

An Appraisal of the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015¹

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Abstract

In view of the need to combat human trafficking and the illegal smuggling of migrants, series of laws have been passed to curb this menace. These laws have enabled the relevant agencies to exercise some powers to rescue the victims of human trafficking. This paper uses the doctrinal method of legal research to examine the recently enacted Trafficking in Persons (Prohibition) Enforcement and Administration (TIPPEA) Act 2015 which provides for the role of the judiciary in combating human trafficking as well as giving powers to the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) aimed at combating human trafficking and the illegal smuggling of migrants. The paper finds that several laws have been made to curb trafficking in persons while recent amendments to these relevant laws have curbed the menace of trafficking in persons considerably in Nigeria.

Keywords: Judiciary, Trafficking, Laws, Victims, Constitution.

1. Introduction

Trafficking cuts across our neighbouring¹ nations, races and continents. Rather than abating, it has reached a distressing dimension that now calls for concerted efforts on the part of mankind to put an end to the ugly practice. There have been series of declarations, conventions, bills of rights, charters and other statutes both at the international and domestic levels prohibiting trafficking in human beings, yet this crime goes on. This discussion examines

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¹ Nigeria is bounded in the North by Niger Republic and Chad; to the west by Benin Republic and Togo, to the East by Cameroon and Equatorial Guinea to the South. These countries not only serve as trafficking routes but also serve as countries of origin, transit and destination for victims of human trafficking within the West African sub region.

the Nigerian and International Legal Framework to combat human trafficking as well as highlight the innovations of the recently enacted Trafficking in Persons (Prohibition) Enforcement and Administration (TIPPEA) Act 2015.

Prior to the passage of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003, which was eventually amended in December 2005, Nigeria did not have specific anti-human trafficking² law out-rightly set aside to combat human trafficking.

Furthermore, before the enactment of the Child Rights Act in 2003, Nigeria had no comprehensive special law protecting the rights of children, noting however, that children are vulnerable and largely fall victims of human trafficking.

To underscore its resolve to tackle this menace and in stemming the tide of trafficking in persons, the National Agency for the Prohibition of Traffic in Persons (NAPTIP) (hereinafter referred to as “the agency”) was established by the Federal Government through an Act of the National Assembly.

Subsequently, the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (hereinafter referred to as the Trafficking Act) was enacted in 2003, with a subsequent amendment in 2005.

2. The Legal Framework for Combating Trafficking in Persons (TIP) and Smuggling of Migrants (SOM) in Nigeria

2.1 Powers, Functions and Administration of NAPTIP³: To enable the agency carry out its functions effectively, the Trafficking Act established different departments comprising investigation, legal, public enlightenment, counseling and rehabilitation, as well as other relevant units within NAPTIP.

2.2 Creation of Offences under the Act: Section 64 of the Trafficking Act 2003⁴ defines “*trafficking*” as:

² It is on record that Nigeria is the first African country to enact a specific anti-human trafficking law.

³ See TIPPEA 2015, Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11.

⁴ See S.82 TIPPEA Act 2015

S. 64 “All acts involved in the recruitment, transportation within or across Nigerian borders, purchases, sale, transfer, receipt or harboring of a person, involving the use of deception, coercion or debt bondage for the purpose of placing or holding the person whether or not in voluntary servitude (domestic, sexual or reproductive) in forced or bonded labour or in slavery-like conditions.”

2.3 Investigation and Prosecution: Section 5 of the Trafficking Act 2003 as amended in 2005, is now reproduced by Section 6 of the Trafficking in Persons (Prohibition) Enforcement and Administration Act, (TIPPEA) 2015. The 2015 Act empowers NAPTIP⁵ to investigate whether any person, body or entity has committed an offence under the Act or the offence of trafficking under any other law. By virtue of the TIPPEA⁶ 2015; and without prejudice to the powers of the Attorney General⁷ of the Federation to discontinue proceedings, the National Agency for the Prohibition of Trafficking in Persons - NAPTIP is empowered to arrest, detain and prosecute offenders under the Act or any other law on trafficking in persons in Nigeria.

2.4 Several other laws provide for the prosecution of trafficking in persons, for clarity some of these laws are reproduced as follows:

- a. The Constitution of the Federal Republic of Nigeria, 1999 (as amended);
- b. The criminal and penal codes;
- c. The Immigration Act;
- d. State Laws for example the Edo State Criminal Code (Amendment) Law, 2000;
- e. The Child’s Rights Act, 2003

2.1 *The Constitution of the Federal Republic of Nigeria 1999 (as amended):*

The Constitution of the Federal Republic of Nigeria, 1999 (as amended); contains provisions which out-rightly outlaw slavery and

⁵ Section 6 subsection (a) TIPPEA 2015

⁶ Section 6 subsection (c) TIPPEA 2015

⁷ See sections 174 and 211 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

forced labour or compulsory labour, sexual exploitation and deprivation of personal liberty of Nigerians. These relevant constitutional provisions which outlaw forced labour and slavery are very unambiguous.

Trafficking in persons violates the provisions of Sections 17, 34 and 42 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Section 17 provides that:

S.17 (1) The state social order is founded on ideals of freedom, equity and justice.

S.17 (2) In furtherance of the social order- the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced;

*S. 17 (3) The state shall direct its policy towards ensuring that-
(f) Children, young persons and the aged are protected against any exploitation whatsoever and against moral and material neglect*

The Constitution of the Federal Republic of Nigeria, 1999 (as amended); further in section 34 contains provisions which strictly and out-rightly outlaw slavery and forced labour or compulsory labour, sexual exploitation and deprivation of personal liberty of Nigerians. These provisions are outlined as follows:

S. 34: Every individual is entitled to respect for the dignity of his person and accordingly:

- (a) No person shall be subjected to torture or to inhumane treatment or to degrading treatments.*
- (b) No person shall be held in slavery; and*
- (c) No person shall be required to perform forced or compulsory labour.*

Section 42 (2): No citizen of Nigeria shall be subjected to any disability or deprivation merely because of the circumstances of his birth.

In addition, it is interesting to note that a victim or victims of trafficking can challenge the infringement of the above mentioned rights under Section 46 of the 1999 Constitution (as amended). Section 46 states that any person who alleges that his or her

fundamental human rights has been or is being or likely to be contravened in any State in relation to him may apply to a High Court in that state for redress. Also, the Third Alteration of the Constitution provides that the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters – connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto⁸.

2.2. *The Criminal Code*

Under the Criminal Code, there are various provisions against slave dealing which could be used to prosecute trafficking in persons and prostitution. Section 223 provides that: Any person who – (1) procures a girl or woman who is under the age of eighteen years and is not a common prostitute or of known immoral character to have unlawful carnal connection with any other person or persons, either in Nigeria or elsewhere, or (2) procures a woman or girl to become a common prostitute, either in Nigeria, or elsewhere; or (3) procures a woman or girl to leave Nigeria with intent that she may become an inmate of a brothel elsewhere; or (4) Procures a woman or girl to leave her usual place of abode in Nigeria, with intent that she may, for the purpose of prostitution, become an inmate of a brothel, either in Nigeria or elsewhere; is guilty of a misdemeanor, and is liable to imprisonment for two years.

Section 224 further provides that any person who by threats, intimidation, false pretense or by administering drugs, with intent to stupefy or overpower a woman or a girl or girls in order to enable any man to have unlawful carnal knowledge of her is guilty of misdemeanor and is liable to imprisonment for two years.

Sections 365, 366 and 369 of the criminal code further cover the field with regard to some of the main methods of intimidation used by traffickers. For instance: Section 365 deals with unlawful confinement or detention against a person's will while Section 366 covers compelling someone to do something by threats, surveillance or other intimidation and is punishable by one-year imprisonment.

⁸ See S. 254C (1) Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2011

Section 369 of the Criminal Code also regards slave dealing as purchasing, selling, dealing with or transferring persons so they may be treated or held as slaves or placed in servitude as a pledge or security for debt or entering into a contract or agreement in furtherance of these purposes. This is punishable by imprisonment for up to fourteen (14) years.

2.3 The Penal Code: The Penal Code which is applicable in the Northern States has similar provisions to the Criminal Code, with the term “trafficking” not however expressly defined. The term ‘slave’ is used and the relevant sections are Ss. 275, 278, 279, 280.

2.4 The Nigeria Immigration Act: The Nigeria Immigration Act, 2015 prohibits all forms of smuggling of illegal migrants. The Act also gives effect in the Federal Republic of Nigeria to the provisions of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, thereby supplementing the United Nations Convention Against Transnational Organised Crime. Relevant sections are as follows: S. 64 which prohibits all forms of smuggling migrants in Nigeria, S. 65 creates a number of offences relating to Smuggling Of Migrants; S.66 prohibits the abuse of the vulnerability of the smuggled migrant, S. 67 proscribes enabling illegal residence, S. 68 proscribes the procurement of fraudulent travel or identity documents, Aiding and abetting of smuggling migrants is captured under Ss. 69 & 70; while escape and aiding and abetting escape is under Section 73.

2.5 The Child’s Rights Act: The Child’s Rights Act, 2003 prohibits the exposure of children to the use, production and trafficking of narcotic drugs under Section 25, while section 26 generally prohibits the use of children for criminal activities of whatever nature. The penalty for breach is fourteen (14) years imprisonment. All forms of sexual abuse and exploitation of children below the age of eighteen (18) years are equally prohibited by Sections 31 – 32 of the Act. Sanctions include life imprisonment and fourteen (14) years imprisonment respectively.

3. Jurisdiction and International Protocols

Jurisdiction: The Act confers jurisdiction to try and punish all offences created under the Act on the High Court⁹.

International Protocols: Trafficking in human beings is a world-wide phenomenon and as such Nigeria has ratified and is a signatory to a number of international conventions which are directly or indirectly related to trafficking. These conventions include:

- a. The United Nations Universal Declaration of Human Rights
- b. United Nations Convention against Transnational Organized Crime
- c. Convention on the Rights of the Child
- d. Convention on the Elimination of All Forms of Discrimination against Women
- e. African Charter on Human and People's Rights
- f. ECOWAS Declaration and Plan of Action against Trafficking in Persons (2001)
- g. Forced Labour Convention, 1930
- h. Minimum Age Convention (no. 138) 1973
- i. Worst Forms of Child Labour Convention (no. 182) 1999
- j. Memorandum of Understanding between Nigeria and Republic of Benin on cross-border crimes, smuggling, human trafficking and drug trafficking, signed on 14th August, 2003

4. The Role of the Judiciary in Curbing Human Trafficking

Generally, the judiciary is conferred with the constitutional responsibility of interpretation of the law vide section 6 of the 1999 Constitution (as amended). Furthermore, there are other statutory roles conferred on judges as well as relevant bodies in the judiciary. For example the National Judicial Council appoints judges¹⁰.

The Role of the Judges as Outlined by the Tippea Act 2015

Judges in line with constitutional provisions have the powers to grant or refuse bail applications by virtue of section 36 (5) 1999 constitution (as amended);

- i. Witness protection private proceedings to be managed by the judge under s. 47 TIPPEA

⁹ See Section 36

¹⁰ Section 153 (1) 1999 constitution (as amended)

- ii. Forfeiture of asset to victims trust fund¹¹
- iii. Granting of adjournments
- iv. Adjudicate over requests from foreign states for mutual legal assistance. Under section 69 TIPPEA
- v. Sentencing which is the judgment of a court is also the exclusive preserve of judges and is a constitutional role of judges not just in TIP/SOM Cases but generally in criminal cases.
- vi. Interim Attachment order after seizure of property under section 55 TIPPEA
- vii. Final Order of forfeiture under section 56 TIPPEA
- viii. Freezing order on banks or other financial institutions.¹²
- ix. Trafficked persons and smuggled migrants should be assisted with information on relevant administrative and court proceedings by virtue of section 63 TIPPEA
- x. Judges should ensure adequate protection for particularly vulnerable victims such as children, disabled persons, victims of sexual abuse and so on.
- xi. Judges should (in smuggling cases); inter alia: provide for some special rights of smuggled migrants,¹³
- xii. Judges should ensure the protection of victim of smuggling cases from reprisal, intimidation or threat, also TIPPEA in section 65 ensures the victim's right to compensation or restitution.
- xiii. Specifically, the National human rights commission act in its commencement provides that the commission has as one of its functions to facilitate Nigeria's implementation of its various treaty obligations. Judges can rely on this provision of the NHRC Act to apply some provisions of these conventions entered into by Nigeria to intervene in trafficking cases.

5. Recommendations

It is recommended that stakeholders in the criminal justice system such as police officers and prosecutors in the Ministry of Justice are familiarized with the provisions of this innovative law. In addition, it is necessary that more awareness is created on the

¹¹ Sections 67 and 68 TIPPEA 2015

¹² Ibid, section 60, TIPPEA, 2015

¹³ Ibid, Section 61 and 62 TIPPEA, 2015

existence of human trafficking in Nigeria. Finally, the judiciary should continue to promote internal funding and capacity building for Judicial Officers as well as ensuring synergy with stakeholders in the justice system. Funding is necessary to improve the knowledge of judicial officers on this pressing issue of trafficking in human beings.

6. Conclusion

The menace and ills of human trafficking have been brought to the knowledge of the average Nigerian on the streets via awareness and sensitization campaigns carried out through the media and consultative forums between stakeholders and communities. The West African sub region under the ECOWAS has demonstrated its commitment to ending the scourge of human trafficking which is particularly rife within the sub region as a direct consequence of the Protocol on Free Movement.¹⁴ In 2001, as part of its effort and commitment to combating human trafficking, the Heads of States and Governments of West African States issued a Declaration proclaiming its strong commitment to the eradication of human trafficking. The Declaration also adopted a Plan of Action against Trafficking in Persons which was annexed to the Declaration.¹⁵ Other sub regional conventions relevant to the fight against trafficking include the ECOWAS Convention on Mutual Assistance in Criminal Matters¹⁶ and the Convention on Extradition.¹⁷ The judiciary equally plays a vital role in this fight against human trafficking and should be encouraged to ensure that incidences of human trafficking in Nigeria are brought to the bare minimum and completely eradicated.

¹⁴ Protocol Relating to Free Movement of Persons, Residence and Establishment A/P.1/5/79, the Protocol and subsequent protocols adopted abolished visas within the sub region and provided citizens of the sub region the right to residency and establishment within the countries of the sub region.

¹⁵ ECOWAS Declaration A/DC 12/01

¹⁶ ECOWAS Convention A/P1/7/92

¹⁷ ECOWAS Convention A/P1/8/94