



## Examination of The Legal Regime for Combatting Trafficking in Persons in Nigeria

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### ABSTRACT

Human trafficking is one of the biggest challenges of the 21<sup>st</sup> Century. The Sub Saharan Africa seems to be the center point of this global epidemic. Nigeria is an origin, transit and destination point for global trafficking in persons. This paper uses a doctrinal research approach to examine the legal regime for combatting trafficking in persons in Nigeria and argues that Nigeria must be more proactive in its fight against human trafficking. This paper finds that poverty, weak legal system, armed conflicts, climate change, family imbalance and greed among other factors, contribute to trafficking in persons. This paper finds that there exist plethora of legislations on human trafficking in Nigeria, such as the Constitution of the Federal Republic of Nigeria 1999, as amended in 2018; Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2015; the Immigration Act 2015; the Criminal and Penal Code Acts; the Child's Right Act and the African Charter. This paper finds that these extant legal frameworks in Nigeria are frost with several lacunas that will hamper and ultimately defeat the fight against human trafficking. The paper therefore makes suggestions on how to remedy the observed lacuna. The paper concludes by stating that the fight against human trafficking must be a collective effort by all. Human rights are not safe anywhere until all persons have enough of the same everywhere.

### 1. Introduction

Human trafficking is a global menace that has ravished all the countries of the world, especially the third world countries.<sup>1</sup> Nigeria is a major stakeholder in global human trafficking as she serves as a supplier, receiver and transit point for human trafficking.<sup>2</sup> A study shows that African children constitute 80% of children trafficked to Italy and 60% of them are Nigerians.<sup>3</sup>

<sup>1</sup> Federal Republic of Nigeria (2008) Country Review Report No. 8 African Peer Review Mechanism at p. viii. See also Ladan M.T. 2011 'Combating Trafficking of Children And Women Under International And Nigerian Legal Regimes' A Paper Presented At A Training Workshop On United Nations System And Programme Organised By The Nigerian Institute Of Advanced Legal Studies, Lagos, between 5-8 of December, 2011.

<sup>2</sup> See UNICEF, Lagos, Nigeria:- Child Trafficking in Nigerian Southern Border Towns (1999), in:- ANPPCAN Nigeria, Child Rights Monitor, Vol. 1, No. 3, pp. 51-63; See also Federal Government of Nigeria, Abuja:- Country Report on Child Trafficking in Nigeria (2002).

<sup>3</sup> Ibid

Nigeria is considered as transit point for global human trafficking as young persons from the south eastern and southern parts of Nigeria are mostly trafficked into central African countries like Congo, Gabon and Equatorial Guinea, while their counterparts from the Northern States like Kwara and Sokoto are trafficked to work in Plantations and as sex slaves in Togo and Mali.<sup>4</sup> Human trafficking is also internally carried out in Nigeria as children and women are being trafficked internally from less urban states like Benue, Bayelsa, Oyo, Cross River, Kwara, Niger and Ebonyi to the developed states like Rivers, Lagos, Abuja, Kano and Kaduna for farm works, domestic services, commercial sex works and other exploitative ventures.<sup>5</sup> Human trafficking is an atrocious global crime engaged in by very powerful and highly organized consortiums. All kinds of tricks are deployed by the syndicates in the form of juicy job promises, coercion and deceit on vulnerable young persons whom they traffic to Europe or America for sexual slavery and domestic servitude.

Despite the prevalence of human trafficking in Nigeria, Nigeria as a nation continued to play the ostrich game with issues of human trafficking until the year 2003. Before then, human trafficking and incidental offences like child labour and child sex exploitation were addressed through the Criminal Code and Penal Code in the Southern and Northern Nigeria respectively. The year 2003 ushered in a new bliss to this aspect of Nigerian jurisprudence through the enactment of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003/2005, and the Child Rights Act, 2003/2005. The Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003/2005 was repealed and replaced by Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2015.

This paper seeks to appraise the factors that encourage human trafficking and the various global and local instruments and legislation for combating this menace of human trafficking in Nigeria. To achieve this, this paper shall succinctly highlight the strength and weaknesses of these legislation, and proceed to proffer suggestions on how to improve on these laws knowing their sensitive status in the society.

Several attempts have been made by scholars to define the term human trafficking. Makisaka defines human trafficking as 'as a process of people being recruited in their community and country of origin and transported to the destination where they are being exploited for the purposes of forced labor, prostitution, domestic servitude and other forms of exploitation'<sup>6</sup> Gabriel Idang opts to describe the term as 'involving a series of activities that culminate into the transfer of persons either from one state to another or to a far distance within the same state through deception'.<sup>7</sup> Some scholars also hold the view that it involves 'the movement of victims, usually women and children, across borders legally or illegally.'<sup>8</sup> Okeshola and Adenugba define human trafficking as 'the illegal and immoral buying and selling of human beings as commodities to meet global demands for commercial sexual slavery or forced labour.'<sup>9</sup> Article 3 of the United Nations Protocol to Prevent, Suppress and Punish trafficking in

<sup>4</sup> Ibid. Uyanga, R., Dickson, A., and Mbosowo, M. (2014). Female Indebtedness and Enslavement: A Study of Relationships and Trends in Nigeria. *Asian Journal of Social Sciences & Humanities Vol, 3, 2.*

<sup>5</sup> Uwa, O., Okor, P., Titilade, A. (2014) 'Human Trafficking and Interface of Slavery in the 21<sup>st</sup> Century Nigeria' *Research on Humanities and Social Sciences* 4(21): 10-19. See also Hassan B.M. (2015) 'Why is Human Trafficking a Challenging issue in Nigeria?' Retrieved October 31, 2018 from [https://www.academia.edu/34604724/Why\\_is\\_Human\\_Trafficking\\_a\\_Challenging\\_issue\\_in\\_Nigeria\\_WHY\\_IS\\_HUMAN\\_TRAFFICKING\\_A\\_CHALLENGING\\_ISSUE\\_IN\\_NIGERIA?auto=download](https://www.academia.edu/34604724/Why_is_Human_Trafficking_a_Challenging_issue_in_Nigeria_WHY_IS_HUMAN_TRAFFICKING_A_CHALLENGING_ISSUE_IN_NIGERIA?auto=download).

<sup>6</sup> Makisaka, M. (2009) 'Human Trafficking: A Brief Overview' *Social Development Notes: Conflict, Crime and Violence* (122): 1-15

<sup>7</sup> Idang, G. (2013) 'Eliminating Human Trafficking' *Studies Home Communication Science* 7(1): 49-54

<sup>8</sup> Hassan *op. cit*

<sup>9</sup> Okeshola F.B. and Adenugba A (2018) 'Human Trafficking: A Modern Day Slavery in Nigeria' *American International Journal of Contemporary Research Vol. 8, No. 2, June 2018*.40-44. Retrieved November 1, 2018 from [doi:10.30845/aijcr.v8n2p5](https://doi.org/10.30845/aijcr.v8n2p5)

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Persons with special regards to Women and Children (Palemo Protocol), supplementing the United Nations Convention against Transnational Organised Crime 2000 defines trafficking as

‘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 person, for the purpose of exploitation’<sup>10</sup>

Based on the above definition, Uwa et al posit that ‘Exploitation shall include at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.’<sup>11</sup>

Section 64 of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act of Nigeria (2003) as (Amended in 2005)<sup>12</sup> defines trafficking to include;

‘all acts and attempted acts involved in the recruitment, transportation, within or across Nigerian border, purchase, sale, transfer, receipt or harbouring of a person involving the use of deception, coercion or debt bondage for the purpose of placing or holding the person whether for or not in involuntary servitude (domestic, sexual or reproductive) in forceor bonded labour, or slavery like conditions’

We agree with Kigbu and Hassan<sup>13</sup>that the Article 3 of the United Nations Protocol to Prevent, Suppress and Punish trafficking in Persons with special regards to Women and Children (Palemo Protocol) is more encompassing than the TIPLEA 2005.<sup>14</sup> TIPLEA 2015 captured all these criticism and made a more elaborate definition of the concept. Section 82 of TIPLEA 2015 defines trafficking or traffic in person to mean:

"trafficking or traffic in persons" means the recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or, use of force or other forms of coercion , abduction, fraud, deception, the abuse of power of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person or debt bondage for the purpose of placing or holding the person whether for or not in involuntary servitude (domestic, sexual or reproductive) in forced or bonded labour, or in slavery-like conditions, the removal of organs or generally for exploitative purposes."

The above definition is all encompassing as it even extends to recent menace of organ harvesting that is ravaging the globe, especially in Asia and Africa.

In Nigeria, human trafficking manifests itself basically in four forms, which are: Rural-Urban Trafficking: This is where trafficked victims are moved from rural areas to urban areas are used for forced labour ranging from domestic servitude to working in mines, quarries etc, and as commercial sex workers or domestic helps.<sup>15</sup>

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<sup>10</sup> The Organisation for Security and Co-operation in Europe (OSCE) also adopted this definition. See OSCE (Organization for Security and Co-operation in Europe, (2010) *Analysing The Business Model Of Trafficking In Human Beings To Better Prevent The Crime*. Austria: UN.GIF. p.17.

<sup>11</sup> Uwa, O., Okor, P., Titilade, A. (2014) ‘Human Trafficking and Interface of Slavery in the 21<sup>st</sup> Century Nigeria’ *Research on Humanities and Social Sciences* 4(21): 10-19. 17

<sup>12</sup> Act No. 24 of 14 July 2003. Hereafter referred to as TIPLEA

<sup>13</sup> Kigbu S.K and Hassan Y.B. (2015) ‘Legal Framework for Combating Human Trafficking In Nigeria: The Journey So Far’ *Journal of Law, Policy and Globalization*. Vol. 38. 2015. Pp 205-220.

<sup>14</sup> Idehen, S.O., Edeko, M.O., Obasohan, O.J. (2013) ‘Child and Human Trafficking in Nigeria’ *International Journal of Gender and Development Issues* 1(1): 119-133.

<sup>15</sup> Okeshola F.B. and Adenugba A (2018) ‘Human Trafficking: A Modern Day Slavery in Nigeria’ *American International Journal of Contemporary Research* Vol. 8, No. 2, June 2018.40-44. Retrieved November 1, 2018 from [doi:10.30845/aijcr.v8n2p5](https://doi.org/10.30845/aijcr.v8n2p5)

- a. Urban-Rural Trafficking: 'This is where victims move from urban area to rural areas. People in this category are usually trafficked for farming purpose.'<sup>16</sup>
- b. Rural-Rural Trafficking: 'This is a situation where traffickers move victims from one rural area to another, for the purpose of farming and other connected purpose'<sup>17</sup>
- c. Urban-Urban Trafficking: 'This is where traffickers move victims from one urban area to another for forced labor, domestic servitude and other connected purposes.'<sup>18</sup>

However, we categorically state that trafficking is of two types but can manifest in the above four forms. Basically, we have internal and external human trafficking. Internal human trafficking has to do with the movement or trafficking of a person within a given country; whereas external trafficking has to do with the movement or trafficking of a person from one country to another country.

## 2. Method

### 2.1 Factors that Contribute to Human Trafficking

Bad as it may sound, human trafficking remains as one of the world's most flourishing crimes.<sup>19</sup>The male trafficked victims are used for forced labour to service quarries, mines, and farms. Other are used for domestic servitude and street vending.<sup>20</sup> On the other hand, the female victims are basically used as commercial sex slaves or as domestic servants.<sup>21</sup> The following have been identified as some of the major factors that contribute to human trafficking:

#### 2.2.1 Poverty

Poverty has been adjudged as the most propelling factor behind human trafficking in the world. Poverty makes people vulnerable to human predators who prone on the financial disability of the low income members of the society. Nigeria is currently ranked as the poverty headquarters of the world.<sup>22</sup> Report has shown that poverty is the root cause of the prevalence of street children in Nigeria.<sup>23</sup> The report further shows that 'the desire of Nigerian potential victims to migrate is exploited by offenders to recruit and gain initial control or cooperation, only to be replaced by more coercive measures once the victims have been moved to another state or region of the country, which may not always be the one to which they had intended to migrate.'<sup>24</sup>

#### 2.2.2 Armed Conflicts

Armed conflicts have become common in the 21<sup>st</sup> century. Armed conflicts have made many flee their ancestral homes for safety. Many have become refugees in foreign countries and many others have become stationed in Internally Displaced Persons Camps (IDPs) within their own countries. Other victims of armed conflicts are homeless and helpless. These categories of people are vulnerable to human traffickers. Over 1.5 billion people are resident in countries that

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<sup>16</sup> Ibid

<sup>17</sup> Ibid

<sup>18</sup> Ibid. See also Okeshola, B.F. (2007). "Assessment of Trafficking in Persons, for Labour Purposes in West and Central Africa, especially Children and Women (Nigeria - Cameroon Human Trafficking Assessment)". A Research conducted for National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP); Okeshola, B. F. (2007), Child Labour as a Social Problem in Nigeria. A Paper Presented at the Workshop Organised by NAPTIP, Kano in Collaboration with UNICEF 'D' between 14th August and 16th August .

<sup>19</sup> Okeshola F.B. and Adenugba A (2018) op. cit.

<sup>20</sup> Ibid

<sup>21</sup> Adepelumi, P. (2015). The Root Causes of Human Trafficking in Nigeria. African Center for Advocacy & Human Development, Nigeria.

<sup>22</sup> Adebayo B (2018) Nigeria Overtakes India in Extreme Poverty Ranking. Retrieved November 2, 2018 from <https://edition.cnn.com/2018/06/26/africa/nigeria-overtakes-india-extreme-poverty-intl/index.html>

<sup>23</sup> ILO/IPEC. (2002). Child Trafficking in Nigeria: The State of the Act. Geneva: ILO/IPEC. See also Okeshola F.B. and Adenugba A (2018) op. cit.

<sup>24</sup> Ibid

are experiencing severe armed conflicts.<sup>25</sup> Poverty, trafficking, and migration are caused by armed conflicts. In the conflict ridden North Eastern part of Nigeria, Boko Haram terrorists kidnap and traffic children. They convert the male children to militias and child soldiers; while some of the girls are sold into slave; and the rest are used as their sex slaves and suicide bombers.<sup>26</sup>

### 2.2.3 Weak Legal System

The Nigeria legal system is currently weak. The Law enforcement agencies are vulnerable to compromise and this has made the borders to be porous. Okeshola and Adenugba note that 'the involvement of international organized criminal groups or networks and limited capacity of our commitment by immigration and law enforcement officers to control borders are contributory factors to human trafficking in Nigeria.'<sup>27</sup>

### 2.2.4 Family Imbalances

Family can be trot into unexpected dysfunctions as a result of poverty, death of the family bread winner, or large size of the family. The above indices will definitely affect the functionality of the family. In order to mitigate or cushion the negative effects of these imbalances, the family will be willing and ready to release some of their members to extended family members and disguised traffickers with appealing offers of assistance.<sup>28</sup>

### 2.2.5 Gendered Cultural Practices<sup>29</sup>

Gendered cultural practices also influence human trafficking. Gender roles are defined to mean "sets of cultural expectations that define the ways in which the members of each sex should behave."<sup>30</sup> Study has it that more than 85-114 million women, predominantly Muslims in Asia and Africa have suffered one form of gendered cultural practices or the other, such as discrimination, genital mutilation, domestic violence and obnoxious widowhood practices.<sup>31</sup> These gendered cultural practices can trigger trafficking, because, a girl child that is afraid of continuous domestic violence or genital mutilation may willingly offer herself to be trafficked in order to gain safety. Also, in families where the father is not willing to train female children, such children may run away from home and may end up in the hands of trafficking syndicates.<sup>32</sup>

## 3. Result and Discussion

### 3.1 Legal Framework for Combating of Human Trafficking in Nigeria

#### a. The 1999 Constitution of the Federal Republic of Nigeria (As Amended)

<sup>25</sup> Ibid

<sup>26</sup> Adepelumi, P. (2015). The Root Causes of Human Trafficking in Nigeria. African Center for Advocacy & Human Development, Nigeria.

<sup>27</sup> Okeshola F.B. and Adenugba A (2018) 'Human Trafficking: A Modern Day Slavery in Nigeria' *American International Journal of Contemporary Research* Vol. 8, No. 2, June 2018.40-44. Retrieved November 1, 2018 from [doi:10.30845/aijcr.v8n2p5](https://doi.org/10.30845/aijcr.v8n2p5)

<sup>28</sup> Dranailova-Trainor, G. & Belser, P. (2006). Globalization and the Illicit Market for Human Trafficking: An Empirical Analysis of Supply and Demand. Geneva: *International Labour Organization*.

<sup>29</sup> Eteng Ikpi Etobe (2009) 'Socio-Cultural Determinants of Sexual Behaviours and Trafficking in Children and Adolescents in the South-south Geo-Political Zone of Nigeria'. (Ph.D Thesis, Sociology, University of Zululand, South Africa). 270. 22.

<sup>30</sup> Vander Zanden, J.W. (1996). *Sociology: The Core 4th Ed*. New York: McGraw-Hili. 225

<sup>31</sup> Kaplan, H. et al (1987). Deviant Peers and Deviant Behaviour: Further Elaboration of a Model. *Sodal Psychology Quarterly*, 50; 277-284. 93.

<sup>32</sup> Muntarbhorn, V. (2002). Human Rights Versus Human Trafficking in the Face of Globalization. Geneva: *UN Human Rights Commission Publication.6*; See also Bruckert, C. & Parent, C. (2002). *Trafficking in Human Beings and Organized Crime: A literature Review*. Royal Canadian Mounted Police. 15.

The CFRN 1999 is the *grundnorm* of Nigeria. The Constitution by virtue of its sections 34 and 42 makes provision for the protection of Nigerians from deprivation of their personal liberty, forced labour, slavery or compulsory labour; and for freedom from discrimination.

Section 34 provides that:

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.

On the other hand, Section 42(2) states that: "No citizen of Nigeria shall be subjected to any disability or deprivation merely because of the circumstances of his birth."<sup>33</sup>

Human trafficking infringes on these rights. A trafficked person can seek redress in court Article 5 of African Charter on Human and Peoples' Rights (Enforcement) Act<sup>34</sup> provide for dignity of human person and freedom from slavery and forced labour. Nigeria is a signatory to the ACHPR and has also domesticated this Charter.<sup>35</sup> ACHPR having satisfied the requirements of ratification and domestication under Section 12 of the 1999 Constitution of the Federal Republic of Nigeria<sup>36</sup> is now part and parcel of the Nigerian laws, and is therefore enforceable in Nigerian courts.<sup>37</sup> Furthermore, the Fundamental Rights (Enforcement Procedure) Rules 2009 in its Order 1 Rule 2 defined fundamental humans to include 'any of the rights stipulated in the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act'.<sup>38</sup>

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

This Act was first enacted in July, 2003<sup>39</sup>, and was amended in December 2005.<sup>40</sup> However, in 2015, the 2005 was repealed and a new Act was enacted.<sup>41</sup> The Act applies to all parts of Nigeria. This new Act has 83 sections and 2 schedules. The Act created the National Agency for the Prohibition of Traffic in Person (NAPTIP).<sup>42</sup> This agency 'took over the functions of the special taskforce in human trafficking and was vested with the responsibilities to enforce laws against traffic in persons, and to take charge and coordinate the rehabilitation and counseling of trafficked persons; and other related matters.'<sup>43</sup> The functions<sup>44</sup> and powers of the agency are created under sections 5 and 6 of the Act respectively. The Agency is under the supervision of the Attorney General of the Federation (hereafter referred to as AGF),<sup>45</sup> who has the power to make guidelines and directives to the Agency which the Agency shall abide by.<sup>46</sup>

#### 3.2.1 Offences Created by the Act

<sup>33</sup> *Ukeje vs. Ukeje* (2014) 11 NWLR (Pt. 1418) p. 384

<sup>34</sup> Cap. A9 LFN 2004

<sup>35</sup> Nigeria ratified the African Charter on 22/6/83 and domesticated it in 1983.

<sup>36</sup> Cap. C23, Laws of the Federation of Nigeria, 2004.

<sup>37</sup> *Abacha v Fawehinmi*, (2000) 6 NWLR (Pt 600) 228.

<sup>38</sup> Emeka Polycarp Amechi, 'Litigating Right to Healthy Environment in Nigeria: An Examination of the Impacts of the Fundamental Rights (Enforcement Procedure) Rules 2009, In Ensuring Access to Justice for Victims of Environmental Degradation', 6/3 Law, Environment and Development Journal (2010), p. 320, <http://www.lead-journal.org/content/10320.pdf> accessed 16 August 2017.

<sup>39</sup> Act No. 24 of 14 July 2003.

<sup>40</sup> The sections amended are: Sections 1, 2, 3, 4, 5, 6, 9, 15, 22, 29, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 36, 47 and 48.

<sup>41</sup> Trafficking in Persons (Prohibition) Enforcement and Administration Act. No. 4 2015.

<sup>42</sup> Section 2

<sup>43</sup> Section 10. See also Kigbu S.K and Hassan Y.B. (2015) 'Legal Framework for Combating Human Trafficking In Nigeria: The Journey So Far' Journal of Law, Policy and Globalization. Vol. 38. 2015. Pp 205-220.

<sup>45</sup> *Serah Ekundayo Ezekiel V. Attorney General of the Federation* (2017) LPELR-41908(SC)

<sup>46</sup> Sections 75 and 76.

The new Act retained all the offences created by the original and amended Act and went further to create additional offences like child labour and running of brothels.<sup>47</sup> Section 82 of TIPLEA 2015 defines trafficking or traffic in person to mean:

"trafficking or traffic in persons" means the recruitment, transportation, transfer, harboring or receipt of persons by means of threat or, use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person or debt bondage for the purpose of placing or holding the person whether for or not in involuntary servitude (domestic, sexual or reproductive) in forced or bonded labour, or in slavery-like conditions, the removal of organs or generally for exploitative purposes."

Section 13(1) generally prohibited all forms of human trafficking in Nigeria.<sup>48</sup>

The other offences include: Exportation of Persons out of Nigeria and Importation of Persons in to Nigeria;<sup>49</sup> Procurement of any person for sexual exploitation;<sup>50</sup> Abuse Procurement or recruitment of person under 18 years for prostitution or other forms of sexual exploitation;<sup>51</sup> Procurement or recruitment of person under the age of 18 years for pornography or brothel;<sup>52</sup> Foreign travel which promotes prostitution or sexual exploitation;<sup>53</sup> Procurement or recruitment of person for use in armed conflicts (a practice that Onu exhaustively appraised in his work);<sup>54</sup> Procurement or recruitment of person for organ harvesting;<sup>55</sup> Prohibition of buying or selling of human beings for any purpose;<sup>56</sup> Forced labour;<sup>57</sup> Employment of child as domestic worker and inflicting grievous harm;<sup>58</sup> Trafficking in slaves;<sup>59</sup>

Other offences created under the Act include: Offences relating to fraudulent entry of persons into another country;<sup>60</sup> conspiracy where the offence is actually committed;<sup>61</sup> conspiracy where the offence was not actually committed;<sup>62</sup> escape or aiding and abetting escape of any person in lawful custody of the Agency or suspected to have committed an offence under TIPLEA, 2015;<sup>63</sup> Where a person is convicted abroad for offences relating to trafficking in person;<sup>64</sup> Attempt to commit any of the offences under the Act;<sup>65</sup> Where evidence establishes an attempt to commit an offence or the Commission of the full offence;<sup>66</sup> An offence under this Act committed by body corporate on the instigation, connivance of or attributable to any neglect on the part of the

<sup>47</sup> Ibid. See section 2 of TIPLEA Act 2015

<sup>48</sup> See section 13(1). See *AGF VS. Affiong Okon* Unreported. Charge No. 0/26c/2005 (High Court of Anambra State, Onitsha judicial Division). Judgment was delivered on 13/02/2006).

<sup>49</sup> Section 14.

<sup>50</sup> The punishment upon conviction is imprisonment for a term of 10 years without an option of fine. See Section 15. *Bassey v. AGF* (2015) LPELR-40425(CA). See also *Raji v. FRN* (2019) LPELR-47182(CA).

<sup>51</sup> Section 16. See also *Oloye V. A-G Federation* (2019) LPELR-46738(CA); *Folorunso v. FRN* (2019) LPELR-46463(CA)

<sup>52</sup> Section 17. *Folorunso v. FRN* (Supra)

<sup>53</sup> Section 18. See also *Oloye V. A-G Federation* (2019) LPELR-46738(CA)

<sup>54</sup> Section 19. See Kingsley N.O. Onu (2018) 'An Appraisal of the EU-ACP Cotonou Partnership Agreement' *The Gravitas Review of Business & Property Law* Vol. 9 No. 3; 133-153, at 147

<sup>55</sup> Section 20

<sup>56</sup> Section 21. See *Alfred v. State* (2017) LPELR-42612(CA)

<sup>57</sup> Section 22

<sup>58</sup> Section 23

<sup>59</sup> Section 24

<sup>60</sup> This attracts a punishment of imprisonment for a term of not less than 5 years without an option of fine upon conviction. See Section 26.

<sup>61</sup> This attracts the full punishment of offence conspired and committed upon conviction. Section 27(a)

<sup>62</sup> This attracts the half punishment of offence conspired but not committed upon conviction. Section 27(b)

<sup>63</sup> This is punishable with a term of 5 years imprisonment upon conviction. Section 28

<sup>64</sup> This attracts a punishment of imprisonment not exceeding 1 year and forfeiture of assets to the federal government. Sections 51(1)(b) and 50.

<sup>65</sup> This offence attracts upon conviction half the punishment for the offence. Section 29

<sup>66</sup> For attempt the offender shall be liable to half the punishment for the offence. Section 30(1). Where full offence is established on a charge for attempt, the offender shall not be acquitted but be punished as though he was charged with the main offence. Section 30(1).

Secretary of the body corporate, director or manager;<sup>67</sup> A body corporate convicted under this act;<sup>68</sup> Commercial carrier that knowingly carries any person in contravention of the Act;<sup>69</sup> Impersonation or assumption of character of an officer of the agency;<sup>70</sup> Tampering with evidence and witness;<sup>71</sup> where the offence is committed on the instigation of the Manager, Secretary etc;<sup>72</sup> Any tour operators, travel agents or airline who violates the provision of section 35(1) and (2) commits an offence;<sup>73</sup> Conviction for any of the offences under the Act;<sup>74</sup> and Obstruction of the Agency authorised officers;<sup>75</sup> and Offences related to forfeiture orders.<sup>76</sup>

It is our submission that the reason for the pegging of the victims of most of the crimes created under the Act to persons below the age of 18 is not clear;<sup>77</sup> reason being that in Nigeria of today that is ranked as the world poverty headquarters, most graduates and persons above the age of 30 are roaming the streets unemployed and are as such vulnerable to the offences created above. We strictly submit that the Act be amended and the age limits expunged to reflect the present day reality in Nigeria.

### 3.2.2 Jurisdiction and Prosecution of Offences under TIPLEA, 2015

NAPTIP has been empowered by the Act to prosecute suspected offenders under the Act through its Legal and prosecution department<sup>78</sup>; to extradite suspects and also to provide legal advice to other departments and to perform other incidental legal matters.<sup>79</sup> Through this, actions can freely be initiated by the agency against suspected offenders without dependence on other agencies or authority. This prosecuting power of the agency is however, without prejudice to the overriding powers of the Attorney General of the Federation or States to take over or discontinue a criminal proceeding as the case may be.<sup>80</sup> NAPTIP usually initiates criminal cases with name 'Attorney General of the Federation' as the complainant. Onu and Kolawole have critiqued this approach.<sup>81</sup> This practice was challenged in the case of *Serah Ekundayo Ezekiel V. Attorney General of the Federation*<sup>82</sup> where the appellant complained that the signature of the officer of the agency in the amended charge in the case did not sign on behalf of the Attorney General of Federation; and since the agency is a separate body that has perpetual succession, and power to sue and be sued in its corporate name, with no statutory provision making it a department in Attorney General's office, the agency could not initiate the charge in its name but on behalf of Attorney General. The Supreme Court resolved the issue by holding "...that for the purposes of investigation and prosecution of matters, law officers of the Agency are ... under the control and general supervision of the Attorney General and can, in the

<sup>67</sup> The officer shall be liable on conviction to the same punishment provided under this Act for individuals committing the offence. Section 31(1)

<sup>68</sup> Shall be liable to a fine of N10 million and the court may also order for the winding up of the company and forfeiture of its assets and properties to the Victims of Trafficking Trust Funds. Section 31(2)

<sup>69</sup> The punishment upon conviction is a fine not exceeding N10 million. Section 35

<sup>70</sup> The punishment on conviction is imprisonment for a term not exceeding 5 years without an option of fine. Section 33

<sup>71</sup> The punishment on conviction is imprisonment for a term not exceeding 5 years or to a fine not less than N250,000.00 or to both

<sup>72</sup> The punishment upon conviction is the same punishment for individual offenders. Section 31(2)

<sup>73</sup> Liable on conviction to a fine not exceeding N10,000,000.00. Section 35

<sup>74</sup> The passport of the person convicted shall be forfeited to the Federal government of Nigeria. Section 48

<sup>75</sup> The punishment on conviction to imprisonment for a term not exceeding 5 years or to a fine of N50,000.00 or both. Section 32

<sup>76</sup> Section 58. This attracts not less than 1 year imprisonment without an option of a fine.

<sup>77</sup> Kigbu S.K and Hassan Y.B. (2015) op. cit.

<sup>78</sup> Section 11(1)(b).

<sup>79</sup> See Section 12(2).

<sup>80</sup> Sections 174 and 211, Constitution Federal Republic of Nigeria 1999 as Amended.

<sup>81</sup> K.O.N. Onu & Kolawole O.A. (2020) Trafficking In Persons (Prohibition) Law Enforcement And Administration Act, 2015: An Old Wine In A New Bottle? Journal of Law and Criminal Justice. Vol. 8. No. 1., 50-62, 59. Available online at URL: <https://doi.org/10.15640/jlcj.v8n1a4>.

<sup>82</sup> (2017) LPELR-41908(SC)

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circumstance, sign processes and charges for and on behalf of the Attorney General of the Federation.<sup>83</sup>

The jurisdiction is vested on the High Court to try all the offences created under the Act.<sup>84</sup> The Act defined High Court to mean the Federal High Court, the High Court of a State or the High Court of the Federal Capital Territory.<sup>85</sup> This means that a suspected offender can be arraigned in any of these court in the state where the trafficking took place. The trafficker may also be prosecuted in another state if some part(s) of the trafficking took place in such a state.<sup>86</sup> Nigerians and foreigners outside foreign country that have violated the provisions of the Act may be repatriated back to Nigeria for trial through a request made by the Attorney General of the Federation based on an order of the Court, where extradition treaty exist between Nigeria and such a country.<sup>87</sup>

The Act empowers the trial Judges to reduce the sentence of a person convicted under the Act who facilitated the arrest of other accused persons or their sponsors.<sup>88</sup> The High Court can in addition to the sentence passed on a convicted person under the Act order that any property, asset or fund used in facilitating the commission of the offence or a proceed of such venture be forfeited to the Victims of Trafficking Trust Fund.<sup>89</sup> The passport of a convict under this Act shall be forfeited to the Federal Republic of Nigeria and the same shall be handed over to the Nigerian Immigration service for necessary action, and the same shall not be returned to the convict except on the order of the President while exercising his power to grant pardon pursuant to the Constitution.<sup>90</sup> The court also has the jurisdiction to order for interim attachment of proceeds or assets of persons accused of commission of any offence created under the Act to the Victims of Trafficking Trust Fund, where there exists a prima facie case against such an accused person and the proceeds or assets were acquired through the commission of an offence created under Act.<sup>91</sup> The procedure for seizure of property was well spelt out under the Act.<sup>92</sup> Where a person has been convicted under the Act such interim attachment above shall be made final,<sup>93</sup> and where such a convict has assets in foreign country which are proceeds of an offence for which the convict was convicted in Nigeria, subject to any treaty or arrangement between Nigeria and such a foreign country, such asset shall be forfeited to the Victims of Trafficking Trust Fund.<sup>94</sup>

The Act does not provide for the applicable Criminal Procedure law for the administration of the Act. It is suggested that the criminal procedure law that is applicable to the court of arraignment will be applied to such a case, however, the Act empowered the court to adopt all legitimate measures that it may deem expedient to eliminate unnecessary delay of trial of offences created under the Act.<sup>95</sup>

National Industrial Court of Nigeria is vested with the exclusive jurisdiction over civil cases emanating from the Act<sup>96</sup>. However, the idea of having different courts handling civil and

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<sup>83</sup> Ibid. 10-11

<sup>84</sup> Section 36(1)

<sup>85</sup> Section 82

<sup>86</sup> *Njovens v. The State* (1973) NSCC 257.

<sup>87</sup> Sections 70. It is important to note that Nigeria has the obligation to reciprocate such gesture under section 69. The Act also provided for the procedure for exchange of information and intelligence between Nigeria and a foreign country. See sections 69-74

<sup>88</sup> Section 36(3)

<sup>89</sup> Section 36(3)

<sup>90</sup> See section 48

<sup>91</sup> See section 55. This also includes money in the bank. See section 60

<sup>92</sup> See Sections 52-54

<sup>93</sup> See section 56 and 49

<sup>94</sup> See section 50

<sup>95</sup> This is notwithstanding to contrary provision in any other enactment. See Section 37

<sup>96</sup> S. 254(1) (i) Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2011.

criminal cases separately poses problems as most times the issues are intertwined within themselves i.e. a civil and criminal issues may arise from the same transaction; this confusion extends the litigation period, cost, and also discourages litigants.<sup>97</sup> A victim may institute a civil action against his/her traffickers for compensation, damages and restitution.<sup>98</sup> However, the Court in making an award to the victim shall take into account the award made by the court in the criminal trial. Where any person or body seeks to initiate a civil action against the agency, such a person or body must first issue the agency with a pre action notice and satisfy the conditions prescribed under section 77 of the Act.<sup>99</sup>

### 3.2.3 Victims' Rights Welfare and Protection

In line with demands of the Palermo Protocol, the Act made elaborate provision for victims' welfare, protection and compensation. The Act mandates the Agency (NAPTIP) to ensure that victims of trafficking: are not discriminated upon on the ground of colour, race, ethnicity, sex, status of being a trafficked person or for the fact that they have been involved in the sex industry;<sup>100</sup> have access to adequate health care and social services while in temporary residence.<sup>101</sup> have access to the embassy or consulate of their home country;<sup>102</sup> are safely returned to their home if the person so wishes and when possible;<sup>103</sup> are not denied access to temporary visas during the pendency of any action related to trafficking in person;<sup>104</sup> personal family history and identity are protected;<sup>105</sup> and their family is protected from intimidation and reprisal attacks from trafficking syndicates; facilities are maintained and rehabilitated.<sup>106</sup>

A trafficked person shall be entitled to compensation, restitution, and recovery for psychological, emotional and economic damages which shall be assessed and paid from the assets forfeited from the convicted trafficker.<sup>107</sup> The Court may in addition to other punishments meted out to a person convicted for an offence under the Act, order the convict to pay compensation to the victim.<sup>108</sup> A victim may institute a civil action against his/her traffickers for compensation, damages and restitution.<sup>109</sup> However, the Court in making an award to the victim shall take into account the award made by the court in the criminal trial. The Act establishes a Victim of Trafficking Trust Fund<sup>110</sup> for the purpose of paying compensation and restitution to victims of trafficking and for the establishment and maintenance of victims support services.<sup>111</sup> The sources of funds for the Trust fund include appropriations from the Federal Government, forfeited assets of traffickers and donations.<sup>112</sup> A Trust Fund Committee is also established to administer the fund.<sup>113</sup>

### 3.3 Criminal Laws

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<sup>98</sup> Section 65(3)

<sup>99</sup> K.O.N. Onu & Kolawole O.A. (2020) Trafficking In Persons (Prohibition) Law Enforcement And Administration Act, 2015: An Old Wine In A New Bottle? Journal of Law and Criminal Justice. Vol. 8. No. 1., 50-62, 59. Available online at URL: <https://doi.org/10.15640/jlcj.v8n1a4>.

<sup>100</sup> Section 61(1)(a and h).

<sup>101</sup> Section 61(1)(b)

<sup>102</sup> Section 61(1)(c)

<sup>103</sup> Section 61(1)(d)

<sup>104</sup> Section 61(1)(e)

<sup>105</sup> Section 61(1)(f and g)

<sup>106</sup> Section 61(1)(h)

<sup>107</sup> Section 65(1)

<sup>108</sup> Section 65(2)

<sup>109</sup> Section 65(3)

<sup>110</sup> Section 67(1)

<sup>111</sup> Section 67(4)

<sup>112</sup> Section 67(2)

<sup>113</sup> Section 68

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Before the enactment of the TIPLEA in 2003, there was no comprehensive legal framework for trafficking in person. Trafficking persons' cases were addressed through the general criminal laws for the country, to wit: Criminal Code Act for the southern Nigeria<sup>114</sup> and the Penal Code Act for the Northern Nigeria.<sup>115</sup> Although these laws stood in the gap in the absence of a comprehensive and unified human trafficking legislation for the country, they were quite deficient in many respects. This criminal law is basically sanction-orientated; no attention whatsoever was paid to prevention and protection measures. Usually, such procured or exploited persons were treated as criminals themselves and subject to deportation.<sup>116</sup> We shall now appraise these laws as they relate to trafficking in persons.

### 3.3.1 Criminal Code

Under the Criminal Code, there are various offences against liberty or slave-dealing which can be used to prosecute trafficking in persons and prostitution.

Section 219 deals with the offence of a householder permitting defilement of girls under 16 years in his premises. This provision though laudable, is deficient, in that modern trends have revealed that young boys are also being defiled, hence making this provision delinquent for present day Nigeria. The accused person can raise the defence that he reasonably believed that the victim was above 16 years.<sup>117</sup>

Section 222A deals with the offence of causing or encouraging the seduction or prostitution of a girl under the age of 16 years that is under a person's care. However, to succeed in proving this offence, the prosecution must establish that the accused person knowingly exposed the girl to such seduction or prostitution. Section 222B deals with the offence of allowing a girl under the age of 16 years that is under a person's care to reside or frequent a brothel. The punishment for this offence is grossly paltry being that it is a term of six months imprisonment or a fine of 100 naira.

Section 223 provides for the offence of procurement of woman or a girl to become a common prostitute either in Nigeria or elsewhere. This provision is laudable, however, the subsection 1 tends to exculpate the accused person where the victim is under 18 years and is 'a common prostitute or of known immoral character'. This provision is questionable in the sense that one would wonder what the parameters for the determination of immoral character are, and secondly, where a person that is below the adult age in the society is involved in immoral behavior, the society owe such a person duty to safe her from herself. We submit that this provision amended to address these challenges and the idea that only women can be sexually exploited be jettisoned with and buried in Medieval grave of costly assumptions, as present day realities has proven that sexual exploitation is not gender or race biased.

### 3.3.2 Penal Code

The Penal Code<sup>118</sup> make similar provisions like the Criminal Code Act on human trafficking. Section 275 deals with inducement of a girl under the age of eighteen years to go from place to place for defilement. Section 278 prohibits the buying, selling, hiring or letting of persons below the age of 18 years with intent that such a person will be or is likely to be employed or used for prostitution or other unlawful or immoral purposes. This provision is laudable as it preserves

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<sup>114</sup> These are: Abia, Akwa-Ibom, Anambra, Bayelsa, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Imo, Lagos, Ogun, Ondo, Osun, Oyo and Rivers States.

<sup>115</sup> These include: Adamawa, Bauchi, Benu, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Nasarawa, Niger, Plateau, Sokoto, Taraba, Yobe and Zamfara States plus the Federal Capital Territory, Abuja.

<sup>116</sup> Kigbu S.K and Hassan Y.B. (2015) 'Legal Framework for Combating Human Trafficking In Nigeria: The Journey So Far' Journal of Law, Policy and Globalization. Vol. 38. 2015. Pp 205-220. 219

<sup>117</sup> Section 20. Maybe the rationale for this defence is that a person that is above 16 years should be able to make right decisions for herself. We submit that this defence is fallacious, should be expunged.

<sup>118</sup> This law applies only in Northern States of Nigeria

the dignity of human person in that a human being is not a commodity that can be purposed in either open or black market. However, the pegging of the age of the victim to 18 years is unacceptable, in my view, being that human beings of all ages could be victims of such buying or selling. Secondly, the limiting of the purpose for such buying or selling to 'prostitution or other unlawful or immoral purposes will pose a huge challenge to the prosecuting authority to establish. In *Nwokocha v. State*<sup>119</sup> the appellant was convicted of buying a person contrary to section 278 of the Penal Code Act. She was convicted on the strength of her extra judicial statement where she stated that she bought the victim from her mother for her sister living in Abuja that has been married for over 10 years without a child. The Court of Appeal held that the buying and selling of new babies and minors is not illegal, that, that's what adoption entails, but in this case that the buying was not from authorized government agency or motherless babies' home. The prosecution couldn't establish that the purpose of the buying was to subject the minor to 'prostitution or other unlawful or immoral purposes'. The content of the extra judicial statement only established the doing an act prima facie legal but by an illegal means. The Court discharged and acquitted the appellant on the above charge but convicted for conspiracy to perform a lawful act by an unlawful manner under section 97(2) of the Penal Code.

Section 279 prohibits slave dealing. Section 280 deals with forced labour. We agree with Kigbu and Hassan<sup>120</sup> that 'the punishment does not seem to be adequate. It is not enough to deter perpetrators. The Penal Code does not define the term traffic. The term used in the penal code is "slave" which makes the provision extremely restrictive and not useful to prosecute traffickers.'

### 3.4 Immigration Act 2015

The Immigration service or department of every country is pivotal in the fight against human trafficking. In 2015, the Immigration Act of 1963 of Nigeria was repealed and replaced by the Immigration Act of 2015. Immigration Act 2015 recreated the National Immigration Service<sup>121</sup> which has the functions of controlling the entrance or leaving of Nigeria by any person; issuance of travel documents; border surveillance among other functions.<sup>122</sup> This Act and the Agency are key in controlling crossborder trafficking in persons. The Act defines trafficking as 'all acts and attempted acts involved in the recruitment, transportation within or across Nigerian borders, purchase, sale, transfer, receipt, or harbouring of a person involving the use of deception, coercion or debt bondage for the purpose of placing or holding the person, whether for or not in involuntary servitude (domestic, sexual or reproductive), in forced or bonded labour, or in slavery-like conditions.'<sup>123</sup> The Act categorizes any person trafficking in persons or smuggling;<sup>124</sup> a prostitute; a person who has been convicted of the offence of rape, defilement, or any other sexual offence; a brothel keeper or a person permitting the defilement, or seduction of a child or young person on his premises or on any other premises under his control; encourages the seduction of a child or young person; a person trading in prostitution, or is a procurer, as a prohibit immigrant, and show a person shall be refused admission or to be deported from Nigeria.<sup>125</sup>

The Act establishes the Division of Irregular Migration on the Directorate of Migration with the responsibility of handling smuggling of migrants and matters related to it.<sup>126</sup> The Division is

<sup>119</sup> (2019) LPELR-47075(CA)

<sup>120</sup> Kigbu S.K and Hassan Y.B. (2015) 'Legal Framework for Combating Human Trafficking In Nigeria: The Journey So Far' Journal of Law, Policy and Globalization. Vol. 38. 2015. Pp 205-220. 214

<sup>121</sup> Section 1 of Immigration Act, Act No.8, 2015.

<sup>122</sup> Section 2

<sup>123</sup> Section 116

<sup>124</sup> Section 44

<sup>125</sup> Section 44. h(i-v) The person is deemed to have committed an offence and is liable on conviction to imprisonment for ten years.

<sup>126</sup> Section 61

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also responsible for 'dealing with matters connected with the extradition, deportation and mutual legal or other assistance between Nigeria and any other country involving trafficking in persons, subject to the powers of the Minister, and the Attorney-General of the Federation, in appropriate cases.'<sup>127</sup>

It is unlawful under the Immigration Act to present forged travel documents to an immigration officer to travel out of Nigeria for any purpose including *inter alia* prostitution or for 'human trafficking for the purpose of prostitution and child labour and abuse'<sup>128</sup> However, it is important to note that section 62 TIPLEA immune victims of trafficking from detention or prosecution for offences accruing from being a victim of trafficking, including non-possession of travel documents, use of fake travel or other documents.

#### 4. Conclusion

Trafficking in person is a sore to our collective conscience and a fundamental abuse of human dignity. One would expect that Nigeria, a country that is origin, transit and destination point for global trafficking in persons, would be more proactive in its fight against human trafficking. This paper has examined the legal frameworks for combatting trafficking in persons in Nigeria. It has also appraised the factors that necessitate human trafficking, and also pointed out some lacuna in the extant legal framework. Until all persons enjoy same rights everywhere, human right is not safe anywhere; thus, the fight against human trafficking must be a collective effort for all. This paper makes suggestions on how the existing frameworks can be strengthened: Due to the nature of this offence, the stipulation limiting the age of victims to 18 years should be amended to read 'any person'. This is because young adults (like secondary school leavers and tertiary institutions students and unemployed or under employed graduates) and old people are also highly vulnerable to trafficking in human. Dignifying verbs should be used to replace the use of the words "importation" and "exportation" of persons used in Section 14 of TIPLEA, as they are derogating. The use of those words reduces human beings to the level of commodities that can be imported and exported. It would be ironic to see a pro human rights law breaching the very human rights.

There's a need for the list of possible form of sexual exploitation under section 15 of TIPLEA to be expanded to include animals, sex machines dolls and other connected objects and practices. This is driven by the change in how sexual activities are carried out in the world today, and sex dolls (both robotized and un-robotized) are now very popular in the adult entertainment industry. A sex pervert may derive sexual gratification from watching animals, sex dolls or machine abuse another person. These despicable acts were not included in the said section 15 of TIPLEA, hence, an accused person can raise a defense stating that the procurement of a victim to engage in sexual activities using animals, sex dolls and machines etc. is not covered under this provision of the Act.<sup>129</sup>

The words '*forced or compulsory*' should be expunged from section 19 of TIPLEA. This is because some trafficked victims under the age of 18 maybe recruited for use in an arm conflict willingly,<sup>130</sup> this doesn't however make it acceptable and legal. Also, stiffer punishments should be the penalty for the offence of organ harvesting under Section 20 especially, where death results. Under the TIPLEA, the penalty for a conviction under this section is imprisonment for a term not less than 7 years and a fine of not less than 5,000,000, this should be increased to a term of imprisonment of not less than 20 years and an increased fine of not less than 12,000,000.00 as

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<sup>127</sup> Section 62(u)

<sup>128</sup> See section 57(4). The punishment for this offence is 10 years imprisonment or a fine of Two Million Naira or both.

<sup>129</sup> K.O.N. Onu & Kolawole O.A. (2020) Trafficking In Persons (Prohibition) Law Enforcement And Administration Act, 2015: An Old Wine In A New Bottle? Journal of Law and Criminal Justice. Vol. 8. No. 1., 50-62, 59. Available online at URL: <https://doi.org/10.15640/jlcj.v8n1a4>.

<sup>130</sup> For example, young persons that have lost loved ones to armed conflicts may willingly volunteer to fight for revenge.

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victims of organ harvesting sometimes lose their lives during or after the procedure and those alive may be prone to serious health issues and complications.

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