migrants from Nigeria's neighbouring countries are not recorded due to lack of proper documentation at border posts and the corruption of immigration officials.

In recognition of the large volume of cross-border migration and economic activities between the West African States, the members of the Economic Community of West African States (ECOWAS) adopted the ECOWAS treaty and the Protocol relating to the free movement of persons.⁷ While the free circulation of labour is necessary for the development of the region, one of its negative consequences has been a rise in the incidence of human trafficking. ECOWAS has also promulgated a declaration and adopted a plan of action that obliges its members States to combat human trafficking. Nigeria as a member of the comity of nations and a strong member of ECOWAS has endorsed most of the international instruments on human trafficking and related issues as well as the ECOWAS initiatives to combat human trafficking. In addition Nigeria has entered into various bilateral agreements and memoranda of understanding with individual countries within and outside Africa that have a direct relationship with the problems of human trafficking, forced labour and migration in general.

6. 1991 population census

7. Adopted in Dakar on 29th May 1979 and ratified by Nigeria's Protocol A/PI/5/79 on 12th September (1979).

3.4 Legal Concept of Victim of Trafficking

Under section 50 paragraph 10 of the Nigerian Anti – Trafficking in Persons Act, a victim of trafficking means any trafficked person. It is evident from the earlier analysis of victim of crime, abuse of power and of human rights violation, as well as trafficking as a crime and a violation of human rights under both Nigerian and International Laws, that there are three categories of victims of trafficking:- trafficked children below the age of 18 years (boys and girls), trafficked adult women, who are above the age of 18 years, and trafficked men, who are adult males or above the age of 18 years.

This categorization was taken care of when the earliest drafts of the UN Trafficking Protocol limited its application to trafficking in women and children. At the very first negotiation session, States, intergovernmental organizations, and NGOs argued that this approach was unnecessarily restrictive and failed to take into account the fact that men were also trafficked. Following a recommendation of the Ad-Hoc Committee, the UN General Assembly subsequently agreed to modify the mandate of the committee's mandate so as to enable that the scope of the proposed protocol be expanded to cover trafficking in persons:- especially women and children.⁸

In Nigeria, any child, woman or man that is recruited, transported within or across Nigerian borders, purchased, sold, transferred, received or harboured by fraudulent means or by the use of deception, coercion or debt bondage for exploitative purpose or for the

8. UN Gen. Ass. Res. 54/126 (1999) For additional details on this issues, see UN Doc. A/AC.254/30 (2000). E/CN.15/2000/4(2000), 1.34.

purpose of placing or holding the person in servitude in force of bonded labour, or in slavery – like conditions, is a victim of trafficking.⁹ Further, since trafficking is a crime and a human rights violation, all trafficked children, women and men are essentially therefore, victims of crime, of human rights violation and of trafficking.

3.5 Concept of Victim Initiated Criminal Process

Although the criminal process is victim initiated, and there can be no determination of guilt and conviction without victim participation, the punishment of the offender pays very little regard to the inherent dominant participation of the victim. According to Karibi-Whyte, J.S.C. (as he then was), “*The sentencing policy in both Criminal Procedure Act, and Criminal procedure Code, pays very little and, indeed, less than marginal emphasis on the participation of the victim*”. The sentencing policy demonstrates a tendency towards deterrent, retributive and little rehabilitative punishment. The punishment attached to the offence by the Criminal and Penal Codes are determined by its nature and gravity and its effect on the political and economic fortunes of the society.

The participation of the victim in our criminal process is limited to his/her role as a witness for the State in the prosecution of the offender. This passive role has been criticized as unsatisfactory and not sufficiently demonstrative of the interest of the victim in the prosecution of the offender. The view is that victims, offenders and their

9. The combined effect of Article 3(a) UN Trafficking Protocol and section 50 of the Nigerian Anti-Trafficking in Persons Act

communities should be involved at the earliest stage and to the fullest extent possible in the administration of the criminal Justice process. It has also been suggested that victims who along with the state have suffered injury from the conduct of the offender, should be allowed to file separate criminal or civil actions in respect of the injury. Individuals of course have suffered more from such injuries than the state. In Austria, Belgium, Denmark, France, Portugal, Spain and Germany and in most civil systems of administration of Justice, victims are allowed to join civil claims for damages with criminal prosecutions. In Russia, the victim is allowed to initiate criminal prosecutions in minor cases, such as minor assault and battery and defamation. Apart from the fact that victim participation in the above described methods results in speediest criminal process, and is considerably less expensive than civil process, it accords the victim an official role. It is also recognition of the interest of the victim in the prosecution of the criminal offender. This is an affirmation of the fundamental principle that crime is an act against the individual, the community and the state. But more important, it accentuates and clearly distinguishes the interest of the individual victim from that of the state¹⁰.

The nature of victim participation will depend upon the nature of the Judicial process, the cultural and social content of the subject population and most important of the observance of the fundamental requirements of the principles of Justice. According to Karibi-Whyte, J.S.C. (as he then was):- “It seems to me that in considering provisions from victims participation, the essential elements of Justice in the prosecution of the

10. Ladan, M.T. *infra*, p.24

accused should still remain dominant. The special interest of the victim should only be a relevant factor after the offender had been adjudged culpable and guilty. Hence in our adversary system it will be clearly inconsistent with our concept of Justice and fairness to make the victim of the offence a co-operator. *Strictusensu*, there is only the victim in respect of who the offender is liable thereafter and not before there had been a determination of guilt. It is therefore obfuscating the criminal process and polluting the pure stream of Justice by the assumption of his guilt before he was so adjudged after due process of the law.”¹¹

The above perception of limited victim’s role in our adversarial system has prompted the argument that the rights and legal position of victims of crime and abuse of power are very poorly protected, especially in comparison with the range of rights which are extended to offenders (in theory at least).¹²

2. Protection of the Rights of Victims of Human Rights Violation and Trafficking.

Trafficked Persons as basically Victims of crime and human rights violations, the UN Victims Declaration, sets out provisions relating to access to justice and fair treatment, restitution, compensation and assistance, stating the following rights which victims of crime and abuse of power should be able to exercise:-

11. Kuti v. A. G. Federation (1985) 8 NWLR (Pt. 6) 211

12. Merryman, J. H. and Clark, D. S.” Comparative Law; Western European and Latin America Legal Systems”, Indianapolis.(1978)

CHAPTER FOUR

INTERNATIONAL AND DOMESTIC INSTRUMENTS FOR THE PREVENTION OF HUMAN TRAFFICKING IN NIGERIA

4.1 Introduction

This chapter analyses the legal framework of international and domestic instruments for the prevention and control of trafficking on women and children. It provides how victims are treated in the administration of justice, by the Police, by the Prosecution in courts, right to protection of their private life, their Safety and how they are compensated. It gave a clear understanding of the position of the victim of crime as it ought to be under international and Nigerian domestic instruments. And, lastly, raises issues, challenging the practical applicability of those instruments and smooth working of the Nigerian agencies established to control trafficking on women and children in Nigeria.

4.2 The Role of International Instruments to Improve the Position of women and children as Victims of Trafficking and Abduction in the Administration of Justice

The legal regime relating to trafficking in persons is made up of hard and soft law. Both hard and soft law comprise instruments specifically dealing with trafficking issues as well as more general issues that have a bearing on trafficking in persons such as the Universal Declaration on Human Rights, the International Covenant on Civil and Political rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). In the field of soft law, there has been a greater emphasis on trafficking-specific measures such as special measures for the protection and support of women and

children in light of their specific needs.¹The subject also falls within the purview of a range of United Nations organs and international treaties whose procedures can generate pressure on recalcitrant governments. The existing public international law may be divided into the following not mutually exclusive categories which will be looked into in more detail below: the international law regime on trafficking in persons and the international criminal law. In the interest of time, regional legal regimes will not be looked into.

Older treaties that deal with trafficking in persons such as the 1949 Convention on Suppression of Trafficking and the Exploitation of the Prostitution of Others exist but have fallen more or less in disuse because the more recent instruments address trafficking in persons with increasing attention given to the human rights issue from the angle of the protection of the victims. These include the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography; the Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families; ILO Conventions. I will also briefly talk about the Palermo Protocol and outline certain soft law instruments of relevance to our issue today.

1. Office of the UN High Commissioner for Human Rights (OHCHR) Recommended Principles and Guidelines on Human Rights and Human Trafficking at [http://www.unhcr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/caf3deb2b05d4f35c1256bf30051a003/\\$FILE/N0240168.doc](http://www.unhcr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/caf3deb2b05d4f35c1256bf30051a003/$FILE/N0240168.doc) (Date of access: Aug 20, 2008) guidelines 6 and 8.

4.2.1 The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)²

Article 6 of CEDAW stipulates that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”³ This obligation can be understood to require States Parties to address the root causes of trafficking and the exploitation of the prostitution in addition to punishing trafficking of women.⁴ Articles 11 and 12 of CEDAW also recognize conditions essential to women’s livelihood such as the right to work, the right to the free choice of profession and promotion, job security, the right to receive training, equal remuneration, social security and protection of health. It has been established that victims of trafficking are deprived of these rights.⁵ As far as enforcement is concerned, article 18 foresees periodical reporting of States Parties on the legislative, judicial, administrative and other measures taken to give effect to the Convention’s provisions and the progress they have made. Reporting is made to the Committee on the Elimination of Discrimination against Women established under article 17.

Even though the CEDAW addresses the root causes of trafficking as stated above, no procedure exists that allows individual complaints alleging violation of the provisions contained in the Convention. In addition, monitoring of member States is not performed regularly.

2. 1249 *UNTS* 13.

3. art.6.

4. L. Chiang “Trafficking in women” 1 *Women and IHRL* (1999) p. 348.

5. Simic Olivera “Victims of trafficking for forced prostitution: protection mechanisms and the right to remain in the destination countries” (2004) *Global Migration Perspectives* No.2 pp. 33-34.

4.2.2 Convention on the Rights of the Child (CRC) (1989) and the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography (2000)⁶

The CRC addresses trafficking in article 35 by stating that States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, sale of or traffic in children for any purpose or in any form. The last clause can be construed to cover any situation of trafficking of children that may arise. Under article 32, States Parties “recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.” States must also “undertake to protect the child from all forms of sexual exploitation and sexual abuse.”⁷ The CRC comprehensively deals with the well-being of children⁸ thus making this instrument a useful tool for the protection of children victims of trafficking. The primary mechanism for monitoring implementation of the rights in the Covenant is the state reporting procedure in accordance with articles 43 and 44.

Addressing the well-being of children in all its aspects makes the CRC a very useful instrument to promote the protection of trafficked children. However, the primary mechanism that allows the monitoring of the implementation of the rights contained therein is the state reporting procedure. Like the CEDAW, there is no mechanism in place to allow for individual complaints.

6. UN Doc.A/54/49.

7. art.34.

8. arts.24, 27-29, 31.

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography reinforces the CRC with regards to the Sale of Children, Child Prostitution and Child Pornography by recognizing several activities as offences that must be punishable under domestic law, whether committed domestically or at a transnational level including child prostitution⁹ and the sale of children for sexual exploitation, organ transfer or forced labour.¹⁰ No definition is provided for trafficking under the Optional Protocol. For the purposes of the Protocol, the sale of children means any act or transaction whereby any person or group of persons transfers a child to others for remuneration or any other consideration.¹¹

Therefore, the primary aim of this instrument is to eliminate child prostitution, the sale of children and child pornography by criminalizing such acts. Article 8 of the Protocol confers rights to children by making State Parties duty bound to adopt appropriate measures to protect the rights and interest of child victims of the practices prohibited under the Optional Protocol to the CRC at all stages of the criminal justice process by recognizing the vulnerability of child victims and adapting procedures to recognize their special needs.¹²

4.2.3 Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990);¹³

Article 16 of this Convention recognizes the rights of migrant workers and members of their families to liberty and security,¹⁴ effective State protection against violence,

9. Art.1.

10. Art.3.

11. Art.2(a).

12. Art.8.

13. UNGA Res.54/158 of 18 Dec. 1990.

physical injury, threats and intimidation, whether by public officials or by private individuals¹⁵ and access to due process of law in case of arrest or detention.¹⁶ It further affords protection to migrants and members of their families from undue deportation,¹⁷ access to social and health services¹⁸ and the free exercise of their economic, social, cultural and other interests. In terms of implementation, a Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families is mandated to examine the reports submitted by each State party.

4.2.4 International Labour Organization Conventions

International Labour Organization (ILO) Conventions applicable to trafficking are the Forced Labour Convention (No.29)¹⁹ adopted in 1930; the Abolition of Forced Labour Convention (No.105)²⁰ and the International Labour Organization (ILO) Convention No.182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999).²¹ Under both Forced Labour Conventions, States parties undertake to suppress the practice of forced labour.²² Both Conventions define forced or compulsory labour as all work or service which is exacted from a person under the threat of a penalty and for which the said person has not offered himself voluntarily.²³

14. Art.16(1).

15. Art.16(2).

16. Art.16(5).

17. Art.22.

18. Art.43.

19. Forced Labour Convention ILO Convention 29 June 28 1930 39 *UNTS* 55.

20. Abolition of Forced Labour Convention 25 June (1957), 320*UNTS* 291.

21. *ibid*

22. Forced Labour Convention , art. 1(1) and Abolition of Forced Labour Convention art.1

23. Art.2(1).

This definition may be construed as applicable to persons who are trafficked.²⁴ As regards the protection afforded to victims of trafficking, a clear advantage is ILO's supervision and enforcement mechanisms. Under the Constitution of the ILO, States parties must submit annual reports to the International Labour Office as regards the measures they have taken to give effect to the provisions of Conventions they have ratified.²⁵ At the same time, States must submit copies of their reports to the organizations that represent employers and workers at the ILO.²⁶ The latter may make their own observations on States parties' performance with regard to implementation of ILO Conventions and States must inform the ILO of any observations received.²⁷ A periodic reporting mechanism is also established for ILO member States that have not ratified a particular ILO Convention in accordance with article 19 of the Constitution of the ILO. These member States must report to the Director-General of the International Labour Office the position of their law and practice as to the matters dealt within ILO Conventions they have not yet ratified.²⁸ Every year the Director-General presents a summary of the reports communicated by states to the International Labour Conference.²⁹ The ILO's Committee of Experts on the Application of Conventions and Recommendations is charged with reviewing and issuing its observations on States' reports, relevant laws, publications and information contained in comments made by workers' and employers' organizations.³⁰ It

24. *Farriorop cit, p. 223.*

25. Constitution of the International Labour Organization (ILO) Art. 22 at http://training.itcilo.it/ils/foa/library/constitution/iloconst_en.html#a22 (Date of access 30 August 2008).

26. art. 23(2).

27. *Farriorop cit, p. 224.*

28. Constitution of the ILO art.19 (5)(e).

29. art. 23(1).

30. *Farrior op cit, p. 224.*

can be concluded that such mechanisms allow for better transparency and accountability of States.

4.2.5 Benefits and Drawbacks of the Treaty Procedures

Taken as a whole, the instruments described above promote a range of actions in order to respond to the rights of trafficked persons especially women and children regardless of their legal status or nationality. Therefore, in order to ensure the effective protection of victims of trafficking, the above listed important international legal instruments must be considered. Still, in order to be bound by specific obligations enshrined in any of these Human Rights treaties, States must have acceded or ratified these documents or the binding obligations must be regarded as a part of customary international law.³¹

Different monitoring mechanisms mentioned above are put in place to oversee treaty performance of Member States which can allow for better follow-up of the actual protection of victims of human trafficking. The benefits are that the reporting mechanisms require States parties to examine the status of their legislation and enforcement mechanisms at the domestic level *vis-à-vis* their treaty obligations. The reporting mechanisms can also expose areas where a government has legislation in place but then lacks the enforcement mechanisms to implement the legislation. However, one set-back to the treaty mechanisms of the CRC and CEDAW described above is that the monitoring committees are limited to the State Parties reports only, when reviewing States performances.³² This means that trafficking that takes place across international

31. *Ibid*, p. 238.

32. *Ibid*, p. 235.

borders cannot be properly addressed since such type of trafficking movement requires a review of at least two states at a time. This implies that information sharing is needed with intergovernmental, regional and other bodies capable of looking into cross-border trafficking.

Another significant drawback of the treaty procedures is the lack of regular monitoring under the treaties above. After the initial report, subsequent reports are requested only every four or five years after it.³³ This means that once the initial report has been reviewed, concerned parties wishing to follow up on the issues raised will have to wait years before being able to bring the matter to the appropriate Committee's attention. Furthermore, since the reports are drafted by States, those lacking transparency may not provide accurate or exhaustive details about their level of compliance to the treaties. There is therefore a danger that the whole reporting exercise amounts to the fulfilment of a mere formality thus preventing the Committee from really assessing the level of compliance and providing useful recommendations. For this reason, non-governmental organizations roles are very important in providing accurate information as to the reality on the ground. However, the problem remains where civil society is stifled.

4.2.6 The Palermo Protocol /the Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children

The Palermo Protocol is not principally a human rights instrument; it mainly deals with international cooperation in the fight against transnational organized crime. As such, member states are duty bound to criminalize trafficking in human beings as well as

33. *Ibid*, p. 238.

exchange information, provide training, border measures and security and control of documents.³⁴ As far as protecting victims of trafficking is concerned, article 9(1) (b) of the Protocol requires parties to “establish comprehensive policies, programmes and other measures... to protect victims of trafficking in persons, especially women and children from re-victimization.” However other provisions are not as demanding. Article 6(3) only requires State parties to “consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society ...”. As far as the privacy and identity of victims of trafficking in persons is concerned, State parties are only required to protect them “in appropriate cases and to the extent possible”.³⁵ Each State Party shall also “consider adopting legislative or other measures” that will allow victims to remain in its territory, temporarily or permanently.³⁶ However, a saving clause (Article 14) emphasizes on the continued application of international law which includes international human rights and humanitarian law. This means that human rights instruments such as those mentioned earlier would apply where the countries concerned have ratified them. This Article also addresses the situation where a victim of trafficking is also a refugee or is seeking refugee status.³⁷ This means that the rights of refugees should be guaranteed even if they are victims of trafficking, these include the right not to be sent back to areas of

34. Arts.5, 10 and 11.

35. Art. 6 (1).

36. Art 7(1)

37. Muntarbhorn V “Combating Migrant Smuggling and Trafficking in Persons, especially Women: the Normative Framework Re-appraised” in Aleinikoff T A and Chetail V (eds) *Migration and International Legal Norms* at 156.

danger (*non-refoulement*) and those seeking refugee status are to be given access to asylum procedures and refugee determination procedures.³⁸

Soft law refers to instruments which do not comply with all the traditional criteria for the establishment of rules of international law (usus and opinion juris in the case of custom, or expressed consent to be bound in the case of treaties) “. ³⁹Soft law therefore consists of principles, standards or codes of conduct that are adopted by an intergovernmental body such as the United Nations General Assembly. Although soft law is not binding as such, it can obtain legal force if it is transformed into hard law.⁴⁰

Examples of the soft law on trafficking in persons abound and include initiatives from the UN High Commissioner for Human Rights (UNHCHR),⁴¹ the UN High Commissioner for Refugees (UNHCR), the European Union and the International Organization for Migration (IOM),⁴² the Organization for Security and Cooperation in Europe (OSCE)⁴³ et cetera.⁴⁴ Therefore, in addition to treaty law and customary international law, soft law can be useful in enhancing the protection of the human rights of trafficked persons. Although

38 Knight S “Asylum from trafficking: a failure of protection” Immigration Briefings (2007) at 3 See also UNHCR: “Guidelines on International Protection: The application of Article 1 A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees to victims of trafficking and persons at risk of being trafficked” (7 April 2006) at <http://www.unhcr.org/publ/PUBL/443b626b2.pdf> (Date of access: 16 October 2008).

39. Olivier M *The Relevance of ‘Soft Law’ as a Source of International Human Rights* 2002 CILSA (2003) p. 294.

40. *Ibid*, pp. 295 -299.

41. Recommended Principles and Guidelines on Human Rights and Human Trafficking HR/PUB/02/3 <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf> 9 (Date of access: 01 June 2008)

42. Brussels Declaration on Preventing and Combating Trafficking in Human Beings at http://ec.europa.eu/justice_home/news/information_dossiers/conference_trafficking/documents/declaration_1709.pdf (Date of access 16 October 2008).

43 OSCE Action Plan to Combat Trafficking in Human Beings

at [http://74.125.39.104/search?q=cache:WupuKb8HLZgJ:www.osce.org/press_rel/2003/pdf_documents/07-3447-pc1.pdf+Organization+for+Security+and+Cooperation+in+Europe+\(OSCE\)+Action+Plan+on+Trafficking&hl=am&ct=clnk&cd=1&gl=et](http://74.125.39.104/search?q=cache:WupuKb8HLZgJ:www.osce.org/press_rel/2003/pdf_documents/07-3447-pc1.pdf+Organization+for+Security+and+Cooperation+in+Europe+(OSCE)+Action+Plan+on+Trafficking&hl=am&ct=clnk&cd=1&gl=et) (Date of access: 16 October 2008).

44. Piotrowicz *op cit*, p. 285.

not legally binding, it can at least provide guidance on what measures to implement. The standards drawn from international human rights instruments and formally recognized international legal norms that aim to protect and promote respect for the human rights of individuals who have been victims of trafficking; and in particular, eight specific principles have been outlined by the Human Rights Standards for the Treatment of Trafficked Persons (the Trafficking Standards).⁴⁵ These standards were developed by the Global Alliance against Traffic in Women, the Foundation against Trafficking in Women and the International Human Rights Law Group acting in concert and include the following:

- i. The Principle of non-discrimination
- ii. Safety and fair treatment
- iii. Access to Justice
- iv. Access to Private Actions and Reparations
- v. Resident Status
- vi. Health and other services
- vii. Repatriation and Reintegration
- viii. State cooperation

In sum, soft law instruments advocate for strong measures to protect and promote the rights of victims of trafficking, such measures ultimately rest with the State which is responsible for protecting and promoting their rights and freedoms. Trafficked persons

45. Global Alliance Against Traffic in Women, the Foundation Against Trafficking in Women and the International Human Rights Law Group *Human Rights Standards for the Treatment of Trafficked Persons* (3ed) 2001.

must be provided with adequate protection from retaliation by their traffickers and re-victimization by governments. The judicial system of countries must be equipped and ready to administer due process of law to benefit victims of trafficking. Governments, regional and international bodies alike must interpret counter-trafficking laws and policies in light of the principles above and engage in cooperation activities to combat trafficking in persons. None of the hard law instruments having a bearing on trafficking in persons deal with the protection of trafficked persons in such detail and to such extent as the soft law principles; however intergovernmental and non-governmental organizations can continue to put pressure at international, regional and national level for their application.

4.2.4 International Criminal Law

Under certain circumstances, trafficking in persons is recognized as a war crime and crime against humanity in the Statute of the International Criminal Court.⁴⁶ This can best show the gravity of human trafficking even though trafficking does not occur during all armed conflicts and all trafficking cannot be associated with armed conflicts.

Article 7(2) (c) of the Rome Statute of the International Criminal Court (ICC) states, “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.”

46. Rome Statute of the International Criminal Court 1998, 2187 *UNTS* 90, entry into force 1 July 2002, hereinafter the Rome Statute.

This means that trafficking and slavery are not the same. The key element in the article quoted above is the right of ownership.⁴⁷ When looking at trafficking, the exploitation phase can be regarded as slavery because of the full exercise of the right akin to ownership.⁴⁸ It can therefore be concluded that trafficking may be treated as slavery in this context when the traffickers themselves exploit their victims.⁴⁹ In the cases where trafficking does not amount to enslavement, other acts that could be linked to trafficking include deportation or forcible transfer;⁵⁰ rape, sexual slavery and enforced prostitution⁵¹ and other inhuman acts⁵² similar in character to acts stipulated in article 7 and causing great suffering, or serious injury to the body or to mental or physical health. In order for trafficking in persons to be prosecuted as a crime against humanity, it must be part of a widespread or systematic attack against a civilian population with knowledge of the attack, it does not have to be transnational nor does the state have to be involved in the offence.⁵³ In this case, we have individual accountability for the breach of what are described as serious crimes against individuals. However, if a state is actively involved, complicit or negligent, we can say that human rights have been breached.⁵⁴ Some offences that may be linked to trafficking in persons are also stated to be war crimes;

47. The Slavery Convention *supra* n.5, art. I(1) defines slavery in the same way, it states: "Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised."

48. Obokata *op cit*, pp. 449-451.

49. In Prosecutor v Kunarac, (Trial Judgment) IT-96-23 (22 Feb 2001), the Trial Chamber held that "the duration of the suspected exercise of powers attaching to the right of ownership is another factor that may be considered when determining whether someone was enslaved".

50. Rome Statute *op cit* art.7(1) (d).

51. Art.7 (1) (g).

52. Art.7 (1) (k); Obokata *op cit*, pp. 450-451.

53. Art 7(1); see also Obokata *op cit*, p. 452.

54. Piotrowicz *op cit*, p. 289.

these include deportation of the population or transfer or unlawful confinement,⁵⁵ outrages upon personal dignity in particular humiliating and degrading treatment,⁵⁶ rape, sexual slavery and enforced prostitution.⁵⁷

From the side of the victims, there are clear advantages of considering trafficking in persons as an international crime, where the act meets the conditions set out by the Rome Statute including the limitations in jurisdiction of the ICC. Firstly, the victims can make representations to the Pre-Trial Chamber of the International Criminal Court (ICC) for it to determine whether or not to issue an authorization of investigation in accordance with article 15 (3) of the Rome Statute. In addition, article 68 of the Statute provides for the protection of victims and witnesses by way of conducting the proceedings *in camera*. Article 79 of the same also provides for a trust fund for victims and their families and the court may award compensation. However, the problem, of the limited and specific jurisdiction of the ICC can remain an obstacle.

There are many treaties that address trafficking in persons. More recently, the regime seems to have evolved rapidly with the recognition of the need to provide at least some level of support and assistance to victims for their rehabilitation and reintegration. Trafficking implicates civil and political rights, equality rights and the right to be free from slavery and slavery-like practices. Trafficking is also intricately connected to economic, social and cultural rights. Furthermore, some victims may have an entitlement to international protection because of risks they face if they are made to return home.

55. Rome Statute *op cit* no. 132 arts. 8(2) (b) (vii); 8(c) (ii).

56. Art. 8(2) (b) (xxi).

57. Arts. 8(2) (b) (xxii); 8(2) (c)(vi).

Intergovernmental and non-governmental organizations have advanced the debate further in the recognition of specific rights of trafficked persons and the need for active engagement of governments for their realization.

4.3 The Role of Domestic Instruments for the prevention and control of Human Trafficking and Abduction in Nigeria

In accordance with the useful guidance for criminalization of trafficking in persons provided by the UN anti- trafficking protocol, the Nigerian government has numerous anti-human trafficking and abduction provisions in its criminal justice system. For example, the Nigerian criminal law has several provision protecting children and youth from harm and sexual exploitation stipulated in the Criminal Code for the South and Penal Code for the North. Within the last three decades, the Nigerian government has not enforced these laws effectively; however, since the democratic transition in 1999, the government and several States Houses of Assembly have passed or are in the process of passing laws to protect children. The Nigerian trafficking in persons (Prohibition) Law Enforcement and Administration Act⁵⁸, further adopted the Protocol's definition and the three separate elements with a slight modification. Hence under section 50 paragraph 9 of the Act, the term "trafficking" includes":-

- i. All acts and attempted acts involved in the recruitment, transportation within or across Nigerian borders, purchases, sale, transfer, receipt or harboring of a person;

58. No. 24 of 2003

- ii. By means of: deception, coercion or debt bondage;
- ii. For the purpose of:- Placing or holding the person whether for or not in involuntary servitude (domestic, sexual or reproductive) in force or bonded labour, or in slavery-like conditions.

Under sections 11-32, 34, 44 and 47 of the anti- trafficking Act, offences and punishments are prescribed respectively. Furthermore, section 30 of the Child's Rights Act prohibits the buying, selling hiring or otherwise dealing in children for the purpose of hawking or begging for alms or prostitution, or domestic or sexual labour, unlawful or immoral purpose, slavery, trafficking, debt bondage, forced or compulsory labour or for the purpose of depriving the child of the opportunity to attend and remain in school as provided for under the Compulsory, Free Universal Basic Education Act.⁵⁹

It is evident from the above mentioned ingredients of trafficking that, it is a complex protection issue including the removal of a child from his or her family environment, the child's transportation, illegal reception or sale, and placement into an exploitative context (Labour, sexual or economic).

The widespread perception of child trafficking solely, as a child labour phenomenon, misses the point. This is so because, trafficking violates the rights of children, under both internationally recognized and national legal instruments, long before their actual labour begins. First, there is the separation of a Child from his or her family environment. Then

59. The Child's Rights Act, 2003, Federal Republic of Nigeria, Official Gazette, No. 116. Vol. 90, Act No. 26:- (Sections 2-4, 8-15).

there is the time spent in the so-called ‘care’ of the traffickers while the child is transported to the eventual workplace; a process that presents its own dangers and abuses. Then there is the illegal reception or sale of the child and, ultimately the child’s final destination. Understandably among the Nigerian populace, there is a little perception that trafficking is, first and foremost, a violation of human rights, particularly, the rights of the child to be protected from any form of labour, economic and sexual exploitation, to preserve family relations and to grow up in a nurturing family environment.⁶⁰

Based on current knowledge of the scale of the problem of child trafficking, the volume, types, major causes, suppliers and receivers, limitations and challenges, as well as the fact that Nigeria is now a major supplier, consumer and also a transit route for human trafficking, especially, children and women, the Federal Government promulgated into law, the Child’s rights Act of 2003. This Act seeks to set out the rights and responsibilities of a child, specifies the obligations of parents, governments and other authorities, organizations and bodies, domesticates the four broad clusters of rights of a child to survival, development, protection and participation guaranteed under the UN Convention on the Rights of the Child and the African Union Charter on the Rights and Welfare of the Child; provides for a system of child Justice Administration, and the care and supervision of a child, amongst others; finally, it gives muscle to the various state and federal legislations dealing with individual aspects of child protection, including the prohibition of:- Child labour and child trafficking, child hawking and begging, child

60. Ladan M. T., Law, Human Rights and Administration of Justice in Nigeria (ed), A.B.U. Press, Zaria, Nigeria, (2001), p. 42.

marriage and betrothal, withdrawal of children from schools, mainly for commercial or marriage purposes. Under the interpretation section 277 of the CRA, 2003, the “age of majority” means the age at which a person attains the age of 18 years; whilst a “child” means, a person under the age of 18 years⁶¹.

Under sections 1-2 (Part 1), the Act provides that the best interest of the child shall be of primary or paramount consideration in all actions to be undertaken whether by an individual, public or private body, institutions or courts of law, administrative, executive or legislative authority. Further, the Act provides that necessary protection and care shall be given to the child for his or her well-being, taking into account the rights and duties of the child’s parents, legal guardians and other bodies legally responsible for the child⁶².

Part II (Sections 3-20) of the Act provides for the rights and responsibilities of a child in Nigeria. Accordingly, it entrenches, among others the following fundamental rights for the child:- the rights to survival and development, to private and family life, to freedom from discrimination, to dignity of the child, to health and health care services, to parental care, protection and maintenance, to free, compulsory and universal primary education, as well as encouragement of the child to attend and complete secondary education. The Act also guarantees the right to special protection measures of a child in need of such protection as is appropriate to his or her physical, social economic, emotional and mental needs and under conditions which ensures his/her dignity, promote the child’s self-reliance and active participation in the affairs of the community, as well as the provision

61. Ibid

62. Ibid

to a child with such assistance and facilities necessary for the child's education, training, employment, rehabilitation and recreational opportunities in a manner conducive to the child's overall development⁶³.

Part III (Sections 21-40) of the Act provides for the Protection of the rights of the child against child trafficking, labour, sexual and other economic exploitative, discriminatory and harmful practices through the prohibition of:- child marriage, child betrothal, exposure to use, production, trafficking, etc of drugs and psychotropic substances, use of children in any criminal activity, abduction and unlawful removal and transfer of a child from lawful custody, forced, exploitative or hazardous child labour, including outlawry of employment of children as domestic helps outside their own home or family, buying, selling, hiring or otherwise dealing in children for the purpose of hawking, begging for alms, prostitution, unlawful sexual intercourse, other forms of sexual abuse and exploitation prejudicial to the welfare of the child. Part V. (sections 50-52) of the Act provides for additional protection of children in need of care and protection from physical or moral danger. Further, under section 17 (f) of the 1999 Nigerian Constitution, all levels and arms of government are obligated to ensure that, "Children and young persons and the aged are protected against any exploitation whatsoever, and against moral and material neglect."

In support of the position that trafficking is a human rights violation issue, three international legal instruments ratified by Nigeria affirmed as follows:

63. Ibid

- i. Convention No. 182 of the ILO on the Worst Forms of Child Labour (1999), which in article 3(a) recognizes child trafficking as one of the worst forms of child labour, “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict,” and calls for action by member states to eliminate them.
- ii. The 1989 UN Convention of the Rights of the Child (CRC), its general principles and its specific provisions, particularly article 35 which calls on state parties to:- “take all appropriate measures to prevent the abduction of, the sale of traffic in children for any purpose or in any form,” and article 32, which recognizes the child’s rights to be protected from economic exploitation.
- iii. Under the African Union Charter on the rights and Welfare of the child, article 15 seeks to protect African children from all forms of child labour and economic exploitation, article 16 protects children against child abuse, neglect, maltreatment and torture, whilst article 27 seeks to protect children from all forms of sexual abuse and sexual exploitation as well as the use of children in the production and trafficking of narcotics and other illicit drugs, article 29 urges State Parties to take appropriate measures to prevent the sales of, or traffic in children and their abduction for any purpose or in any form, by any person including parents or legal guardians.

4.3.1 Right of Access to Justice and Fair Treatment

Access to Justice Means that where people do need help, there are court and other mechanisms of Justice which are accessible, affordable, comprehensible, fair and equitable legal framework, and dispense Justice speedily without fear or discrimination.⁶⁴

Hence victims of crime of trafficking have the right:- to access mechanisms of Justice and to prompt redress; to the establishment of fair, inexpensive and accessible procedures of redress, both formal and informal, to be informed of such mechanisms, the scope, timing and progress of the proceedings and the disposition of their cases, especially in cases of serious crime and where such information was requested; to have their views presented and considered at appropriate stage of the proceedings where their personal interests are affected; to be provided with proper assistance throughout the legal process; to protection of their privacy, and to measures to ensure their safety and that of their families from intimidation and retaliation, in order to minimize inconvenience to victims; to avoidance of unnecessary delay in the disposition of their cases and the execution of orders granting awards to them; to have access to informal mechanisms for the resolution of disputes, including mediation, arbitration and customary practice, which should be used where appropriate to facilitate conciliation and redress for victims.⁶⁸

64. Ladan M. T. "Women's Rights, Access to, and Administration of Justice under the Sharia in Nigeria," in *Sharia Implementation in Nigeria*: -Ezeilo, Ladan and Afolabi (ed.), WACOL., Enugu and WAARD C. Lagos, (2003), P. 19.

4.3.2 Victims' Right to Fair Treatment means Right to be Treated with Compassion and Respect for their Dignity

Under the Nigerian Anti-Trafficking in Persons Act, a trafficked person shall not be subjected to discriminatory treatment in practice on any account whatsoever, including his or her status as a victim of trafficking or having worked in the sex industry; a person, in certain circumstances, shall not be detained, imprisoned or prosecuted for offences relating to being a victim of trafficking, including non-possession of valid travel stay or use of a false travel or other document.

4.3.3 Right to protection of Privacy

Under the Nigerian Anti-Trafficking Act, victims of trafficking shall have their identity protected; that investigation, detection, gathering and interpretation of evidence are conducted in such a manner as to minimize intrusion into the personal history of a trafficked person; the use by any person's history of being trafficked to discriminate or cause harm to any trafficked person, his family or friends in any way whatsoever, particularly with regards to freedom of movement, marriage or search for gainful employment shall not be encouraged.

4.3.4 Right to Protection against Traffickers and to Institute Action for Remedies including Compensation, Restitution and Recovery

Under the 2003 Anti-Trafficking Act, a trafficked person and his family shall be protected from intimidation, threats, and reprisals from traffickers and their associates including reprisals from persons in authority. Further, a trafficked person, irrespective of

his/her immigration status, shall have the right to institute a civil action against a trafficker and any other person including a public officer who have exploited or abuse him/her, and such a victim shall be entitled to compensation, restitution and recovery for economic, physical and psychological damages to be met from the assets, if any, of the convicted trafficker, forfeited and paid into the Victims of Trafficking Trust Fund.

With regard to restitution and compensation, a number of principles are set out in Articles 8 to 13 of the Victims Declaration:- Offenders or third parties responsible for their behaviour should make fair restitution to victims, their families or dependants, where appropriate. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as result of the victimization, the provision of services and the restoration of rights.

Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal matters, in addition to other criminal sanctions. Where public officials are the offenders, the state should be responsible for restitution to victims. Further, where compensation cannot be obtained from the offender or other sources, the states are encouraged to provide such compensation. The establishment of particular funds to that end is encouraged.

4.3.5 Right to Assistance

Under Articles 14-17 of the Victims Declaration, victims should receive the necessary materials, medical, psychological and social assistance through governmental, voluntary,

community-based and indigenous means. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them. Under the Nigerian Anti-Trafficking Act, a trafficked person should have access to adequate health and other social services during the period of temporary residence; a trafficked person shall also have access to the embassy or consulate of which he is a citizen or any diplomatic representative to protect the victim; a trafficked person shall not be denied temporary residence visas during the pendency of any criminal, civil or other legal action. According to the NAPTIP Victim Manual, a victim of trafficking is entitled to a shelter if he/she so desires for a period not exceeding two weeks for his or her psychological and vocational counseling. A victim is also entitled to rehabilitation and reintegration programme of the NAPTIP to enable the victim acquire prerequisite skill in any vocation of the victim's choice and also if necessary formal education. Moreover, a victim on request is entitled to micro-credit facilities provided by NAPTIP'S partners to enable victims of trafficking complete the process of reintegration into the society.

4.3.6 Right of Trafficked Person to Remain in the Receiving Country and to Return to State of Origin Safely

Under Article 7 (1) and (2) of the UN Protocol on Trafficking in persons, a state party is to consider adopting legislative or other measures permitting victims of trafficking to remain in their territories temporarily or permanently in appropriate cases with appropriate consideration being given to humanitarian and compassionate factors.

By virtue of Article 8 of the UN Trafficking Protocol, state parties of origin are to facilitate and accept, without undue or unreasonable delay, the return of their trafficked nationals and those who have a right of permanent residence within their territories with due regard to the safety of those persons. In order to facilitate repatriation, states parties shall communicate with each other in verifying nationalities as well as travel and identity documents. In returning a trafficking victim to another state party, the returning state party is similarly required to ensure that such return is with due regard both for the safety of the trafficked person and the status of any legal proceedings relating to the fact of that person being a victim of trafficking. The Protocol notes that return shall preferably be voluntary.

Similarly, section 36 of the Nigerian Anti-Trafficking Act provides that a trafficked person is entitled to return home safely, if he/she wishes and when the victim is able to do so; That a trafficked person shall not be denied temporary residence during the pendency of any criminal, civil or other legal actions.

4.3.7 Role of Prosecutors and Judges in the Protection of Victim's rights and the Criminal Justice Administration

The administration of Criminal Justice is an exceedingly complex process that involves a large number of formal and informal agencies concerned with different aspects of the problems of crime and delinquency. The police, the courts, the prisons and the Office of the Director of Public Prosecutions in the Ministry of Justice are examples of formally organized agencies. The aim of the criminal Justice has been aptly summarized thus:- It is

to sustain the Rule of Law by preventing crime wherever possible; by detecting the culprit, when crimes are committed; by convicting the guilty and acquitting the innocent; and by dealing adequately and appropriately with those who are guilty and by giving proper effect to the sentence and orders which are imposed.

From the perspective of the Criminal Justice system, the significance of the adoption of a federal system of government lies in the division of legislative powers between the various tiers of government within the Federation. In other words, which tier of government is vested with the power to render an act or omission a crime, which tier of government has the power to prosecute a crime? These have led to the distinction between federal and state offences. Both the federal and state governments have the legislative competence to enact criminal laws. However, certain subject matters are reserved exclusively for the Federal Government under the Exclusive Legislative list of the 1999 Constitution. Prohibition of trafficking, however, is within the competence of both governments. Human rights in the administration of criminal Justice, therefore, refers to what institutional arrangements exist for protecting the rights of individuals in their most vulnerable circumstances, that is, as suspects or offenders or victims. This is irrespective of whether they are aware of their rights or not⁶⁵.

However, Just as citizen's awareness of his right is an extremely important element in ensuring the observance of such rights, so is the recognition of the fact that organs for the administration of criminal Justice that respect human rights thus reap benefits which

65. Vodopivec, K. "Restitution to Victims of Criminal Offence", in *Slovenia International Annals of Criminology*, 17 (1978) pp. 147-166.

advance the very objectives of criminal justice, while at the same time building a law enforcement and criminal justice structure that does not rely on fear and raw power, but on honour, professionalism, legality and fairness to all⁶⁶. It is against this background that the role of prosecutors and Judges will be examined.

4.3.8 Role of Prosecutors

A prosecutor is a person who instigates, institutes or causes to be instituted a Judicial proceedings against a person, in a court of law or competent tribunal, for the determination of liability, right, etc. Prosecutors, as essential agents of the administration of Justice, shall at all times maintain the honour and dignity of their profession, and be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law, thereby, contributing to fair and equitable criminal justice and the effective protection of citizens against crime. On the role of prosecutors in criminal proceedings, the UN Guidelines on the role of prosecutors, adopted by the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, 1990, provides, among others as follows:- That prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.

66. Ibid

Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the Criminal Justice System. In the performance of their duties, prosecutors shall, among others:- carry out their functions impartially, protect the public interests, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect; consider the view and concerns of victims when their personal interest are affected and ensure that victims are informed of their rights in accordance with the Victims Declaration.

In order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to cooperate with the police, the courts, the legal profession, public defenders and other national human rights institutions or government agencies.

4.3.9 Role of Judges

In administration of Justice, the critical role of Judges is that of the guardian of the Rule of Law and enforcer of fundamental rights of suspects, offenders and victims in any politically organized society. It is the function of courts of law to open their doors for aggrieved parties to seek redress. They have Jurisdiction to do just that. They do not have the Jurisdiction to shut out aggrieved parties coming for remedies. As a matter of law, the entire essence for establishing courts of law is to adjudicate upon disputes between

parties and come to a clear decision one way or the other. Judges have no legal right to stand by the fence and see litigants fighting or in altercation without looking at the merits of the matter and taking a decision. That may result to self-help on the part of the aggrieved party, a situation which may give rise to anarchy or despotism or injustice. In either case, the social equilibrium and the stability of the society is disturbed if not destroyed, and that will not be good for both the society and the courts.

Generally, the courts have the last and the most authoritative say in the determination and pronouncement of what Justice demands in every situation involving claims and counter-claims to legal rights and duties. But the Justice meted out by the courts is human and not divine. It is a product of a fair, impartial and consistent application of domestic and international laws to facts in dispute as adduced in evidence by the parties.

Therefore, in the context of administration of Criminal Justice, Justice is not a one-way traffic. In the words of Justice Oputa, in *Josiah v. The State*, he said:

Justice for the appellant accused of a heinous crime of murder; Justice for the victim, the murdered man, the deceased, whose blood is crying to heaven for vengeance, and finally Justice for the society at large, the society whose social norms and values had been desecrated and broken by the criminal act complained of.⁶⁷

These words express the judicial view of penal policy. Thus in the criminal law, Justice envisages the doing of right not only to the offender, accused, of breaking the law and violating the approved social norms, but also justice to the victim of such conduct,

67. (1985) 1 NWLR 125.

constituting a crime and a human rights violation, and the society whose treasured values have been violated.

It is evident from the above analysis that given the numerous instruments that set out to protect the rights and welfare of suspects and accused persons, the fact that there is little or no legal foundation protecting those of victims of crime and abuse of power offers a disconcerting view of priorities. It does not seem fair or just that their rights and position are so poorly protected in comparison with the levels of protection extended to offenders. While the situation of all victims of crime and abuse of power is a matter of concern to all the organs for the administration of criminal Justice, victims of trafficking deserve particular attention for the very fact that the violation in question has been committed by unscrupulous and heartless individuals or group of individuals in an organized setting, through their official collaborators, at times, to debase the human dignity of trafficking victims.

CHAPTER FIVE

CONCLUSION

5.1 Summary

This study is premised on five chapters. It provides general background of the study. In that chapter, the writer gives an introduction of the topic. Problems of research are provided as well as the aim and objectives of the research. The writer still justified her study in that chapter, and provided a literature review of the available literatures used as well as the method of research adopted, and provided the organizational layout of the study therein.

Chapter two of the work highlights the definition of key concepts. Chapter three of the study discusses the concepts of trafficking on women and children. Chapter four of the work made a comprehensive analysis of the international and domestic instruments and policies, for the protection of trafficking on women and children. Chapter five provides the summary of the work, observations made by the writer in the course of the research and recommendations.

Therefore, we have been able to appraise the legal framework on trafficking on women and children in Nigeria. We were also able to highlight some problems in relation thereto as it affects women and children in Nigeria. Observations and recommendations were made to solve the identified problems.

5.2 Findings

Based on the discussions given on the above, the following findings were made;

- i. It has been observed that the Judicial and administrative mechanisms for the prevention of human trafficking and abduction is ineffective in Nigeria.
- ii. It has further been observed that illiteracy contribute a lot to backwardness of combating human trafficking and abduction in Nigeria. The mass populaces are not educated as to the dangers involved in human trafficking and abduction.
- iii. Moreover, it has been observed that, the Nigerian anti-trafficking law in itself does not provide a serious punishment that is commensurate with the gravity of the offences of human trafficking and abduction. Indeed, this seeming deficiency has been its greatest assets through the ages as it is passed down through the process of socialization from generation to generation. It equally explains its resilience in the face of social, economic and cultural hegemony of Nigeria as a nation.
- iv. Lastly, it has been observed that there has been a problem of lack of coordination between international agencies and the Nigerian domestic agencies, i.e. NAPTIP and other law enforcement agencies that are meant for protection of trafficking on women and children.

5.3 Recommendations

Based on the above observations, the following recommendations are proposed.

- i. Judicial and administrative mechanisms should be strengthened where necessary to enable victims to obtain prompt and adequate redress through formal and informal procedures that are expeditious, fair, inexpensive and accessible.
- ii. Need to educate the public about the rights and duties of suspects, offenders, victims and the state as stakeholders in the criminal justice system. This is with a view to ensure a meaningful balance in addressing the needs, concerns, hopes, fears, and aspirations of all citizens in the society
- iii. Need to further re-examine our criminal justice administration with a view to addressing the problems created by our inheritance of a colonial system which extols the theory of law and state to the point that recognizes only the state and the offender as the “parties” to criminal proceedings, and to the attendant neglect of the rights and welfare of the victim.
- iv. There is the need for further inter-agency and international coordination and collaboration to combat effectively the menace of trafficking; need to strengthen the capacity of NAPTIP and other law enforcement agencies on developing programmes that seek to assist victims of trafficking physically, psychologically, educationally, economically and for ultimate social re-integration into the society. It is recommended that police, Justice, health,

social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.

In conclusion, Nigeria is a country of origin, transit and destination for human trafficking and is subject to both national and international flows of human trafficking. Women and children make up the vast majority of the human trafficking chain. This is a result of push factors that are rooted in poverty, inequality and discrimination, resulting in survival strategies that expose the most vulnerable to exploitation and abuse. Pull factors include the lure of opportunity and huge economic differential that make even relatively poor neighboring regions seem a likely source of livelihood; as well as the lucrative trade in adoption and organ transplants.

There are some national and international legal instruments in Nigeria which can be used to address certain aspects of human trafficking such as child labour and sexual offences. In 2003, Nigeria passed the Child Right Act which comprehensively deals with the issue of child trafficking. Moreover, Nigeria ratified the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children in 2001 and passed a national law against trafficking in 2003 entitled “Trafficking in Persons (Prohibition) Law Enforcement and Administration Act2003”. Nigeria is one of the few African countries to have passed such a law.

However, many challenges remain and there is a continuing need for the further ratification and implementation of international legislation along with the use of national legal tools currently available to fight against trafficking in human beings. The persistence of harmful cultural practices, the growth of the reach and influence of organized crime and the persistent loss of young women and children to sexual and forced labour exploitation require concerted and constant attention. To better combat human trafficking in Nigeria, and the attendant damaging effects throughout Nigerian society will require the energy, talents and resources of Government, international organizations, NGOs and civil society.

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