

**EFFICACY OF THE LEGAL FRAMEWORKS FOR CHILD PROTECTION
IN NIGERIA**

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by

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ABSTRACT

This research evaluates the potential challenges to a total eradication of child trafficking in Nigeria. The magnitude of the problem, as well as its despicable nature, triggered increasing legislations in Nigeria in recent years. This research shows that despite the remarkable efforts in term of law and policy approaches the problem appears to persist. The objective of the research is to demonstrate that law and policies approaches to addressing the issue are not proving effective. It appears that several socio-cultural issues related to child trafficking remain unaddressed. Despite the wealth of knowledge in relation to the topic there is a gap in literature. Indeed the existing gap in literature regarding child trafficking in Nigeria is evidenced by the fact that no adequate way forward has been indicated to overcome the phenomenon. In an attempt to fill the existing gap this research inquires whether the non-achievement of goals in combatting child trafficking is imputable to the lack of toughness in the spirit of the laws and policies or the lack of efficacy due to ineffective implementation and enforcement. By providing the appropriate answers to these crucial questions the research may not only fill the existing gap in literature but also offer the adequate approach to be taken by law and policy makers and other stakeholders in the fight against child trafficking to overcome the problem. The approach taken in conducting this research is textual analysis or doctrinal analysis and deconstruction of the enforcement mechanisms of human trafficking laws and policies in Nigeria in general. However Nigeria has sufficiently domesticated international human trafficking legislation and Human Rights instruments, the issue of enforcement remains a crucial element in achieving the ultimate goal of total eradication. Where such prospect appears unattainable, it is necessary to adopt a holistic approach to combatting child trafficking in order to achieve the ultimate goal of total eradication.

Keywords - Human Trafficking, Child Trafficking, Child Labour, Child Abuses, Culture, Child Protection, Child Rights, Law, Implementation, Enforcement.

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List of Abbreviations

ACRWC

African Charter on the Rights and Welfare of the Child

AU	African Union
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Committee on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CILS	Core International Labour Standards
CLASP	Child Labour Action Support Programme
CLDA	Child Labor Deterrent Act
CNLTEE	National Committee for the Fight against Trafficking and Exploitation of Children
CRC	Convention on the Rights of the Child
CSR	Corporate Social Responsibility
ECOWAS	Economic Community of West African States
EFA	Education for All
EU	European Union
GDP	Gross Domestic Product
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organization
ILS	International Labour Standards
IPEC	International Programme on the Elimination of Child Labour
MDGs	Millennium Development Goals
MNCs	Multinational Corporations
NAPTIP	National Agency for the Prohibition of Trafficking in Persons
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations International Children's Fund

UNHCR	United Nations High Commissioner for Refugees
USDA	U S Department of Agriculture
WFCL	Worst Forms of Child Labour
WHO	World Health Organization
WOTCLEF	Women Trafficking and Child Labour Eradication Foundation
WTO	World Trade Organisation

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Chapter 1

Introduction

1- Context

Trafficking in children is a global phenomenon that takes place across all regions of the world. It is a crime that involves gross violations of human rights which threaten children's survival and development. Trafficking in children results in denying children their fundamental rights including, the right to education, health and protection from exploitation and abuse. According to the International Labour Organisation, recent estimate 1.2 million children are victims of trafficking around the world.¹ Child trafficking is one of the three most profitable trades. It comes next to drug trafficking and arms trafficking. However it hard to ascertain the exact number of persons including children that are trafficked across the globe, traffickers reap a significant profit from exploiting fellow human beings, including children. Trafficking in children is directly associated with child abuses. Lawrence and Roberts are of the view that the historical pattern of Africa's involvement in the global slave trade remains a fundamental element in the present day practice of trafficking in persons.² Indeed it involves multiple forms of abuses akin to modern day slavery such as forced labour and debts bondage.³ Trafficked children are forced into prostitution and other forms of exploitation. They not only become victims of psychological and physical abuse but also face many other violations of their fundamental human rights.

Trafficking in person in general and child trafficking, in particular, is one of the most challenging phenomena to the modernisation and developmental aspirations of Nigeria. It should be agreed with Okogbule that human trafficking in the Nigerian context has two

¹ See ILO, 'Trafficking in children'. Available at <http://www.ilo.org/ipec/areas/Traffickingofchildren/lang--en/index.htm>, accessed 13 October 2016.

² Benjamin N Lawrence and Richard L Roberts, 'Contextualizing Trafficking in Women and Children in Africa' in Benjamin N Lawrence and Richards L Roberts (eds) *Trafficking in Slavery's Wake : Law and the Experience of Women and Children in Africa* (Ohio University Press, 2012) 1.

³ Sandy Hobbs, Jim Mckechnie and Michael Lavalette *Child Labour: A world History Companion* (ABC-CLIO Ltd, 1999). See also Assefa Bequele and Jo Boyden, 'Combating Child Labour' (International Labour Office, 1988).

dimensions.⁴ It is worth noting that child trafficking also has two dimensions. It is necessary to shed light on the two dimensions in order to understand their mechanisms and identify the type and level of challenges they constitute for Nigerian authorities, law and policymakers as well as scholars.

The internal dimension of human trafficking consists of a situation where young women, girls, and boys are trafficked from their natural rural environments to urban areas in the country through intermediaries or by loosely organized crime networks. The object is to procure for them madams or households where they can serve as house helps with little or no payment for the services rendered. This practice derives from the tradition in several African countries where less endowed members of the community living in rural areas send their children and wards to other relations in urban areas who are financially more able to take care of their less fortunate relations. The agents are usually compensated for providing this service to both the host families and those assisted in securing such placements.⁵

The external dimension of human trafficking has been a subject of grave concern in Nigeria in recent years. This increased concern is attributable to the extent of exploitation involved in the practice and its implications for the country's international corporate image. It involves the trafficking of victims from Nigeria to other African and European countries, based on attractive offers made to them by the traffickers or through their intermediaries. The general trend in this dimension of human trafficking is that, before the victims leave Nigeria, they are made to sign documents agreeing to pay to their sponsors a sum of money as a refund for their travel expenses.⁶

External and internal child trafficking thrive principally in Nigeria because some factors contribute to its perpetuation such as poverty, customary and traditional practices. Child trafficking is closely linked to the problem of poverty.⁷ Child trafficking is practised either for parents to solve their economic demise or traffickers exercise the practice out of pure

⁴ Nlerum S Okogbule, 'Combating the 'New Slavery' in Nigeria: An appraisal of the Legal and Policy Responses to Human Trafficking'

⁵ *ibid.*

⁶ *ibid.*

⁷ Olubukola S Adesina, 'Modern day slavery: poverty and child trafficking in Nigeria' (2014) 12 *African Identities* 165,180. See also Asian Development Bank and Jan P M Van Heeswijk, 'Combating Trafficking of Women and Children in South Asia: Regional Synthesis Paper for Bangladesh, India, and Nepal' (Asian Development Bank, 2004)

greed. It could be argued that what is regarded as exploitation of children by parents has never been understood as such in most African societies. The modernisation of African societies could have been crucial to the change of perception about certain traditional setting and views, but it appears that financial requirements have prevailed on social values. Folami argues that the free economic system has created the opportunity for children exploitation in modern Nigeria.⁸ He notes that children are now the tools of income generation for the parents. This problem had become unprecedented compared to what is obtainable in the traditional structure of Nigeria when children were considered as economic tools for the more production of wealth by parents on the farms.⁹ Although the responsibility for creating the sound legal environment for child rights protection rests with the authorities, parents also have the primary responsibility to apply a level of care and protection irrelevant of their environment. In regard to that approach Abba writes that:

“Every Child has right to life, and if so, it is a responsible parent that could make this workable and realistic to uphold the children’s rights and existence to life. Time is now ripped for society to look into the children’s Rights and Human Trafficking and Responsible Parents in Western African country Nigeria. Children have the natural rights to exist, grow maturely and to develop in whichever hemisphere or environment they find themselves. A good child born to a good and responsible parent ought not and should not encounter or experience in anyway the so called children’s problem through one’s good mother and father care in any family.”¹⁰

The claim that the practice of child trafficking in Nigeria is particular does not insinuate that the practice is less dramatic in other countries. Instead, this research intends to highlight the fact that child trafficking in Nigeria has its peculiar characteristics that require a different approach to deal with this problem. While human trafficking, in general, is exclusively driven by a financial gain in most societies where it occurs, the practice of child trafficking in Nigeria is underpinned by customary and traditional practices such as child fostering.

The handling of phenomena such as child labour, child trafficking, and other child abuses require that the authorities initiate law and policy reforms having in mind the reconciliation of traditional and modern values. It is evident that most of these social issues have strong tied

⁸ Olakunle Michael Folami, ‘Criminal Exploitation of Children in Contemporary Nigeria’ (2011) Social Work Review 39.

⁹ *ibid.*

¹⁰ Joebarth Abba, ‘Children’s Rights and Human Trafficking and Responsible Parenthood in West African country Nigeria’ (2014) 3 Journal of Arts and Humanities 81.

with cultural and traditional settings. Hence they cannot be dealt with from a legal perspective without exploring the possible challenging and the adequate responses. So far as such approach is not adopted and as long as underlying problems or surrounding factors remain unaddressed it may prove difficult to achieved the expect goals. In certain cases even though the issue is addressed the paradoxes of reconciling traditional or customary rules and contemporary perceptions of the law give rise to the complex circumstance of implementation and enforcement. The risk that such scenario is perpetuated remains one of the questions posed to Nigerian authorities. On that persisting issue in Nigeria, Adefi pertinently concludes in his observations that:

“Thus custom is dynamic and not static. It is subject to change particularly over a long period of time. There exist such customary practices in different parts of rural Nigeria, some of which have evolved into customary law, and are enforced as such by the existing authorities/ruling bodies. Some of these practices have been written down as laws, but most of them are largely unwritten but have the force of law. They are accepted by the communities concerned and are applies in some cases ruthlessly. Some of them do not even pass the repugnancy test, and as such are contrary to known principles of natural justice.”¹¹

The traditional perception of children’s rights, women’s rights, and good governance, are issues to be appropriately dealt with in the case of child trafficking in Nigeria. Crawford notes that: ‘Transparency is an essential feature of a human rights-based approach to development. Transparency reflects both intrinsic and instrumental human rights values. Citizens’ insight and oversight regarding issues of public concern are important fundamental values, enabling people to make informed and autonomous choices and live meaningful lives.’¹² This argument leads to the ideal approach to a country’s practice of public administration and public management. This approach is critical to the present research as the lingering practice of child trafficking in Nigerian society is underpinned by multiple factors centred on the issues of traditional settings and authorities’ management of public affairs and the lack of good governance.

¹¹ Olong Mathew Adefi, ‘Prospects for the Realization of Human Rights: Rural Nigeria in Perspective’ (2012) 5 *Journal of Politics and Law* 40, 48.

¹² Gordon Crawford, ‘Human Rights and Development: Putting Power and Politics at the center’ (2015) 37 *Human Right Quarterly* 662.

Values such as transparency, the protection of human rights, in general,¹³ and the protection of women and children's rights, in particular, are scarce in most traditional communities of developing countries, yet many developing countries have signed and ratified many international treaties and conventions that deal with human rights.¹⁴ Such state of affairs creates the debate about the genuine participation of some developing countries in the building of a global community. There is an impression that countries engage in international cooperation merely for the purpose of compliance with the international order. A genuine interest in observing international order, adherence to international treaties and standards must transpire in the domestic legislation.

Increased legislative activity was regarded as the best if not the unique approach to addressing the challenging issue of child trafficking at both international and national levels. The setting of numerous international, regional and sub-regional legal frameworks, their subsequent domestication at national levels as well as the enactment of various law and policies was considered to be an effective way of combating child trafficking. Lawrence observes that: "some legislative paradigms emerged as the consensus for legislative remedy prevailed." Legislative paradigms were fashioned by international instruments and national iterations of international protocols and conventions. These legislative paradigms can be divided into three typologies: i) a blanket approach incorporating diverse forms of human trafficking, ii) child-centric laws focused exclusively on the child dimensions of trafficking, iii) legislative revalidation, whereby existing remedies were valorized.¹⁵ It transpires from this observation that, the legislative paradigm was the unique approach adopted in response to the dramatic effects of child trafficking in most West African countries.

Adopting a unique approach to addressing the issue appears not to prove efficient regarding yielding the expected result. It is understood that every effort to combat human trafficking in general and child trafficking, in particular, is aimed at the total eradication of the phenomena or at least having them under control so as to find the best approach to tackling them. However, law and policy responses seem to be ineffective. The lack of results on the ground

¹³ See the Universal Declaration of Human Rights (UDHR) is a declaration adopted by the United Nations General Assembly on 10 December 1948.

¹⁴ See Nnadi Ine, 'Son Preference – A Violation of women's Human Rights: A Case Study of Igbo Custom in Nigeria' (2013) 6 Journal of Politics and Law 134, 141.

¹⁵ Benjamin N Lawrence, 'From Child Labor 'Problem' to Human trafficking 'Crisis'; Child Advocacy and Anti-Trafficking Legislation in Ghana' (2010) 78 International Labor and Working-Class History 63, 88.

may not be attributed to the scarcity of law and policy responses. Moreover, the inefficacy of the laws and policies might not be attributed to a lack of their rigidity. Indeed, there is an abundance of legislations and, at the same time, the laws are strict. For instance, under section 19(b) of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003, the maximum imprisonment term is ten years or a fine not exceeding NGN 200,000 or both.¹⁶

In a situation where the maximum jail term is given to a trafficker, the full force of the law would have been excised. The maximum term and the amount of the fine alone are sufficient to demonstrate that the law is rigid. Therefore, the lack of result on the ground can be attributed to poor law and policy response. Although the lack of rigidity of the laws is not at issue, there are still questions regarding the far-reaching effect of the laws. Indeed, laws are made to achieve the purpose of their enactment. This fact seems not to be the case with the laws and policies regarding human trafficking in Nigeria. In the quest for effective means of tackling the problem of child trafficking, an inquiry could be made in to establish the reason for the lack of far-reaching power of the laws. An inquiry could also be made into the possible alternatives to make the far-reaching power of the laws effective. The discourse about child trafficking ought to be developed in a broader ambit encompassing the political, social, cultural and legal aspects. The Nigerian Constitution guarantees citizen rights. However, some rights are not guaranteed under the Constitution. Adefi observes that:

“Under the Nigerian Constitution, there are claims which are fundamentally guaranteed as rights to be enjoyed by the citizens which are remediable upon breach. These set of rights are called civil or political rights. There are however other claims which are not guaranteed in the Constitution either as guiding principles of state policy or as privileges which may, upon progressive development become rights in themselves in the future. These set of rights are non-justiceable and thus cannot be remedied in the Courts upon breach. These set of claims are regarded as social and economic rights. It is noteworthy to stress that the non-justiceability of social and economic rights does not in any way diminish the quality and character of these claims as necessary compliments for the due enjoyment or realization of the civil and political rights. In the words of Nnamdi Aduba (1992:220), human rights and social justice should be complementary of each other. Having one in the absence of the other makes little or no sense.”¹⁷

The above observations contain the whole point about law and policy makers’ selective approach to social issues. In a legal pluralistic context such as Nigeria, some conservative

¹⁶ See Act No. 24 of 2003, Trafficking in Persons (Prohibitions) Law Enforcement And Administration Act [Nigeria], Cap T23 LFN 2004, 14 July 2003, available at: <http://www.refworld.org/docid/54f989d24.html> , accessed 28 October 2015

¹⁷ Supra 9.

views based on customary settings often thrive because there is a requirement of flexibility towards the variety of regulatory frameworks. The flexibility requirement does not insinuate that the legal pluralistic system in Nigeria is to be rejected. Legal pluralism must be upheld, but a degree of harmonisation is necessary to create a stable legal and institutional environment for the promotion and protection of human rights.

Laws and policies related to child trafficking in Nigeria also promote human rights, but the overall goal is often not achieved.¹⁸ The Punishment on traffickers is often inflicted in consideration of their fundamental human rights. The court will assess the full circumstances before making any decision. As a result, some offenders' get away with small fines. Courts usually impose fines, restricting orders or imprisonment terms within the ambit of sentencing guidelines. Regarding the far-reaching power of the laws, the argument of the rigidity of the law can be relevant. The general perception is that the cases of trafficking offences have increased in Nigeria since the enactment of the trafficking law in 2003. The softness of sentences is blamed for such state of affairs. It should be noted that such narrative could overshadow certain relevant issues. As the legal response is not the sole approach to be adopted in combatting human trafficking in general and child trafficking in particular in Nigeria. There is a need to combine the legal approach with the social and cultural approach to creating a comprehensive environment for dealing with the problem of child trafficking.

2- Literature Review

The globalisation narrative seems to create an effect of mimetics whereby every country endeavour to meet certain international standards. In that vein, Chang observes that: 'with the recent advance in globalization, it has become popular to argue that countries need to adopt a certain set of institutions that meet the "global standards" in order to survive in the new, borderless world.'¹⁹

While this eagerness might not be strong among industrialised nations because they have met or nearing to meeting these standards, the developing countries strongly compete for the

¹⁸ Nigerian Children's Trust Fund (Amendment) Decree no. 72 1993, The Child Rights Act (CRA) 2003, Trafficking Law Enforcement and Administration Act 2003 are important instruments adopted for the promotion and protection of the rights of the child in Nigeria. These Legal instruments are the subject of analysis in subsequent chapters in this thesis.

¹⁹ Ha-Joon Chang, 'Globalization, Global Standards, and the Future of East Asia' (2005) 34 Economic and Industries Review 363, 378.

meeting of those standards. Moreover, they tend to be active at every stage of the globalisation process. Chigara argues that: 'latecomers' involvement in the ILO objective of authoritatively updating the International Labour Code gave them co-editorial control over the whole of the labor code so that the end result could be said to be an International Labour Code that has been both co-authored and approved by all the four regions of the world through their representation in the Working Party.'²⁰

Many countries who aspire to a certain international position often fall short of observing basic societal values. The modernisation of African societies could have been crucial to the change of perception about certain traditional setting and views, but it appears economic requirements have prevailed on social values. Folami argues that the free economic system has created the opportunity for children exploitation in modern Nigerian. He notes that children are now the tools of income generation for the parents. This problem has become unprecedented compared to what is obtainable in the traditional structure of Nigeria when children were seen as economic tools for further production of wealth by parents on farm.²¹

Values such as transparency, the protection of human rights, in general,²² and the protection of women and children's rights, in particular, are scarce in most traditional communities of developing countries yet they are part of the global community.²³ Such situation creates the debate about the genuine participation of some developing countries in the building of a global community. There is an impression that countries engage in international cooperation merely for the purpose of compliance to international order. A genuine interest in observing international order, adherence to international treaties and standards must transpire in a country's handling of issues of universal character and importance. The handling of phenomena such as child labour, child trafficking and other child abuses require that the authorities initiate law and policy reforms having in mind the reconciliation of traditional and modern values. It is evident that most of these social issues have strong tied to cultural and

²⁰ Ben Chigara, 'Late Comers to the ILO and the Authorship and Ownership of the International Labour Code' (2007) 29 Human Rights Quarterly 706, 726.

²¹ Olakunle Michael Folami, 'Criminal Exploitation of Children in Contemporary Nigeria' (2011) Social Work Review 39.

²² See the Universal Declaration of Human Rights (UDHR) is a declaration adopted by the United Nations General Assembly on 10 December 1948.

²³ See Nnadi Inc, 'Son Preference – A Violation of women's Human Rights: A Case Study of Igbo Custom in Nigeria' (2013) 6 Journal of Politics and Law 134, 141.

traditional settings. Hence they cannot be dealt with from a legal perspective without exploring the possible challenging and the adequate responses. So far as such approach is not adopted and as long as underlying problems or surrounding factors remain unaddressed it may prove difficult to achieved the expect goals. In certain cases even though the issue is addressed the paradoxes of reconciling traditional or customary rules and modern perceptions of the law give raise to the complex circumstance of implementation and enforcement. The risk that such scenario is perpetuated remains one of the questions posed to Nigerian authorities On that persisting question in Nigeria, Adefi pertinently concludes in his observations that:

“Thus custom is dynamic and not static. It is subject to change particularly over a long period of time. There exist such customary practices in different parts of rural Nigeria, some of which have evolved into customary law, and are enforced as such by the existing authorities/ruling bodies. Some of these practices have been written down as laws, but most of them are largely unwritten but have the force of law. They are accepted by the communities concerned and are applies in some cases ruthlessly. Some of them do not even pass the repugnancy test, and as such are contrary to known principles of natural justice.”²⁴

The traditional perception of children’s rights, women’s rights, and good governance are issues to be properly dealt with in the case of child trafficking in Nigeria. Crawford notes that: ‘Transparency is a key feature of a human rights-based approach to development. Transparency reflects both intrinsic and instrumental human rights values. Citizens’ insight and oversight regarding issues of public concern are important intrinsic values, enabling people to make informed and autonomous choices and live meaningful lives.’²⁵ This argument leads to the ideal approach to a country’s practice of public administration and public management. This approach is critical to the present research as the lingering practice of child trafficking in Nigerian society is underpinned by multiple factors centred on the issues of traditional settings and authorities’ management of public affairs.

The existing literature on child protection in general and child trafficking, in particular, is considerable. Although the responsibility for creating the sound legal environment for child rights protection rests with the authorities, parents have the primary responsibility to apply a

²⁴ Olong Mathew Adefi, ‘Prospects for the Realization of Human Rights: Rural Nigeria in Perspective’ (2012) 5 *Journal of Politics and Law* 40, 48.

²⁵ Gordon Crawford, ‘Human Rights and Development: Putting Power and Politics at the center’ (2015) 37 *Human Right Quarterly* 662.

level of care and protection irrelevant of their environment. In regard to that approach Abba writes that:

“Every Child has right to life and if so, it is a responsible parent that could make this workable and realistic to uphold the children’s rights and existence to life. Time is now ripped for society to look into the children’s Rights and Human Trafficking and Responsible Parents in Western African country Nigeria. Children have the natural rights to exist, grow maturely and to develop in whichever hemisphere or environment they find themselves. A good child born to a good and responsible parent ought not and should not encounter or experience in anyway the so called children’s problem through one’s good mother and father care in any family.”²⁶

However, the existing literature about child protection, child abuse, child labour and especially child trafficking appears sufficient in that various questions related to the phenomenon have been elaborated on by scholars, experts, and practitioners there is a lingering gap in the literature regarding the specific case of child trafficking in Nigeria. The issue has yet to be addressed from a different angle that encompassed multiple topics. In other words the combat against child trafficking in Nigeria demands that other issues be addressed on the ground across Nigeria. For instance, poverty, customary fosterage, illiteracy corruption, and the wrong approach to the application of legal pluralism are issue to be efficiently addressed if there a genuine will to eradicate child abuses and child trafficking in Nigeria.

The existing body of literature serves as the stepping stone to achieving the ultimate goal of total eradication. The claim that the practice of child trafficking in Nigeria is specific does not insinuate that the practice is less dramatic in other countries. Instead, it is intended to highlight the fact that child trafficking in Nigeria has its peculiar characteristics that require a different approach in going about the issues. As noted, the adverse effects of child trafficking are also effective in in industrialised nations. In that vein Vinkovic writes that:

“The trafficking of children expressis verbis should be identified as a cause of the worst forms of child labour, in particular of sexual exploitation of children. Coherent activity of eu member state authorities, cooperation in the field of internal affairs and criminal matters, and development of effective supranational criminal framework must become a priority of a society oriented towards the highest standards of protection of children’s rights as separate human rights category.”²⁷

²⁶ Joebarth Abba, ‘Children’s Rights and Human Trafficking and Responsible Parenthood in West African country Nigeria’ (2014) 3 Journal of Arts and Humanities 81.

²⁷ Mario Vinkovic, ‘The ‘unbroken marriage’- trafficking and child labour in Europe’(2010) 13 Journal of Money Laundering Control 87, 102.

While human trafficking, in general, is exclusively driven by a financial gain in most societies where it occurs, the practice of child trafficking in Nigeria is underpinned by several factors. Oderinde notes that the major factor for the crime of child trafficking is poverty coupled with weak enforcement of the Child Right Act, ignorance, greed, illiteracy, collapse of family values and increase in violence against women.²⁸ However, the observation contains the essential elements to the perpetuation and the thriving of child trafficking; there are elements such as traditional and customary settings.

Increased legislative activity was regarded as the best if not the unique approach to addressing the challenging issue of child trafficking at both international and national levels. The setting of numerous international, regional and sub-regional legal frameworks, their subsequent domestication at national levels as well as the enactment of various law and policies related to the issue, there seem to be no practical results on the ground. Lawrance observes that: 'A number of legislative paradigms emerged as the consensus for legislative remedy prevailed. Legislative paradigms were fashioned by international instruments and national iterations of international protocols and conventions. These legislative remedies can be divided into three typologies: a blanket approach incorporating diverse forms of "human trafficking" such as Ghana's; child-centric laws focused exclusively on the child dimensions of trafficking; and legislative revalidation, whereby existing remedies were valorized.'²⁹ It transpires from this observation that, the legislative paradigm was the unique approach adopted in response to the dramatic effects of child trafficking in most West African countries.

Adopting a unique approach in addressing the issue appears not to prove efficient in terms of yielding the expected result. It is understood that every combat engaged against human trafficking in general and child trafficking, in particular, is aimed at the total eradication of

Mario Vinkovic, 'The 'unbroken marriage''- trafficking and child labour in Europe'(2010) 13 Journal of Money Laundering Control 87, 102.

²⁸ See Olatundun A Oderinde, 'The religio-cultural Context of Child Trafficking in Nigeria' (2014) 6 Review of European Studies 190.

²⁹ Benjamin N Lawrance, 'From Child Labor 'Problem' to Human trafficking 'Crisis'; Child Advocacy and Anti-Trafficking Legislation in Ghana' (2010) 78 International Labor and Working-Class History 63, 88.

the phenomena or at least having them under control so as to find the best approach to tackling them. However, law and policy responses seem to be ineffective. The lack of results on the ground may not be attributed to the scarcity of law and policy responses. Moreover, the inefficacy of the laws and policies might not be attributed to a lack of their rigidity. Indeed, there is an abundance of legislations and, at the same time, the laws are tough. For instance Under section 19(b) of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003, the maximum imprisonment term is ten years or a fine not exceeding NGN 200,000 or both.³⁰

In a situation where the maximum imprisonment term is given to a trafficker, the full force of the law would have been excised. The maximum term and the amount of the fine alone are sufficient to demonstrate that the law is rigid. Therefore, the lack of result on the ground cannot successfully be attributed to poor law and policy response. Although the lack of rigidity of the laws is not at issue, there are still issues regarding the far-reaching effect of the laws. Indeed, laws are made to achieve the purpose of their enactment. This seems not to be the case with the laws and policies regarding human trafficking in Nigeria. In the quest for a definite answer to the fact, enquiry can be made in order to establish the reason for the lack of far-reaching power of the laws. Enquiry can also be made into the possible alternatives to make the far reaching power of the laws effective.

The discourse about child trafficking ought to be developed in a broader ambit encompassing the political angle, the institutional and socio- legal framework. The Nigerian Constitution guarantees citizen rights. However some rights are not guaranteed under the Constitution. Adefi observes that:

“Under the Nigerian Constitution, there are claims which are fundamentally guaranteed as rights to be enjoyed by the citizens which are remediable upon breach. These set of rights are called civil or political rights. There is however other claims which are not guaranteed in the Constitution either as guiding principles of state policy or as privileges which may, upon progressive development become rights in themselves in the future. These set of rights are non-justiceable and thus cannot be remedied in the Courts upon breach. These set of claims are regarded as social and economic rights. It is noteworthy to stress that the non-justiceability of social and economic rights does not in any way diminish the quality and character of these claims as necessary compliments for the due enjoyment or realization of the civil and political rights. In the words of Nnamdi Aduba (1992:220), human rights and social

³⁰ See Act No. 24 of 2003, Trafficking in Persons (Prohibitions) Law Enforcement And Administration Act [Nigeria], Cap T23 LFN 2004, 14 July 2003, available at: <http://www.refworld.org/docid/54f989d24.html> , accessed 28 October 2015.

justice should be complementary of each other. Having one in the absence of the other makes little or no sense.”³¹

The above observations contain the whole point about law and policy makers’ selective approach to social issues. In the environment of legal enpluralism of Nigeria, some conservative views based on customary settings often thrive because there is a requirement of flexibility towards the variety of regulatory frameworks. This does not insinuate that the legal pluralistic system in Nigeria is to be rejected. However, legal pluralism must be upheld and a degree of harmonisation must be achieved in order to create a stable legal and institutional environment for the promotion and protection of human rights.

Laws and policies related to child trafficking in Nigeria also promote human rights, but the overall goal is often not achieved.³² The Punishment on traffickers is often inflicted in consideration of their basic human rights. The court will assess the full circumstances before making any decision. As a result, some offenders’ get away with small fines Courts usually impose fines, restricting orders or imprisonment terms within the ambit of sentencing guidelines. In terms of the far-reaching power of the laws, the argument of the rigidity of the laws can be relevant. Although the recurring recidivism or growing cases of trafficking offences in Nigeria since the enactment of an exemplary trafficking law in 2003 is blamed for the softness of the sentences it should be noted that such narrative could overshadow certain relevant issues. As indicated hereinbefore, the legal approach ought to be combined with the social and cultural approach to create a comprehensive environment for dealing with the problem

Worthwhile, society through the court expects that the offenders do not re-offend by getting involved in any form of trafficking or child abuses. However, these individuals are often caught as second or third time offenders. This situation of the vicious circle is also crucial to the debate about the efficacy of the laws. Hence, where, for example, the law provided lengthy prison sentences or heavy fines, it will be recommended that such laws be revised thus making sentencing guidelines flexible to allow courts to render tougher decisions. In

³¹ Supra 9.

³² Nigerian Children's Trust Fund (Amendment) Decree no. 72 1993, The Child Rights Act (CRA) 2003, Trafficking Law Enforcement and Administration Act 2003 are important instruments adopted for the promotion and protection of the rights of the child in Nigeria. These Legal instruments are the subject of analysis in subsequent chapters in this thesis.

Attorney General of the Federation v Toyin Ogbebor,³³ having found the accused guilty of child trafficking, the court held: Imprisonment as punishment is to reform the accused and make her fit for future roles in the society. In this case, the accused person is very sober having realised her mistake. To that extent, she made confessional statements and also pleaded guilty before this court. As such, imprisonment will not serve any benefit on the accused person.” The term of Imprisonment pronounced, in this case, was under Section 19(1) (b) of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003.³⁴ Under the same section 19(1) (b) of the Trafficking in Person and Law Enforcement and Administrative Act 2003, the alleged offence is punishable of ten years imprisonment, or a fine not exceeding N 200,000 or both. In this particular case, the accused was sentenced to 2 years imprisonment term and NGN 50,000 (approximately USD 310) only. In the light of the court decision, there is no guarantee that the accused will not re-offend.

Institutions such as the National Agency for the Prohibition of Trafficking In Person (NAPTIP), the police, the customs being at the enforcement section of the chain, can be more well-funded and well-staffed. Such endeavour will be materialised by the allocation of enough financial resources as well as logistics and new technologies to every institutions and agency participating to the fight against human trafficking in Nigeria.

3- Hypotheses

The need to explore avenues other than legislation in the quest for a viable answer to the phenomenon of child trafficking in Nigeria seems to be a matter of urgency. Hence, this thesis examines the opportunity for Nigerian authorities, law and policy makers to devise viable socio-economic responses as well setting workable legal instruments and to undertake law and policy reforms. The full picture of the phenomenon and relevant issues need to be presented to comprehend the state of affairs regarding the law and policy implementation and the possible answers to the problem in the foreseeable future. Hence, the thesis seeks to grasp the combat against child trafficking from four perspectives. Firstly, it examines the contextual approach to child protection from the cultural and legal perspective in the Nigerian legal

³³ See *Attorney General of the Federation and Toyin Ogbebor* [NCT/140/06] High Court of Justice (7 April 2008).

³⁴ See Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003. Sect 1(b) Any person who by force compels or by any deceitful means induces any person to go from any place, commits an offence and is liable on conviction to imprisonment for ten years or to a fine not exceeding N200,000.00 or both;

system with a focus on child trafficking. Secondly, it examines the nature of the problem, the magnitude and its adverse impacts on Nigerian society as a whole. Thirdly it analyses child trafficking with a focus on the existing international, regional, sub-regional and national legal instruments. Fourthly this research examines the way forward particularly for Nigeria in the fight against the enduring. Based on the fact that the current legal frameworks have proven inefficient the thesis identifies the social, legal and economic opportunities available to Nigeria to move forward effectively in combating child trafficking. In order to achieve this aim, the thesis questions the efficacy of the formal legislation to address the problem of child trafficking in Nigeria. Moreover, it examines the extent to which Nigerian legislation conform to international standards in dealing with the issue of child trafficking.

This question offers the opportunity to evaluate the legislative process in Nigeria, the functioning of existing legal frameworks, the institutional frameworks, the efficacy of the laws and the need for a holistic approach to combatting child trafficking in Nigeria. The research places great emphasis on the fact that however the existing laws and policies may seem fit for purpose, the solution to the phenomenon of child trafficking might not be found through law and policy alone. Therefore, other avenues should be explored in addition to the legal approaches.

Chapter 1 is considered to be an introductory chapter. It sets the scene for the thesis. The chapter elaborates on the whole process leading to the completion of this research. From a holistic approach, the traditional pattern of a research proposal is to be applied. Issues raised in this chapter are expected to be widely discussed and thoroughly analysed in subsequent chapters. The chapter discusses the background, aims, and objectives, the significance of this research and the chapter breakdown.

Chapter 2 provides a theoretical basis for this research. Indeed the success of this research depends on a strong scientific base. Indeed the selected concepts and theories analysed in this research are related to child trafficking in general and the practice of child trafficking in Nigeria. The selected concepts and theories will help to understand the rationale behind the perpetuation of the phenomenon. They will also contribute to comprehending the right approach needed for the eradication of child trafficking in Nigeria. Hence a good theoretical framework will serve as a structure or support in that the definitions and models chosen in this section will give the research direction. Moreover, the thesis will be built on these choices in different stages of the research. In the particular case of child trafficking in

Nigeria, concepts such as child abuse, child exploitation, and child protection are key concepts that must be defined and understood. Equally theories such as cultural relativism, social constructionism, and legal pluralism are fundamental theories that must be defined and their relevance to the research topic must be demonstrated in the thesis.

Chapter 3 will examine the contextual approach to child protection. It outlines the cultural and legal perspectives on child protection in Nigeria. The chapter lays down the context and defines the scope of the research. The context is understood by the particular environment or a geographical limit within which the practice occurs. Emphasis on the context is essential in that it provided a clear understanding of the peculiar characteristics of the practice as it occurs in that environment. In this dissertation, child trafficking is being apprehended from a socio-legal perspective in the specific context of Nigeria.

Eradicating societal phenomena such as child trafficking and child labour require that a process is followed. Determining factors to the thriving of the practice on the ground must be addressed even before the laws prohibiting the practice are enacted. From this standpoint, it is imperative to grasp all the underpinning factors to the practice in the very context where it occurs. The underpinning factors to child trafficking in Romania might not be the same as those of Nigeria. Hence legal and policy approaches in the two contexts may not be the same.

The financial gain may motivate the practice of child trafficking in all contexts, but the contextual factors nursing the perpetuation of the phenomenon may vary pretty substantially from country to country. Whereas trafficker in most European countries responds to the demand of couples wanting children to '*adopt*' the traffickers in most African countries, supply their customers with children who will be used as slaves, sex workers, child soldiers child labourers or street beggars. From this standpoint, the common denominator for child trafficking is financial gain and is irrelevant to the context. Hence, this chapter elaborates on the relevant conceptual and theoretical frameworks to grasp the whole approach to analysing the topic and the outcome of the research.

Child protection in the Nigerian context appears controversial. In most Nigerian communities, practices involving children or certain types of attitudes towards children are not regarded as child abuses under traditional or customary settings. However, the practices are often detrimental to the child's wellbeing; they are condoned. In the current global context where Western views dominate international relations as well as the letter and spirit of international legal frameworks, Nigeria has to adapt. Despite the conflicting views in the

process of creating a safe environment for the emotional and physical development of the child, the Nigerian society needs a new paradigm in approaching the issue of child protection.

Chapter 4 focuses on the particular case of child trafficking in Nigeria. Amid the child abuse and child protection discourse at both the international and national levels, the issue of child trafficking in Nigeria appears to attract more attention. The transnational element of the phenomenon seems to be determinant in increased actions to eliminate the practice. However, the degree of actions undertaken, the practice may not be addressed efficiently unless certain contextual realities are identified and addressed. Hence, this chapter places emphasis on the origin of the practice and the elements to be understood to go about it efficiently.

This chapter explores, the nature of the problem in Nigerian society, the magnitude of the problem, and the mechanisms put in place by human trafficking networks in Nigeria are to be analysed. For example, the practice of trafficking from a historical perspective has the patterns of slavery that thrived in West African kingdoms well before the slave trade introduced by Europeans. From that standpoint, child trafficking is viewed as a slavery-like practice. The magnitude of the child trafficking, its dynamic nature, and its immoral nature make it a despicable practice that requires an immediate eradication in Nigeria. This chapter also analyses the impacts of child trafficking on Nigerian society. Trafficking in person general and child trafficking, in particular, remain a despicable and counterproductive practice in any society. The argument about the self-defeating nature of child trafficking is more significant to an emerging nation like Nigeria that needs to establish a corporate image and preserve it. The debate about child trafficking ought to be engaged in a way that all negative impacts on Nigeria's socio-economic development perspectives are identified and addressed. Undoubtedly, child trafficking is detrimental to the education goals of a country. Children at the age of formal education are diverted to the route that will handicap them in their adult life. The lack of primary education attributable to their unstable social condition will create an adult without the necessary skills to participate in the country's economic development. As a result, the country is faced not only with the public awareness but also a problem of poor economic performance. The state of affairs regarding the management of the issue of child trafficking by Nigerian officials appears to be unsatisfactory. As a result, shortcomings in addressing the phenomenon must be identified and overcome.

Chapter 5 places great emphasis on right based rationale for child protection in the context of child trafficking in Nigeria. Indeed the rising child abuses in general and child trafficking in

particular in Nigeria demand a tougher child protection regime at both international and national levels. There is a comprehensive set of international, regional and sub-regional legal frameworks that led Nigeria to enact laws and policies to be implemented and enforced. While the whole process of domestication is said to be effective in Nigeria, child trafficking endures. The perpetuation of the phenomenon raises the question of the efficacy of the various laws. Provisions about child trafficking are primarily laid down within the general human trafficking frameworks. Human trafficking is also a gross violation of human rights, and this makes the human rights framework an important legal mechanism for combating the practice. Hence, the Universal Declaration of Human Rights, 1948 states in Article 4 that: “no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms”, and Article 5 adds that “no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.”³⁵

There is an array of legal and institutional frameworks that need to be analysed to determine their efficacy in combating child trafficking both at international and national levels. These declaratory provisions are reinforced by the binding provisions of article 8 of the International Covenant on Civil and Political Rights, 1966. Moreover, under Article 5 of the African Charter on Human and Peoples’ Rights 1981 (African Charter), it stated that ‘All forms of exploitation and degradation of man or woman particularly slavery, the slave trade, torture, cruel, inhuman or degrading shall be prohibited.’³⁶ Section 34 of Nigeria’s Constitution of 1999 guarantees the right to the dignity of the person and prohibits the subjection of any person to slavery or servitude. Ideally, the laws are meant to provide a definite answer to the issue of child trafficking by achieving complete eradication. Hence, this chapter analyses the challenges to an effective implementation and enforcement of the legal framework in Nigeria. Noteworthy, despite the existence of a considerable number of international and national legal instruments, there seem to be little results achieved in the fight against human rights violations in general and child trafficking in particular.

Chapter 6 explores the way forward to address the issue of combating child trafficking in Nigeria. It emphasises that the contextual realities and the particular circumstances of Nigeria need to be taken into account in adopting new approaches to combat child trafficking.

³⁵ United Nations, Universal Declaration of Human Rights available at <http://www.un.org/en/universal-declaration-human-rights/>, accessed 06 December 2016.

³⁶ See African Commission on Human and Peoples’ Rights, African Charter on Human and Peoples’ Rights, available at <http://www.achpr.org/instruments/achpr/>, accessed 06 December 2016.

The contributing factors to the perpetuation of child trafficking in Nigeria have been identified in previous chapters. This chapter offers strategies that can trigger new paradigms to combat child trafficking in Nigeria. The strategies for new paradigms are necessary not only for the general issue of child abuses and child protection but also for the issue of child trafficking. This chapter, therefore, offers new approaches to be considered by law and policy makers in Nigeria. They can also be useful to academics interested in the debate about child abuses and child protection in Nigeria. This chapter concludes the research by providing recommendations to combating child trafficking-in Nigeria.

4- Significance of the Research

This research examines the opportunities and challenges attendant upon Nigeria in attempts to eradicate child trafficking. Whereas international, regional and sub-regional institutions consider the setting of legal frameworks to be an efficient way of addressing the issues and as a response to this, States develop law and policy frameworks. However dealing with the problem of child trafficking in Nigeria demands a wider and holistic approach. This research proposes a comprehensive approach to the issues to tackle the issue of child trafficking. The sentiment that both authorities and lawmakers pay little attention to the holistic approach to solving the problem render the whole debate about child trafficking in Nigeria much more complex. It seems that a single-minded approach remains the choice of authorities regarding combating human trafficking in general and child trafficking in particular. The idea that child trafficking can be eradicated through laws and policies only might not prevail in the existing socio-economic and political environment in Nigeria. Hence for the purpose of finding a comprehensive way forward to combat child trafficking, a holistic approach should be adopted. A holistic approach to dealing with the problem will also help to understand the inefficacy of existing legal frameworks.

The research is informed tremendously by my previous work as a Nigerian lawyer and my knowledge of the country's practice of public administration. I gained a wealth of practical insights and the working mechanisms of law and policy makers in Nigeria. My contribution to reflexions on socio-legal issues such as human trafficking, child labour, Female Genital Mutilation (FGM) held at both local and federal levels in Nigeria gave me the opportunity to grasp the problem of child trafficking in the socio-legal perspective. The conduct of this

research is a unique opportunity to not only critically analyse the lingering issue of child trafficking in Nigeria but also to propose the practical solutions for a way forward. Hence this thesis appeals to all stakeholders in the practice of child trafficking in Nigeria, all individuals involved assuring the welfare of the child, law and policy makers and the international community.

5- Aims and Objectives of the Research

This research aims at identifying the determinants of the persisting child trafficking in Nigerian society and critically evaluates the law and policy responses to the phenomenon both at international and national levels. The objective of the research is to demonstrate that law and policies approaches to addressing the issue are not proving effective. However, the laws and policies are often regarded as fit for purpose; the inefficacy appears to be down to the lack of proper implementation and enforcement. It is worth noting that despite the rigidity of the laws and policies, implementation and enforcement are not effective. The rationale behind such inefficacy should, therefore, be identified and addressed. Hence, the existing shortfall should lead to the identification of challenging issues to the effective implementation and enforcement of the laws. The determination or identification of the challenging issues to implementation and enforcement will be crucial to devising strategies for addressing the problem of human trafficking in general and child trafficking in particular. The rationale is that if increasing legislative activities have not totally produced the expected results in combatting child trafficking, there should be a pause in law and policy making. The break will allow the critical analysis of other related issues that do not necessarily need to be addressed through legislation only. It should be recalled that this thesis falls within the ambit of a socio-legal research. Considering laws in the context of broader social and political perspectives imposes the questioning of the legal pluralistic context of Nigeria. Equally the analysis of the social constructionist approach to child protection, the thesis seeks to propose a way forward for Nigeria in achieving the ultimate goal of eradicating child trafficking and child abuse. Social constructionism is a theory of knowledge in sociology that examines the development of jointly constructed understandings of the world that form a basis for shared assumptions about reality. It centres on the notion that human beings rationalise their

experience by creating models in society.³⁷ The theory is relevant to this thesis in that it inquires about the status of the child in society in general and in Nigeria in particular. Has the concept of childhood been socially constructed or a child is recognisable from a biological viewpoint? Answering this question is important in defining whom can be considered as a child for the purpose of implementing and enforcing laws and policies related to the rights of the child.

Where it is recognised that law and policy responses have not proven practical, a tangible explanation should be provided for such deficiency. Hence, answers could be sought through questions related to traditional perceptions about the child, his status in society, his welfare, and the political will of authorities to address relevant issues in the debate about the control or the total eradication of despicable practices.

6- Methodology

The research methodology relied upon is predominantly doctrinal (textual analysis) also known as library-based research.³⁸ The body of literature available on trafficking in persons general and child trafficking, in particular, is consistent and wide. In relying upon the existing legal instruments as well as scholarly contributions about the issue, it is evident that the analysis of these available materials provided an answer to several questions raised in the conduct of this research so as the option of empirical research is not contemplated at any stage of the research. An interdisciplinary approach is adopted through the research to address the main topic and related concepts and theories thoroughly. Indeed inquiries are made in the field of law, the field of policy, the field of sociology, the field of politics and the field of economics. Although the primary determinant of child trafficking appears to be the economic gain, it is also driven by traditional perceptions, lack of good governance. It is necessary to evaluate all determinants in order to address the phenomenon in Nigeria efficiently. For instance, an analysis of the traditional element is critical to this research because the enduring of child trafficking in general and child abuse, in particular, is sustained by cultural or traditional perceptions. While this is a significant determinant in Nigeria, in Europe it would not have been the same determinant. Child trafficking being a universal

³⁷ Wendy Leeds-Hurwitz, 'Social construction of reality' in Stephen W Littlejohn, and Karen A Foss (Eds.), *Encyclopedia of communication theory* (SAGE Publications, 2009) 892,895.

³⁸ See Ashish Kumar Singhal and Ikramuddin Malik, 'Doctrinal and socio-legal methods of research: merits and demerits' (2012) 2 Educational Research Journal 252, 256.

phenomenon, the comparative analysis is also applied to this research so as to gauge the strength of the Nigerian laws and policy frameworks by comparing it with the international, regional and sub-regional legal frameworks. Secondary such as books, journal articles, and previous researches were extracted and reviewed using Brunel Library, School of Oriental and African Studies (SOAS) Library, and the British Library. Whereas secondary sources were predominantly used in the conduct of this project, the relevant primary sources are clearly identified and exploited. Indeed relevant treaties to child trafficking, statutes and cases have been examined. In the light of the approach taken, the research methodology exclusively applied is doctrinal (textual analysis). It should be admitted that the quality of available treaties, statutes, cases, data, reports, and published researches related to the issues are sufficient to rely exclusively on textual analysis in the context of the present research. Moreover, the topic of this research being country specific, in that it relates to law and policy responses to child trafficking in Nigeria, there is an urgent need to scour the existing legal regime in order to determine its efficacy.

Chapter 2

Child Trafficking in Nigeria: An Analysis of the Conceptual and Theoretical Frameworks

Introduction

Child trafficking is an enduring phenomenon in Nigeria, and the dynamic nature of the practice has made it a challenging issue for both Nigeria and the West African sub-region.³⁹ This chapter examines the concepts and theories which surround the practice of child trafficking. Indeed, meticulously selected concepts and theories will not only lay a strong lexical foundation for the building of this thesis but also it will provide the right direction to comprehending the dynamic of child trafficking in Nigeria. More significantly, the analysis of the various theories and concepts will permit to grasp the rationale behind child trafficking not only in Nigeria but also in countries know as a country of destination for victims of child trafficking. Concepts such as trafficking in person, child abuse, child protection, governance, and social justice are relevant to this thesis either because they are not adequately exercised in society or because they are just ignored. As a result, their contribution to eliminating child trafficking in society is almost non-existent. On the other hand, theories such as social constructionism, legal pluralism, and cultural relativism serve as elements to enquire whether the practice of child trafficking is defensible and how they can be used to assess the efficacy of the Nigerian legal system in combatting child trafficking.

In the context of globalisation, where challenging issues for the world community are addressed adequately to avert detrimental impacts on economic and social stability, it appears that child abuses remain a serious concern. Therefore this chapter examines the concept of child abuse as a general concept that encapsulates the concept of child trafficking itself. However, child trafficking is a form of child abuse the practice is surrounded by various types of abuses. In the Nigerian context, the types of abuses that occur in the process of trafficking require the exceptional focus of national and international law framers.⁴⁰ Thus,

³⁹ The West African sub-regional area refers mainly to ECOWAS countries. The issue is significant to the economic integration and development of the organisation.

⁴⁰ See Peter O Ebigbo, 'Child abuse in Africa: Nigeria as focus' (2003) 35 International Journal of Early Childhood 1, 2.

this chapter places emphasis on the analysis of the concept of child protection and the different approaches adopted towards it.

2.2 The Conceptual Frameworks

2.1.1 The Child and Parental Responsibility

Childhood resides in the perception and categorisation of children by each population according to their social and economic realities, hence asserting the cultural construct approach of childhood⁴¹. Meanwhile, Wyness argues that the 'scientific' tendency to generalise, and the emphasis on childhood as a universal and natural form, has often meant that Western modes of thought about childhood are assumed to have currency in non-Western cultures⁴². Where leading International Institutions find the urgency of vesting themselves with the right to establish a standard and universal definition of a child in their attempt to determine his or her legal status, the fact about the diverse geographical and economical understandings of the concept appears to be the spanner in the works.

The United Nations Convention on the Rights ratified by Nigeria stipulates in its Article 1 that a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier⁴³. Although the Child Rights Act 2003 in Nigeria is a domesticated version of the United Nations Convention on the Rights of the Child 1989, it has not expressly provided a definition of a child. However, Article 21 of the Child Rights Act 2003 provides that 'No person under the age of 18 years is capable of contracting a valid marriage, and accordingly, a marriage so contracted is null and void and of no effect whatsoever. 'From the letter and spirit of this provision, it appears that a child in Nigeria is a person under the age of 18 years.

In any case, from social and legal standpoints, the child cannot assumed responsibilities in many situations. In such cases parental responsibility has to be fully assumed. Parental responsibility refers to the rights and privileges which underpin the relationship between a child and either of the child's parents or those adults who have the significant role in the child's life. Although the State has plays a role in the life of the child this remains minimal.

⁴¹ Woodhead, M. Montgomery, H. (2002) *Understanding Childhood, an Interdisciplinary Approach*, The Open University & Wiley, p51

⁴² Wyness, M. (2012) *Childhood and Society*, Palgrave Macmillan, London, p95-98

⁴³ See Article 1 of the Convention on the Rights of the Child (1989) 1577 UNTS 3

Onyemachi pertinently observes that the role of the State in is one of distant support. He emphasises that this is because in an ideal situation, any unbroken integrity of relationship, parental interest and influence of privacy and control is more of paramount and distinct consideration than mere presumption of shared interests.⁴⁴ Hence, parental responsibility can play a significant role in minimising child trafficking. Indeed if parental responsibilities are genuinely assumed children would hardly fall prey of traffickers and all others child abusers. Because the role of the parents is direct and assumed on a regular basis in the life of the child. To a great extent, parents have the power to make decision about whether their children should fall victim of traffickers or not. In many cases the lack of parental responsibility in all its aspect has favoured the perpetuation of child trafficking. However, in situations where the demise of children does not depend on whether or not parents have assumed their responsibility, they cannot be blamed for such demise.

2.1.2 The Concept and Typology of Child Abuse

The definition of child abuse, which is a critical issue in every society, varies according to different people and the society in which they live.⁴⁵ The term ‘abuse’ is defined as ‘any action that intentionally harms or injures another person.’ Indeed it is an unfair, cruel or violent treatment of somebody.⁴⁶ It is evident that such actions or attitudes towards a child render the concept a point of focus for society as a whole. Thus, in the mid-1970s, the US authorities deemed the issue a matter of urgency,⁴⁷ and action was taken to prevent child abuse and neglect. Paradoxically, as Welner et al. observe, after several hundred major papers and books published on the subject over a decade, there are no reliable or valid data concerning child abuse, and there is no consensus as to what child abuse actually constitutes (and as a consequence no agreement on its incidence). Furthermore, there is no agreement on what actually characterises the abuser or the abused child.⁴⁸

⁴⁴ Thomas Uche Onyemachi, ‘Children Status and the Law in Nigeria’ (2010) 4 African Research Review 378, 398.

⁴⁵ David Finkelhor and Jill Korbin, ‘Child abuse as an international issue’ (1998) 12 Child Abuse and Neglect 3, 23.

⁴⁶ See Oxford Advanced Learner’s Dictionary, sixth edition

⁴⁷ A Welner et. al, ‘Child abuse: A case for different approaches’ (1977) 18 Comprehensive Psychiatry 363, 368.

⁴⁸ *ibid.*

From Welner et. al observations, it is evident that the lack of consensus on a concept of child abuse is likely to create an enduring situation which is detrimental to children.⁴⁹ Defining the issue serves the purpose of better understanding this societal phenomenon and efficiently addressing the many challenging and underlying issues that accompany it. Child abuse is a universal phenomenon, so it has become an international debate. Finkelhor and Korbin note that “Child abuse arose as a social issue primarily in the developed countries of the western world.”⁵⁰ However, with time, there has been increasing recognition that it exists in some form virtually everywhere, in developing and developed countries, in the East as well as in the West. Thus, international organisations in recent years have started to build international awareness about child abuse,”⁵¹ which is evidenced by definitions provided by related legal instruments.⁵² It must be noted that the locus concerned with this introductory chapter is Nigeria; nonetheless, some comparative analysis will be required in order to grasp the extent of the phenomenon in the West African sub-region.

As per the dictionary definition provided above, child abuse has a unique end, namely to cause harm to the child. However, abuses take various forms in their administration, and the forms of child abuse are equally universal. The converging view is that there are four types of abuses to which a child is usually subjected, namely physical, sexual, neglect and emotional.

In regard to the first type of abuse, Barker and Rhodes write that “physical abuse starts at one end of the continuum with minor injuries or bruising, and ends at the other with injuries that can prove fatal.”⁵³ In light of its seriousness, they define physical abuse as “violence directed towards children which involve a broad range of harsh, punitive, controlling and aggressive styles of parenting. It is understood that the child can be subject to hitting, shaking, throwing, poisoning, burning or scalding, drowning, and suffocating in such circumstances.”⁵⁴

Sexual abuse, which can also have a devastating effect on the child, happens to children of all ages, including the very young. It is defined as the sexual molestation of children by adults or

⁴⁹ *ibid.*

⁵⁰ David Finkelhor and Jill Korbin, ‘Child abuse as an international issue’(n 3)

⁵¹ *ibid.*

⁵² See Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319 (Trafficking Protocol), See also Kevin Browne and Catherine Hamilton-Giachrisis, ‘Child abuse: defining, understanding and intervening’ in Kate Wilson and Adrian James (eds), *The Child protection handbook* (Baillière Tindall, Edinburgh 1995) 49, 50.

⁵³ Judy Barker and Deborah Hodes, ‘*The Child in Mind*’ (3rd edn A Child Protection Handbook, Routledge, 2007) 22, 23.

⁵⁴ *ibid.*

older children. It is understood that 'sexual' in this case means any activity that leads to sexual arousal in the perpetrator. Sexual abuse may range from voyeurism and exhibitionism to oral, vaginal or anal penetration, and it may be perpetrated by single or multiple offenders, on one or more occasions, and is associated with other types of abuses.⁵⁵ Neglect, which is indicated as the third type of child abuse, describes the breakdown or absence of parental care. Neglectful parenting is defined through acts of parental omission, known as 'passive abuse.' Furthermore, it involves lack of physical care, limited or non-existent emotional responsiveness and the absence of supervision and control, and it can also be expressed in the deliberate deprivation of basic requirements such as food, warmth, protection and affection.⁵⁶

The fourth type of child abuse is emotional, which describes a relationship that is characterised by harmful interactions which impair a child's psychological and emotional health and development. Barker and Hodes observe that mental abuse continues to be under-recognised and is frequently viewed as an accompanying or subordinate feature of other forms of abuse.⁵⁷ Thus, they assert that it is "probably the most complex form of abuse to define, identify and respond to."⁵⁸ Despite their variety in nature, child abuses are linked intrinsically to child trafficking in Nigeria. Through the process of trafficking, these abuses occur, even if the typology of the abusers changes. The general perception regarding the typology of the abuser is that parents are the primary offenders,⁵⁹ but where such a perception can be applied to child trafficking at some stage of the process; there is a shift in the type of abuses further down the line.

2.1.3 The Concept of Trafficking in Persons

Child trafficking is part of the general concept of trafficking in people, and as such analysis and understanding rest upon relevant international, regional and national legal instruments. The Palermo Protocol, which is the most significant international legal instrument, defines people trafficking as follows:

⁵⁵ Judy Barker and Deborah Hodes, *'The Child in Mind'* (n 11) 22, 23.

⁵⁶ *ibid.*

⁵⁷ *ibid.*

⁵⁸ *Ibid* at 50.

⁵⁹ See the ILO, *'Child labour: A textbook for University Students'* (ILO, Geneva 2004).

“People trafficking is defined 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.’”⁶⁰

Three significant elements derive from the definition provided by the Palermo Protocol, namely the act, which implies what has been done, the means – implying how it is done – and the purpose. From each perspective, it is observed that trafficking is executed through recruitment, transportation, transfer harbouring or the receipt of people. As for the means, i.e. how it is done, the use of threat or force constitutes the essential element. Other elements include coercion, fraud, and deception, abuse of power or vulnerability or giving payments or benefits to a person in control of the victim. The purpose noted in the definition is the exploitation of the person being trafficked. Exploitation includes forced prostitution, sexual exploitation, forced labour, slavery or similar practices and the removal of organs.

Emphasis is placed on the fact that, in order to ascertain whether a particular circumstance constitutes people trafficking, the definition of such in the Trafficking in Persons Protocol, and the constituent elements of the offence, as defined by relevant domestic legislation, must be considered.⁶¹

Among the three specific elements of trafficking in people, *movement* constitutes the crucial factor in differentiating between children and some adults. In its 2006 report, the U.S. Department of State emphasised that:

“A person may decide to travel to another location for a job, within his or her own country or abroad and still subsequently fall into involuntary servitude. Some governments and law enforcement agencies mistakenly focus on the voluntary nature of a person’s transnational movement, and fail to identify the more important element of compelled service or forced labor that can occur after someone moves for employment. Movement to the new location is incidental. The force, fraud or coercion exercised on that person to perform or remain in service to a ‘master’ is the defining element of trafficking in modern usage.”⁶²

In light of this observation, it should be understood that in the case of child trafficking, the movement element is imposed by adults, without the consent of the child. Indeed, the child does not make any decision in regard to his or her moving to a different location, away from

⁶⁰ United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) 2224 UNTS 209 (Palermo Protocol).

⁶¹ *ibid.*

⁶² See U.S. Department of State, Trafficking in Persons Report (Office to Monitor and Combat Trafficking in Persons, June 2006) available at <http://www.state.gov/g/tip/rls/tiprpt/2006/> accessed 20 December 2013.

his or her parents or guardians. While movement constitutes the first characteristic element in the process of trafficking, less emphasis is placed on the voluntary or involuntary nature of the act.

Most children fall victim to this practice through the process of migration. Desiring better alternatives for their offspring, parents in overseas countries are tricked by traffickers promising education, employment, and financial prosperity. Other vulnerable children include street workers, the homeless and unaccompanied minors crossing international borders illegally and without adult supervision.

Traffickers may also have isolated children from their parents by using control, violence, coercion, narcotics and social isolation to force the children into debt bondage, involuntary servitude, and commercial sexual exploitation. The violence inflicted on children in the sex industry is severe, and the few children actually rescued by law enforcement exhibit acute physical and sexual traumas and adverse health effects including mental illness, substance abuse, sexually transmitted diseases, HIV infection, pregnancy and abortion-related complications.⁶³ According to the International Labour Organisation: The trafficking in children - internally in countries, across national borders and across continents - is closely interlinked with the demand for cheap malleable and docile labour in sectors and among employers where the working conditions and the treatment grossly violate the human rights of the children. These are characterized by environments that are unacceptable (the unconditional worst forms) as well as dangerous to the health and the development of the child (hazardous worst forms). These forms range from bonded labour, camel jockeying, child domestic labour, commercial sexual exploitation and prostitution, drug couriership, and child soldiering to exploitative or slavery-like practices in the informal industrial sector.⁶⁴ The ILO asserted that child trafficking is about taking children out of their protective environment and preying on their vulnerability for the purpose of exploitation. Both boys and girls - are in a forced labour situation as a result of trafficking.⁶⁵

⁶³ See Rowena Fong and Jodi B Cardoso, 'Child human trafficking victims: Challenges for the child welfare system' (2010) 33 *Evaluation and Program Planning* 311, 316.

⁶⁴ See ILO, 'Trafficking in Children'. Available at <http://www.ilo.org/ipec/areas/Traffickingofchildren/lang-en/index.htm>, accessed 08 September 2016.

⁶⁵ See ILO, 'Trafficking in Children'. Available at <http://www.ilo.org/ipec/areas/Traffickingofchildren/lang-en/index.htm>, accessed 08 September 2016.

2.1.4 The Concept of Exploitation

After trafficking, children are exploited through child labour, prostitution, domestic work, street begging. It is understood that the purpose behind these acts is to gain financial benefit. Valdman notes that “to exploit someone one must, on the whole, gain benefits from one’s dealings with them.” Accordingly, wrongful exploitation occurs when someone gains unfairly or excessively from a transaction with another. Conversely, for consensual and mutually beneficial market transactions, non-exploitative transactions should occur at what he calls the “hypothetical market price,” a price that an “informed and unpressured seller would receive from an informed and unpressured buyer.”⁶⁶

Roemer argues that exploitation is characterised by a “relationship of dominance,” while from a canonical viewpoint he suggests that dominant classes exploit subordinate groups by wrongfully taking from them surplus goods or (in capitalism) values which, by virtue of being produced by subordinate classes, they feel is rightfully theirs. Dominance is therefore premised on the principle of inequality in society. In this respect, he writes that: ‘What forms of inequality does a particular society (or person) view as exploitative? The inequality of master and slave was viewed as just and non-exploitative by many in ancient society, as was the inequality of lord and serf in feudal society, although today most of us consider both of these relationships exploitative. Similarly, Marxists view the inequality in the capitalist-worker relationship as exploitative, although this inequality is conceived of as non-exploitative by many people in capitalist society today.’⁶⁷

Adults in a position of dominance will take advantage of the social status of children, and this could be the action of individuals or even a country. For instance, a country that relies to some extent on the practice of child labour to guarantee its economic growth will obviously find itself in a situation of exploitation. The use of child labourers is usually carried out informally, but the result remains a burgeoning and cheap labour market and a subsequent boost to the economy.⁶⁸ The concept of exploitation entails facts characteristic of every society. Moreover, the economic rationale behind exploitation makes it a more complex social fact. The exploitation of children, however, posits the problem of morality in society in

⁶⁶ Valdman Mikhail, ‘Exploitation and Injustice’ (2008) 34 *Social Theory and Practice* 551

⁶⁷ Roemer John E, ‘Exploitation, Alternatives and Socialism’ (1982) 92 *The Economic Journal* 87,107.

⁶⁸ Alessandro Cigno and Furio C Rosati, *The economics of child labour*, (Oxford University Press, Oxford 2005) 187.

the light of new forms of perpetuation; indeed, child exploitation in the 21st century has “become a more complex issue,” as Broughton argues, with the development of technology.⁶⁹

2.1.5 The Concept of Child Protection

Child protection as a natural obligation

In defining the concept of natural obligation Snyder writes that ‘A "natural obligation" may be defined as an obligation that does not give rise to an action to enforce it, but that does have some cognisable legal effects.’⁷⁰ He notes that the law grants them some grudging recognition is what separates natural obligations from obligations that lie purely in the moral realm. These obligations, sometimes called "moral" or "imperfect" obligations, have no effect at law.⁷¹ Whatever the definition may be, the need to protect the child in every human society it seems obvious, but child protection is still a matter of great concerns in many societies. Hence a paradigm shift in perceptions regarding the exact place or status of the child in society is imperative. Where ambiguities remain regarding who the child is, Pufall and Unsworth’s approach could prove helpful, as they propose the rethinking of childhood:

“Rethinking childhood makes sense only when it is not driven by our fears or by our idealising visions. It is not a call to a romantic view of children that requires respect and active listening with the handing over of keys to the kingdom. Rethinking requires a thorough examination of the validity of both sides of this apparent ambivalence in society’s estimation of its children-patronizing on the one side and idealizing on the other. It is a challenge to understand children as they are and where they are by listening to them and understand the ways in which they act to create their own futures.’⁷²

As a result of Pufall and Unsworth’s analysis, there is a need to rethink childhood against the backdrop of present knowledge and continuing research about children, and in doing so, we are bound to take into account some realities of childhood that require post-Aristotelian and post-Rousseauistic consideration.⁷³ Indeed, child protection is a critical issue in every human society.⁷⁴ A better protection system or mechanism could be put in place if there were a clear understanding of the status of the child in society. More significantly, the child protection

⁶⁹ Daniel D Broughton, ‘Child exploitation in the 21st century’ (2009) 19 Paediatrics and Child Health 197.

⁷⁰ David V Snyder, ‘The Case of Natural Obligation’(1995) 56 Louisiana law review 423.

⁷¹ *ibid.*

⁷² Peter B Pufall and Richard P Unsworth, ‘*Rethinking childhood*’ (Rutgers University Press, New Brunswick 2004) 2.

⁷³ *ibid.*

⁷⁴ Peter Lachman et al. ‘Challenges facing child protection’ (2002) 26 Child Abuse and Neglect 587, 617.

approach must be adapted to modern and current global standards. The adaptation requirement does not alter the cultural relativist discourse about childhood because such debate is necessary to achieve the ultimate goal of universal standards.⁷⁵ A more comprehensive mechanism transpires in Ferguson's approach when he writes that:

“There is a vitally important mode of modern work experience we know as child protection. It is to be part of a vast division of labour in a welfare state. It is an experience of time and space, of working simultaneously in public and private realms, of hourly home visits, office interviews, medical consultation, the working day, and weekends. Of being part of large faceless bureaucracies that have the power to enter people's lives, their homes, communities and to tears them apart by taking children into care, but only at the same time as it is to embody resources, initiatives and sources of strength which can also enable people, families and communities to pull together, to prevent them falling apart, to live to fight bureaucracy another day.”⁷⁶

Although Ferguson's observation may not escape criticism, the need to protect the child remains a priority in many regards. From a biological viewpoint, as well as the general human rights perspectives, child protection has become an imperative. Thus, in a debate about child abuse in general and child trafficking, in particular, the concept of child protection stands, among others, as the central pillar.

Physical and health rationale for child protection

A better understanding of child biology can support attempts to advocate the protection of children in society. In regard to the various abuses a child can suffer, it is understood that his physical development is always at risk. As noted before, child trafficking is intended to drag the victim into different types of activities, each of which has its adverse impact on the health of the child. This aspect of biological transformation is, therefore, crucial in understanding the concept of child protection.

Smith and Cowie observe that in humans, the most dramatic developmental changes occur during prenatal development, infancy, and childhood. Consequently, the term 'development' refers to the process by which an organism (human or animal) grows and changes through its lifespan.⁷⁷ Most specifically, Newcombe writes that “development is defined as orderly and

⁷⁵ Karen Wells, 'Childhood in a global perspective' (Polity Press, Cambridge 2009) 1, 4.

⁷⁶ Harry Ferguson, 'Protecting Children in Time, or Failing to: Child Abuse, Child Protection and Modernity' in Harry Ferguson (ed), *Protecting Children in time: Child Abuse, Child Protection and the Consequences of Modernity* (Palgrave Macmillan, Houndmills 2004) 1.

⁷⁷ Peter K Smith, Helen Cowie and Mark Blades, *Understanding Children's development* (4th edn Blackwell Publishing, Malden 2003) 5.

relatively enduring changes over time in physical and neurological structures, in the thought process, in emotion, in forms of social interaction, and in many other behaviours.”⁷⁸ According to McDavid and Garwood, “the underpinning idea [behind a] child’s development in society is that children are valued resources to be nurtured and cared for in ways that benefit both the individual child and the society in which he or she lives,” which is an important part of our value system.⁷⁹ Given the fact that the child is still in the development stage, he is not physically fit to undertake certain activities.

While child labourers, street children, child prostitutes, children working as domestics or child soldiers are not necessarily victims of trafficking, many victims of this practice end up in the different activities stated herein. From this viewpoint it is important to address the issue of child trafficking from the perspective of it being a detrimental end goal to the rights, dignity, and health of the child; for instance, children trafficked for the purpose of child labour will obviously be trapped in dangerous and hazardous activities. The 2004 International Labour Organisation’s report on child labour concludes that:

“While most children continue to be trafficked into commercial sexual exploitation, a number of recent studies indicate that children are also trafficked for domestic service, armed conflict, service industries, agricultural and factory work. The trafficking of children is a result of an unmet demand for cheap, malleable labour in general and, in some specific instances, a demand for young children, especially girls, such as in the fast-growing commercial sex sector. Children are an attractive source of labour because they are easier to abuse, are less assertive and less able to claim their rights than adults.”⁸⁰

The ILO report contains the full spectrum of the dangers and the tragedies faced by young children, who in regard to their biological, physical stature are prone to permanent impairment or early, premature death.⁸¹ For example, children enrolled as soldiers are usually kidnapped and forced into combat in rebel military units or government forces; there are even cases where entire classrooms of children have been kidnapped from their rural schools for this purpose. In a few cases, the children are persuaded to join military units by their peers or family members, who are already involved. The actual work they do can include wielding sophisticated weaponry at a very young age and with little training. They may also be forced

⁷⁸ Nora Newcombe, *Child Development: Change over Time* (8th edn Harper Collins College Publishers, New York 1996) 4.

⁷⁹ John W McDavid and S Gray Garwood, *Understanding Children: Promoting human growth* (D. C. Heath and Company, Lexington 1978) 1.

⁸⁰ The ILO, *Child labour: A textbook for University Students* (ILO, Geneva 2004).

⁸¹ Fernanda Estevan and Jean-Marie Baland, ‘Mortality risks, education and child labor’ (2007) 84 *Journal of Development Economics* 118, 137.

to commit acts of extreme savagery, often under the influence of drugs to dull their sensitivity and moral conscience – and be under pain of death if they refuse to carry out the order. Girls are used both as cooks and as sexual workers; they live with the units and are often forced to serve the sexual needs of a vast number of male combatants. Some girls are also involved in armed combat.⁸²

In regard to commercial sexual exploitation, the ILO report indicates that an estimated 1.8 million children worldwide, some of them very young, are used for to gratify adults' sexual needs. These children are most often young girls, who may have been trafficked by intermediaries and coerced into this activity, or fell into it through peer pressure or certain damaging events that made it difficult for them to live 'normal' lives due to trauma or stigma.⁸³ Some of these girls contract HIV/AIDS while still young teenagers, but they cannot obtain any of the life-extending medicines that are available in wealthier countries. The report observes that paradoxically, however, child labour in the sex sector partly fuels the spread of the disease. Indeed children in prostitution do not have the bargaining power to insist upon the use of condoms, and many of their male clients are married transients (from truck drivers to businessmen) who take the disease home with them to their wives and girlfriends.⁸⁴

The prominent sector of activity that creates the greatest number of child trafficking victims is agriculture. West Africa, among other regions, is most in need of child labourers on cocoa plantations and other agricultural sites. For example, the ILO report, referring to the situation of child trafficking in the sub-region, indicates that 15 children from Benin had been repatriated to their home country, four years after they were taken to Côte d'Ivoire to work as underage labourers. The boys and girls, aged between 11 and 18 years old, were taken to Côte d'Ivoire in 1998 and 1999 by two Benin nationals and housed in a village 418 km west of Abidjan, the capital.⁸⁵ There, they worked as labourers on coffee and cocoa farms, as street vendors, domestic workers, and helpers on construction sites. The children said they were promised 1.14 million FCFA (US\$1,600) in return for four years' work, but they were only given 50,000 (US\$70), prompting them to run away. However, they were apprehended by Ivorian police, who in turn informed Benin's embassy in Côte d'Ivoire.⁸⁶

It is noteworthy that farming is probably more hazardous than manufacturing and tends to have high accident rates, in the developed as well as the developing world. The risks faced by

⁸² *ibid.*

⁸³ Early rape, for example, which reduces their chances of marriage.

⁸⁴ The ILO, *'Child labour: A textbook for University Students'* (ILO, Geneva 2004).

⁸⁵ *ibid.*

⁸⁶ *ibid.*

child agricultural workers in poor, rural communities include exposure to the elements (hot sun, rain) as well as harmful animals and insects; furthermore, they may be cut by tough stems and the tools they use. Rising early to work in the damp and cold, often barefoot and inadequately dressed, some develop chronic coughs and pneumonia and working hours in the fields are extremely long – eight- to ten-hour days are not uncommon.⁸⁷

The concept of rights in child protection

The concept of rights is inclusive of the child protection narrative. Hence children should be protected because they have rights too.⁸⁸ On the question of child rights protection it is important to emphasise that where children are engaged in hazardous activities or exposed to possible hazards their case should be addressed in the context of human rights. The threat to their health, developmental and emotional safety is inherent to their status as children. Hence there cannot be strong arguments to defend the idea that the protection of children from all possible hazards occurring for example in the process of child trafficking or child labour is best treated under the umbrella of fundamental rights. This argument rests on the idea that, on account of being young, all children are entitled to special rights and this is a universal fact. As previously emphasised, the concept of childhood which is distinct from adulthood evolved over the 20th century, inspired by visionary books such as Ariès' *Century of childhood* to Cunningham's *The Invention of Childhood*.⁸⁹ Most remarkably, from Philippe's *Century of childhood* to Peter Newell's *Children are people too*, it is evident that there has been a paradigm shift in perceptions of children in society. The change is of particular importance, as it underpins the discourse about the child as a rights holder.⁹⁰ Newell writes that "It is deeply hypocritical for our society to pretend to be child-centred, to express moral outrage at the recently uncovered phenomenon of child abuse and all other forms of criminal aggression, and at the same time, lend its support to the whole vocabulary of violence against children."⁹¹ Freeman, giving his account of a few scholars' perceptions of rights, notes that:

⁸⁷ *ibid.*

⁸⁸ Michael Freeman and Philip E Veerman, '*The ideologies of children's rights*' (Martinus Nijhoff, Boston 2012) 47

⁸⁹ D Harrison, '*Regardless of frontiers: Children's rights and global learning*' (Trentham Books, Sterling 2008) 1.

⁹⁰ Jane Fortin, 'Children as Rights Holders: Awareness and Scepticism' in Antonella Invernizzi and Jane Williams (eds) '*Children and Citizenship*' (Sage Publication, London 2008) 55, 65.

⁹¹ Peter Newell, '*Children are people too: the case against physical punishment*' (Bedford Square Press, London 1989) viii.

“To understand the importance of rights as valuable commodities it is worthwhile considering society where rights did not exist. Indeed it would be a society in which relationships would approximate to those between a master and his slave. The powerless could make no demands at all. Such society would be impoverished. Rights are important moral coinage because they enable us to stand with dignity, if necessary, to demand what is our due without having to grovel, plead or beg or to express gratitude when we are given our due, and to express indignation when what is our due is not forthcoming.”⁹²

New paradigms in regard to child rights discourse occurred between the 1920s and the 1990s. Harrison writes that the history of child rights can be dated back to 1924 when English philanthropist Eglantyne Jebb presented five points to the League of Nations in Geneva.⁹³ The League adopted them and proclaimed the first ever International Declaration of the Rights of the Child, also known as the Declaration of Geneva. Eglantyne later founded the Save the Children Fund and devoted her life to the welfare of the world’s children.⁹⁴ From this early move towards advocating children’s rights, the children’s rights movement culminated between 1960 and 1990. Significant developments in this period were the extension of procedural rights to young people in juvenile courts, greater public awareness of child abuse and the passage of federal legislation requiring child protection agencies to try to support the family of a child rather than remove the child.⁹⁵

The consolidation of the concept child rights took effect in International Law through the Convention on the Rights of the Child (CRC) adopted by the United Nations in 1989. A child, within the remit of the Convention, is defined as an individual aged 17. The Convention also provides a set of economic, social, cultural, civil and political rights for children. The rights guaranteed by the Convention are afforded to all children, without exception. By ratifying the Convention, governments agree to incorporate the CRC into their national legal framework and confirm that they should make sure that every child has all of the rights outlined in the treaty.⁹⁶ The main provisions of the Convention include standards of care, health care, the right to an adequate standard of living, to education and child care, to cultural life and the arts and to know about the UNCRC.⁹⁷ A thorough analysis of these rights will be made in a subsequent chapter to demonstrate that child trafficking systematically violates all the fundamental rights recognised to the child.

⁹² M D A Freeman, *The Rights and Wrongs of Children* (Frances Pinter, London 1983) 32.

⁹³ D Harrison, *Regardless of frontiers: Children’s rights and global learning* (n 45) 1.

⁹⁴ Peter Newell, *Children are people too: the case against physical punishment* (n 47) viii.

⁹⁵ Joseph M Hawes, *The Children’s Rights Movement* (Twayne Publishers, Boston 1991) 96.

⁹⁶ Phil Jones, ‘What Are Children’s Rights? Contemporary Developments and Duties’ in Phil Jones and Gary Walker (eds), *Children’s Rights in practice* (Sage, London 2011) 5.

⁹⁷ Priscilla Anderson, *Young Children’s Rights* (2nd edn Jessica Kinsley Publishers, London 2000) 27.

Understanding the concept of child rights serves to better the effective protection of the child in any society. Thus, the development of legal standards at international and national levels is a significant move towards the ultimate goal of a safer world for children. Meanwhile, the status of the child in many developing countries, mainly in Sub-Saharan Africa, begs the question as to whether the core concept underpinning these rights is valued.⁹⁸ The acute nature of child abuse, trafficking, child labour and other predicaments of millions of children in the region require the launching of new debates.

2.1.6 The Concept of Governance

The Rule of Law

The rule of law exists when there is unbiased justice, when there is an opportunity to be heard and fundamental rights are protected. Phenomena such as trafficking in persons, child labour and various child abuses are likely to prosper in an environment where the rule of law is non-existent. The non-existence of rule of law in a country does not imply that there are no laws at all. Instead relevant laws and policies are often not implemented or enforced. The rule of law is important in combating child trafficking as it allows communities as well as enforcement authorities to espouse the idea and attitude of strict compliance to the rules in place. Indeed the rule of law is one of the essential pillars of good governance.⁹⁹ According to Weingast, ‘the emergence of the rule of law coincides with the transition from natural state to the open access order.’¹⁰⁰ He argues that natural states have only a limited ability to provide the rule of law, they cannot make either extensive credible commitment to institutions and rules that provide for certainty, expectation or impersonal rule that treat a broad class of citizen equally. Whereas the rule of law requires that the state treats citizen impersonally, natural law treats people personally and hence differentially.¹⁰¹ Weingast enquires why developing countries are so resistant to the rule of law.¹⁰² This question implies that there is

⁹⁸ See Vanessa E Munro, ‘Of Rights and Rhetoric: Discourses of Degradation and Exploitation in the Context of Sex Trafficking’ (2008) 35 *Journal of Law and Society* 240, 264.

⁹⁹ M T Akinlade, ‘Good Governance: A Variable Tool for Nation Building in Nigeria’ (2012) 3 *International Journal of Advanced Legal Studies and Governance* 78, 84.

¹⁰⁰ Barry r Weingast, ‘Why Developing Countries Prove so Resistant to the Rule of Law?’ in James J Heckman et al. (eds) *Global perspectives on the Rule of Law* (Routledge-Cavendish, Abingdon 2010) 40.

¹⁰¹ *ibid.*

¹⁰² *ibid.*

an issue with the effective exercise of the rule of law in developing countries. Certainly, there is an erroneous belief that the rule of law exists in a society where basic human rights are ignored. Yet the principle is intended to be a safeguard against arbitrary governance. Accountability which is another important principle of governance can be effective only if the rule of law is established. The establishment of the rule law will ensure that the recognised duty-bearers are held responsible if there are any discrepancies in the fulfilment of legally binding norms granting individuals their human rights.

More significantly the rule of law entitles rights-holders to claim their breached rights and remedy for the violations committed through recognised institutions such as courts. The rule of law is the principle that governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws adopted and enforced in accordance with established procedure. Understanding certain practices requires that several factors be put together. In evaluating the claim that the rule of law is effective in society, every element is taken into account. If the test for the effective exercise of the rule of law is successful, the question to be raised is to determine whether there are no bad practices such as corruption, nepotism and whether the principle of accountability is effectively applied in the governance process. Moreover, it is an imperative to ensure that in a context where international laws have to be abided by, the sovereignty narrative is not abusively used or serve as a shield or excuse for a country who have absolute disregard for fundamental human rights.

The rule of law is also an underpinning element to an effective functioning of institutions that foster and promote human rights. Given the fact that child trafficking raises a child rights question it is important that from a holistic approach the rule of law fully functions in Nigeria. The effective exercise of the rule of law in Nigeria will not only put the country on the path to comprehending rules pertaining to civilised societies but also to sustainable development. Indeed the lack of the rule of law creates a breeding ground for all sorts of abuses in a context where the pervasive traditional perceptions about the child have always been disadvantageous.

Corruption

Hoi and Chan (2008) write that “corruption, which is defined by Transparency International as the misuse of entrusted power for private gain, was related to the number of people

participating in tertiary education across countries.”¹⁰³ Moreover, Fraser-Moleketi observes that corruption is prevalent in both developed and developing countries.¹⁰⁴ From a historical perspective, corruption has been manifest in all historical epochs, such as colonialism, neo-colonialism, and the Cold War, as well as in the contemporary period. Through their determination to fight the Cold War through proxy nations in the south, global superpowers overthrew many democratically elected regimes in Africa, Asia, and Latin America, and often replaced them with malleable regimes. The legacy of the Cold War has created an environment for the forces of globalisation which are supranational in character, to once again exploit the vulnerabilities of nation states.¹⁰⁵ People occupying the highest political offices have abused their offices for private gain or to further their own personal or political party’s ambitions. Nonetheless, placing the phenomenon into context, Fraser-Moleketi writes that:

“Corruption has largely been perceived as an African and ‘developing south’ phenomenon. Definitions of the problem have often been limited to the abuse or misuse of public power or resources for private benefit, thus focusing on the behaviour of politicians and those in the public service. Corruption and bribery have also frequently been used interchangeably and in a manner that conceals that bribery is a two-way transaction involving both bribe-givers and bribe-takers. There has also been a projection of particular societies or people as endemically corrupt, so that an outsider is required to pay bribes in order to conduct legitimate business.”¹⁰⁶

Corruption hurts the many and benefits the few. It inhibits the ability of government to respond to citizens’ needs and to utilise scarce resources in the most efficient and effective manner. Furthermore, it takes away resources from priority areas such as health, social development, and education. As such, in the specific case of child welfare, it becomes impossible for authorities to deliver. Child trafficking and various forms of exploitation are therefore the results of an acute mismanagement of public resources in most developing countries, including Nigeria. The lack of an adequate school infrastructure, non-existent resources for child maintenance as well as the lack of adequate resources for individual families to care for their children result in a situation wherein children are neglected or systematically abandoned and placed into the claws of traffickers and other child abusers.

¹⁰³ Hoi Yan Cheung and Alex W H Chan, ‘Corruption across countries: Impacts from education and cultural dimensions’ (2008) 45 *The Social Science Journal* 223, 239.

¹⁰⁴ Geraldine Fraser-Moleketi, ‘Towards a Common Understanding of Corruption in Africa’ (2009) 24 *Public Policy and Administration* 331, 338.

¹⁰⁵ *ibid.*

¹⁰⁶ *ibid.*

According to Husted and Instituto Tecnológico y de Estudios, cultural values also play a fundamental role in the structural aspects related to corruption.¹⁰⁷ The authors argue that given the fact that cultural values must play some role in corruption, we need to define more precisely the relationship that specific cultural values and other environmental factors play in selecting practices such as bribery or extortion.¹⁰⁸ Thus, the enduring nature of corruption in countries such as Nigeria could be blamed on the cultural environment. Corruption being one of the characterising element of governance in Nigeria, impacts negatively on fundamental human rights.

The argument of culture is rejected by some scholars, as no justification can be made for the spoliation of a country's people. Pope posits that it is hard to imagine that numbered Swiss bank accounts, for one, are a part of anyone's culture other than the tax evader and the drug trafficker. Where culture requires presentations, these usually take place in the light of day, and not in the shadows.¹⁰⁹ The prevalence of the phenomenon in Africa in general and in Nigeria, in particular, creates a situation of lethargy in regard to sustainable development.¹¹⁰ In such a context, any prospect of a paradigm shift in the handling of issues relating to children and the most vulnerable in society looks bleak.

Accountability

According to Mulgan, accountability can be defined as "being called to account for one's actions."¹¹¹ He further emphasises that the act of calling to account seek answers and rectification, while the other side, being held accountable, responds to and accepts sanctions.¹¹² Core accountability has thus commonly covered issues such as how voters can make elected representatives answer for their policies and accept electoral retribution, how legislators can scrutinise the actions of public servants and make them answerable for their mistakes and how members of the public can seek redress from government agencies and

¹⁰⁷ Bryan W Husted, 'Culture, and Corruption' (1999) 20 *Journal of International Business Studies* 339, 359.

¹⁰⁸ *ibid.*

¹⁰⁹ Jeremy Pope, 'Corruption in Africa: The role of Transparency International', (1994) 20 *Commonwealth Law Bulletin* 1468, 1473.

¹¹⁰ Joseph C Ebegbulem, 'Corruption and Leadership Crisis in Africa: Nigeria in Focus' (2012) 3 *International Journal of Business and Social Science* 221.

¹¹¹ Richard Mulgan, 'Accountability: An Ever-Expanding Concept' (2000) 78 *Public Administration* 555, 573.

¹¹² *ibid.*

officials.¹¹³ Moreover, accountability is used as a synonym for many desirable, yet loosely defined, political goals such as good governance, transparency or democracy.¹¹⁴

In light of this definition, it is evident that accountability is an essential element of governance. Husted and Instituto Tecnológico y de Estudios write that the paternalistic system thus leaves considerable room for corruption in the form of favouritism and nepotism. Scandals involving people in authority are almost always covered up as long as they remain, and these cover-ups are a logical consequence of the loyalty of subordinates.¹¹⁵

Fombard and Nwauche are of the view that a fundamental tenet of modern constitutionalism and an offshoot of its core principle of constitutional supremacy is that nobody, regardless of his status, is above the law. From the view of these authors, it transpires that accountability can only be effective when the rule of law exist. In fact, constitutionalism proceeds from an assumption of human fallibility, the corrupting influence of power and the need to limit it accordingly. Moreover, it treats all citizens and government officials, from the highest to the lowest, as creatures of the law who are bound to obey and act in accordance therewith.¹¹⁶

This state of affairs was the general perception among sub-Saharan Africans and those aspiring to power after the so-called third wave of democratisation in the early 1990s.

Meanwhile, Fombard and Nwauche observe that in spite of the progress made by constitutional craftsmen in the last two decades, to design constitutions that promote constitutionalism by incorporating most of the core elements of modern constitutionalism such as separation of powers, judicial independence and a Bill of Rights, recent studies have shown that the problem of presidential absolutism in Africa and the gross abuses that go with it remain a monumental challenge.¹¹⁷ They, therefore, conclude that considering the constant challenges to good governance and the rule of law in the last two decades; it is clear that many of the measures introduced in the post-1990 constitutions to make Africa's leaders more accountable are failing.

Therefore, disturbing the fact, as Ocheje observes, is that billions of dollars have been looted by African leaders from public coffers and stashed away in offshore banks, while several billion more in natural resources have been mismanaged, resulting in massive poverty,

¹¹³ *ibid.*

¹¹⁴ Amost Vesely, 'Accountability in Central and Eastern Europe: concept and reality', (2013) 79 *International Review of Administrative Sciences* 310, 330.

¹¹⁵ See *Supra* 48.

¹¹⁶ Charles M Fombard and Enyinna Nwauche, 'Africa's imperial presidents, immunity, impunity and accountability' (2012) 5 *African Journal of Legal Studies* 91, 118.

¹¹⁷ *ibid.*

hunger, disease, illiteracy and social turmoil on the continent. The colossal theft of public funds in Africa is unique in the way that the thieves get away with it, without suffering any punishment. Ironically, most of the people known to have looted public treasuries in Africa usually remain in power and enjoy their loot, in the countries which they have so ruthlessly stripped bare. Former African leaders such as Ibrahim Babangida of Nigeria, Mathieu Kerekou of Benin, Hastings Kamuzu Banda of Malawi and Gnassingbe Eyadema of Togo are prime examples of this outright challenge to the concept of accountability in governance.¹¹⁸

The question as to whether a shift in perception of governance can occur could find its answer in existing models of governance with deep-rooted traditions of accountability. For example, Simms notes that the most pervasive model of government accountability in Australia has traditionally presumed that the political executive is responsible to parliament, which, in turn, is responsible to the people. The executive's legitimacy is thus grounded in popular consent. In practical terms, this means that the electorate can throw out a bad government, but it has also come to mean that poor performances and decisions can be directly criticised by the community, through interest groups and the media.¹¹⁹

Consequently, as a result of models such as Australia, and also with the effectiveness of technological development on the continent, populations are more aware of the governance process. Mordi argues that with their comparatively greater share of Internet access, middle-class populations in many African countries, which are in a strong position to watch their governments and how they spend public money, will be the ones who would be most likely to lead changes in these societies. By using the Web, they can harness the power of social media to work for transparency, accountability and better governance, in order to access records on public spending projects on infrastructure and development, to find out how public money is being spent in their communities, to hold their government accountable and to advocate for better governance and more responsible spending.¹²⁰ The lack of accountability in a society is interwoven with the lack of the rule of law, deep-rooted nepotism, and political clientelism.¹²¹ Hence practice such as child trafficking can exist without being questioned. The Nigerian

¹¹⁸ Paul D Ocheje, 'Refocusing International Law on the Quest for Accountability in Africa: The case against "other" Impunity' (2002) 15 *Leiden Journal of International Law* 749, 779.

¹¹⁹ Marian Simms, 'Models of Political Accountability and Concepts of Australian Government' (1999) 58 *Australian Journal of Public Administration* 34, 38

¹²⁰ Mathias Mordi, 'Connectivity and Accountability in Africa' (2012) 46 *The Futurist* 6.

¹²¹ Morris Szeftel, 'Clientelism, Corruption & Catastrophe' (2000) 27 *Review of African Political Economy* 427, 441.

authorities' failure to fulfil their obligation towards children cannot be challenged let alone punished. As a result, child trafficking thrives not only because the authorities fail to perform their duty owed to children by effectively protecting the welfare of the child but also by getting away with their treason due to the lack of accountability.

Sovereignty

Sovereignty can be defined as an aspect of a particular form of political organisation, i.e. as the authoritative apex of a hierarchical structure of governmental powers in a modern, centralised and unitary state.¹²² The sovereignty narrative dominated the political discourse of most newly independent African states in the 1960s, and the perspectives of governance were crystallised around the concept, although they were still at the stage of what Jackson designates as “quasi-states.”¹²³

According to Clapham, quasi-statehood understandably led the rulers of weak states to emphasise sovereignty, which was critically important to them because they had so few other cards to play.¹²⁴ The key criteria for absolute sovereignty, the maintenance of existing frontiers, insistence on the principle of non-intervention in the internal affairs of states and the claim to the state's right to regulate the management of its own domestic economy were built into documents such as the Charter of the Organization of African Unity and the Charter of the Economic Rights and Duties of States. He goes further to observe pertinently that although Ayoob argues that Third World state elites have internalised to an exceptional degree the dominant values of the Westphalian system,¹²⁵ it would be more accurate to suggest that elites adopted these values as the result of an instrumental recognition of the amount that they could do to enhance their own power.¹²⁶

¹²² Raia Prokhovnik, 'Spinoza's Conception of Sovereignty', (2001) 27 *History of European Ideas* 289, 306.

¹²³ Jackson coined the phrase 'quasi-states' to describe those states which, despite the recognition of other states and international institutions within the global system, nonetheless often lacked “substantial and credible statehood by the empirical criteria of classical positive international law.” See Robert H. Jackson, *Quasi-states: Sovereignty, International Relations and the Third World* (Cambridge University Press, Cambridge 1990).

¹²⁴ Christopher Clapham, 'Degrees of statehood', (1998) 24 *Review of International Studies* 143, 157..

¹²⁵ Sovereignty has usually been identified with the Westphalian model, which sets an institutional arrangement for political organisations. The Peace of Westphalia (1648) came to symbolise a new era when the modern state drew a clear boundary, asserting its authority on its side of the boundary, and incorporated the people living there, turning the territories they inhabited into inalienable national property, and the people, ultimately, into citizens. This was the beginning of an 'international society': a group of political entities with governments claiming sovereignty over a group of people, and a well-defined territory came to exercise its legal rights and crude power. See S Krasner, 'Compromising Westphalia' (1995) 20 *International Security* 115, 151. See also H Bull, *The anarchical society: A study of order in world politics* (Columbia University Press, New York 1977) 13.

¹²⁶ Christopher Clapham, 'Degrees of statehood', (n 78).

Most significantly, as African regimes lost the popular support which they had generally enjoyed at independence, and then refused to renew it at the price of risking their own incumbency, so the moral justification for quasi-statehood, that the states which it protected represented their own populations, was lost. In the process, quasi-statehood was converted into a mechanism by which those who controlled governments, regardless of the means by which they had attained power or by which they exercised it, claimed the right to external support with which to repress their own populations. For the outside states which provided this support, whether these were superpowers or former colonial rulers, sustaining African regimes became the internationalised equivalent of colonial indirect rule whereby indigenous rulers remained in power, as part of a pact which served the mutual interests of themselves and their external protectors. This formula could only be maintained, however, for as long as the domestic regimes within quasi-states were able to supply benefits to their protectors and at a price which these were prepared to pay.¹²⁷

In light of such well-established and unquestioned ways of governance, corruption, lack of the rule of law, nepotism political clientelism, and the lack of accountability deepened, to the ultimate demise of the population. As a result, the social conditions of families and communities became a moral justification for what in principle is unethical. Child trafficking, child labour and other abuses inflicted on children, among other predicaments, could be comprehended through the key concepts analysed herein. The sovereignty narrative is, therefore, a ring fence which can be employed to harbour unethical practices. Indeed states who are reluctant to abide by the international law are tend to brandish their sovereignty.

2.1.7 The Concept of Social Justice

The social justice narrative becomes heated in a country where gripping inequalities, the lack of redistribution of wealth, nepotism, and clientelism thrive. However inequalities can exist in every human society, the bad or non-redistribution of wealth belonging to all, inevitably lead to abject poverty hence widen the gap between categories of people.¹²⁸ As a result some unethical and degrading practices occur in society. Miller writes that:

¹²⁷ *ibid.*

¹²⁸ Gerry Rodgers et al. '*The international labour organization and the quest for social justice, 1919-2009*' (ILO, Geneva 2010) 223, 24

“When we talk and argue about social justice, what exactly are we talking about and arguing? Very crudely, I think we are discussing how the good and bad things in life should distribute among the members of a human society. When, more concretely, we attack some policy or some state of affairs as socially unjust, we are claiming that a person, or more usually a category of person ought to enjoy (or bear more of the burdens than they ought to bear), given how other members are faring.”¹²⁹

As indicated hereinbefore, the hindering factors to the establishment of a viable Nigerian society are interwoven. Phenomenon such as child trafficking is the result of deepening inequalities in Nigeria society. The idea of justice in term of redistribution of wealth and assistance to those who are socially disadvantaged is almost non-existent. Among other social predicaments, child trafficking, child labour, child prostitution as well as other child abuses thrive due to the lack of social justice. Social Justice - minded authorities would pursue reforms and put in place strategies that rid the country of injustices translated by abject poverty and worst forms of child labour. The idea of social justice is one of the key arguments put forward by the International Labour Organisation (ILO) in combatting poverty which *per se* is regarded as one the root causes of human trafficking in general and child trafficking in particular. In its Declaration on Social Justice and Fair Globalization in 2008 the ILO recognised that achieving an improved and fair outcome for all has become even more necessary in the current world circumstances to meet the universal aspiration for social justice, to reach full employment, to ensure the sustainability of open societies and the global economy, to achieve social cohesion and to combat poverty and inequalities.¹³⁰ The ILO’s perception of social justice is to be adopted by Member States in that it offers each one of them the opportunity to address their individual weakness in governance. Countries such as Nigeria that are plagued by child trafficking and other grave violation of child rights, the effective perception and commitment to the principle of social justice can be one piece of the puzzle to eradicate poverty hence the predicaments of children.

2.2 The Theoretical Frameworks

2.2.1 Childhood and Social Constructionism

The rationale behind protecting children has traditionally rested upon the perceptions held by a community or social group about who should be considered a child. Thus, the culmination

¹²⁹ David Miller, ‘*Principles of Social Justice*’ (Harvard University Press, Cambridge 1999) 1.

¹³⁰ See ILO, ‘ILO Declaration on Social Justice for a Fair Globalization’.(adopted by the International Labour Conference at its Ninety-seventh Session, Geneva, 10 June 2008) Available at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---cabinet/documents/genericdocument/wcms_371208.pdf, accessed 20 September 2016.

of the long-standing debate about childhood determines the creation of a safer and fairer environment for children.¹³¹ This point emphasises that children have not always been perceived as they are today. The whole discourse surrounding childhood is put more simplistically by Frijhoff who writes that:

“The ‘discovery of childhood’ is a tricky notion because childhood is as much a fact of a biological and psychological nature as a cultural notion that through the centuries has been the object of changing perceptions, definitions, and images. Children barely speak in history; virtually everything we know about them is mediated by adults.”¹³²

Heywood writes that childhood, according to the 17th-century French cleric Pierre de Bérulle, “is the most vile and abject state of human nature, after that of death.”¹³³ Such a perception of the child in history is the starting point for a discourse on the changing conceptions of childhood over the centuries.

Indeed, it must be understood that perceptions of children have varied over different periods in history, resulting in the status recognised today in the current global context. Existing and consistent literature on the history of childhood from medieval to modern times relates only to the West,¹³⁴ while any accounts pertinent to primitive societies are almost non-existent. From the principle of analogy, it could be said that the pattern of well-documented child-society relation in the West applies to the other societies.

Moreover, in recent years knowledge about the conception of some societies about childhood is a testimony to the similarities in patterns referred to beforehand. Montgomery argues that in Tonga, children are perceived as mischievous, and they cry simply because they are being naughty.¹³⁵ In a society that prizes social competence, and where its lack thereof is regarded as shameful, children are at the bottom of the social hierarchy.¹³⁶ Moreover, Montgomery emphasises that the child in the view of the Mende of Sierra Leone is someone who not only lacks understanding but who is also likened to an animal.¹³⁷

¹³¹ Bernard P Dreyer, ‘To create a better world for children and families: the case of childhood and poverty’ (2013) 12 *Academic Paediatrics* 83.

¹³² Willem Frijhoff, ‘Historian’s discovery of childhood’ (2012) 48 *International Journal of the History of Education* 11, 29.

¹³³ Heywood made this quote from Emile Guillaumin’s work. As cited in Colin Heywood, ‘A *History of Childhood*’ (Polity Press, 2006) 9.

¹³⁴ *ibid.*

¹³⁵ Heather Montgomery, ‘*An Introduction to Childhood: Anthropological Perspectives on Children’s Lives*’ (Wiley-Blackwell, 2009) 56.

¹³⁶ *ibid.*

¹³⁷ *ibid.*

The treatment meted out to children in some traditional Nigerian societies today is redolent of historical treatment in the West. The likening of a child to a mere animal, which as a consequence can be used for any purpose by adults, is per se a view consistent with the situation of child abuse in the current Nigerian context.¹³⁸

As previously noted, the concept of childhood has changed over different eras, a fact which demonstrates that childhood is not a permanent and immutable notion. Thus, the perception of a child could be so ambiguous in the mind of some traditional societies that they hardly distinguish between minors and adults. Taking the Western experience of childhood as a reference point, it should be noted that, at a certain time during this evolution in thinking, the child was viewed as an adult in miniature.¹³⁹ The idea of evolution over the time supports the view that the concept of childhood is constructed by society.

Burr argues that from the social constructionism perspective, we must take a critical stance on our taken-for-granted ways of understanding the world, including ourselves.¹⁴⁰ It invites us to be critical of the idea that our observations of the world unproblematically yield its nature to us, to challenge the view that conventional knowledge is based upon objective, unbiased observations of the world.¹⁴¹ Montgomery admits that it is necessary to underscore the work of the French historian Philip Aries, whose analysis of childhood as a social and historical construct has had a profound influence on ideas about childhood.¹⁴² Montgomery is of the view that in Medieval Western European society, the idea of childhood did not exist in society was not aware of the particular nature of childhood which distinguishes the child from the adult.¹⁴³

According to Woodhead and Montgomery, social constructionism asserts that children and childhood are not facts of nature but social constructs. They argue that images of children, attitudes towards them, expectations and understandings are all constructed through social processes. Thus, the realities that people take for granted, the things they know about their world and how it works, are not what they seem to be: they are in fact self-evident truths

¹³⁸ Michel S Agba et al., 'Law and Children's Rights Protection: the Nexus for a Sustainable Development in Nigeria' (2010) 6 *Canadian Social Science* 26.

¹³⁹ Ariès' most famous evidence is the iconography of the Middle Ages, which depicts children as adults, only in miniature. See P Ariès, '*Centuries of Childhood*' (Penguin, London 1973) as cited in

¹⁴⁰ See Vivien Burr, '*An introduction to social constructionism*' (Routledge, London 1995).

¹⁴¹ *ibid.*

¹⁴² Heather Montgomery, '*An Introduction to Childhood: Anthropological Perspectives on Children's Lives*' (n 89) 51.

¹⁴³ *ibid.*

about what the world is really like.¹⁴⁴ Whether socially constructed or a state inherent to the biological stature of the child, childhood needs to be recognised and protected. From this standpoint, the discourse on the Universalist and relativist approach to the concept becomes less relevant.¹⁴⁵ However, the cultural perspective of child trafficking in Nigeria is worth emphasising in the bid to grasp the influence of customs and cultures on practices that result in child abuses.

From this simplistic presentation, it is obvious that traditions play an important role in the handling of children. Many practices have their sources and justifications in the traditional ways of managing child issues. For instance, Akanbi et al. observe that “a child’s upbringing is essentially demanded from parents by societies and is in turn shaped by the social and cultural influences within and outside the domain of the children concerned. A child’s culture and upbringing may result from the mainstream or dominant culture, or it may be one of many subcultures that can be found in almost any country.”¹⁴⁶

2.2.2 Legal Pluralism

Legal pluralism is the existence of multiple legal systems within one geographic area. The significance of legal pluralism to this thesis is evident. Not only it has become a major theme in socio-legal studies but also from the practical point of view of the concept, the status of the child in Nigeria is viewed from different angles.¹⁴⁷ The different perspectives here are characterised by particular systems. Hence the approach of the Federal law to the child often varies from approaches sustained by other legal systems and settings in the country. Plural legal systems are particularly prevalent in former colonies, where the law of a former colonial authority may exist alongside more traditional legal systems.¹⁴⁸ When these systems develop, the idea is that certain issue, such as commercial transactions, will be covered by colonial law, while other issues, such as family and marriage, will be covered by traditional law. Eventually, changes in conceptions in societies have led to the dissipation of

¹⁴⁴ Martin Woodhead and Heather Montgomery, ‘*Understanding Childhood: An interdisciplinary approach*’ (The Open University, Milton Keynes 2003) 26.

¹⁴⁵ Focus needs to be placed on the appropriate mechanisms to find a definite answer to the problem. The usual controversy is centred on culture. However, from a pragmatic perspective, the plight of millions of children across the globe remains identical.

¹⁴⁶ See Akanbi M Ayokunle, Adetoro G Wuraola and Duru Obuchi ‘Influence of Socio-Cultural Factors on Child’s Upbringing’ in Oshodi/Isolo Local Government Area of Lagos State, Nigeria’,(2013) 21 *Ife Psychologia* 206.

¹⁴⁷ Frédéric Mégret, ‘Is There Ever a ‘Right to One’s Own Law’? An Exploration of Possible Rights Foundations for Legal Pluralism’ (2012) 45 *Israel law review* 3, 34.

¹⁴⁸ See Natan Lerner, ‘Group Rights and Legal Pluralism’,(2011) 25 *Emory International Law Review* 2.

these distinctions. The tendency appears to be that more individuals choose to bring their legal claims under the system that will offer them the better outcome.

Legal pluralism also occurs when different laws govern various groups within a country. For example, in India, there are special Islamic courts that address concerns in Muslim communities by following Islamic law principles, while secular courts deal with issues relating to other communities.¹⁴⁹ Delmas-Marty is of the view that modern western legal systems can also be pluralistic, so it is misleading to discuss the issue purely in relation to non-western legal systems.¹⁵⁰ Hence, analysing the decision of the European Court of Justice, regarding the Walrave of December 1974, case 36/74, La Torre observes that by “direct effect” the Court meant that community law is an integral part of domestic law, namely the “law of the land.” He further notes that this would have been inconceivable had community law been considered (as the Italian constitutional courts hold) a legal order separate to and independent of domestic law.¹⁵¹ La Torre goes even further to propose a solution. Accordingly, the solution is legal pluralism. This is not to mean a mere descriptive approach, as with the assessment that there are several legal orders, all of which are effective but whose internal validity we are not called on to consider, but rather as a normative criterion which recommends that the judge (and the citizen) does not direct himself solely to one source of law when in search of a regulation for a case. Legal pluralism would mean here the multiplication and differentiation of the sources of law, i.e. the various arguments which justify a certain course of action or a specific legal decision.¹⁵² Hence intellectual odyssey of the concept of legal pluralism moves from the discovery of indigenous forms of law among remote African villagers and New Guinea tribesmen to debates concerning the pluralistic qualities of law under advanced capitalism.¹⁵³

The strength of legal pluralism could be found in the fact that the concept and its practice are accepted by both the colonial administrations and the indigenous people. Also, the practice owes its strength to the fact that it remains to the present day in some countries. Moreover, it could be asserted that Africa is today’s largest living laboratory of effective legal pluralism. Fremont admits that legal pluralism is a contemporary reality and a challenge in most post-colonial

¹⁴⁹ Pamela Raghunath (April 29, 2013), ‘First Sharia Court for Mumbai’ at <http://gulfnews.com/news/world/india/first-sharia-court-for-mumbai-1.1176973>, accessed June 17, 2013.

¹⁵⁰ Mireille Delmas-Marty, *Towards a truly common law: Europe as a laboratory for legal pluralism* (Cambridge University Press, Cambridge 2007).

¹⁵¹ M La Torre, ‘Legal Pluralism as Evolutionary Achievement of Community Law’ (1999)12 Ratio Juris 182, 95.

¹⁵² Ibid.

¹⁵³ Sally E Merry, ‘Legal Pluralism’ (1988) 22 *Law and Society Review* 869, 896.

African states, as they grapple with how to preserve the cultural heritage reflected in their customary law and instruments while attempting to function as modern constitutional regimes. Few of them found structural solutions for linkages between and mutual co-existence of multiple regimes within the same states.¹⁵⁴ Moreover, Melissaris¹⁵⁵ observes that:

“Early theoretical endeavours in legal pluralism concentrated on the ability of the law to be responsive to the community by acknowledging its actual needs. It was the study of the tension between formal law and the ways in which social co-existence was regulated in actuality. These endeavours range from sociological critiques of formal law to the legal anthropological study of the effects of colonization and the imposition of the law of the colonizing nations upon the colonized peoples. What all these versions of legal pluralism have in common is their empiricist-positivistic approach to law. They apply formal criteria in order to identify non-state legal orders and their relationship with state legal orders.”¹⁵⁵

Legal pluralism has also proven strong and useful in addressing some sensitive social issues.¹⁵⁶ On that positive aspect, Unruh writes that:

“Land tenure, at its most fundamental level, is a system of rights and obligations in human relationships. Legal pluralism with regard to land tenure signifies the different sets of rights and obligations concerning land and property, as these reside within multiple social fields or normative orders. The most pervasive example of legal pluralism regarding land exists in the postcolonial developing world where, due to the existence of both customary and formal tenurial regimes, legal pluralism in land administration is pursued as an approach to realistic governance.”¹⁵⁷

Benda-Beckmann observes that for a long time the concept of legal pluralism was stringently rejected by legal theorists, who insisted that the law of the nation-state was the only relevant kind of law in modern society. Nevertheless, with the recognition that international law does not merge seamlessly with national laws, and that a body of transnational law is emerging that has little to do with the law of nation states, the term has become acceptable. Legal pluralism is not a new phenomenon and includes far more than just national, international and transnational law.¹⁵⁸ There are some concerns that traditional legal systems and Muslim legal systems fail to promote women's rights. As a consequence, members of the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) have called for the

¹⁵⁴ David Pimentel, 'Legal Pluralism in Post-colonial Africa: Linking Statutory and Customary Adjudication in Mozambique', (2011) 14 Yale Human Rights and Development Law Journal 59.

¹⁵⁵ Emmanuel Melissaris, 'The More the Merrier? A New Take on Legal Pluralism' (2004) Social and Legal Studies 13, 57.

¹⁵⁶ The land issue is one of the most sensitive issues in African societies. See 'Africa: Land issues are key to transitional justice' (2008), Oxford Analytica Daily Brief Service 1.

¹⁵⁷ Jon D. Unruh (2003), 'Land Tenure and Legal Pluralism in the Peace Process', *Peace & Change* Volume 28, Issue 3, 11 June 2003.

¹⁵⁸ Von Benda-Beckmann (2002), 'Globalisation and legal pluralism', *International Law FORUM du droit International* 4: 19, 25, 2002.

unification of legal systems within countries.¹⁵⁹ When it comes to the community level, Millns observes that ‘the resolution of competing claims between different legal orders is a common concern and one which also highlights the distinct legislative and judicial roles at national and supranational levels in determining the ultimate site of legal authority.’¹⁶⁰

If they want to retain the central values of their constitutional system – such as fundamental rights, (democratic) legitimacy, accountability and integrity – it is sometimes necessary to place themselves outside the formal hierarchic (constitutionalist) order that normally guides the interaction between national and international law.¹⁶¹

Child protection is an important issue in Nigeria, and it has become a matter of urgency because the level of child abuse has not decreased since the country gained independence in 1960. From a global perspective child rights have become the focus of attention for both developed and developing countries – and Nigeria remains in line with this topical question. Phenomena such as child trafficking, child labour and other child abuses are entrapped in cultural and customary conceptions, and it should be understood that Nigeria is pluralistic in terms of ethnicity, religion and laws. There are more than 250 ethnic groups, and within these groups are distinctive subgroups and communities. Therefore, embarking on a study that relates to child abuse in the current Nigerian context requires an understanding of the pluralist dynamic.

Legal pluralism in Nigeria is a highly complex issue which takes three distinct forms. First, it arises from the multifarious legal traditions or legal cultures in the country. Laws in Nigeria are derived from three distinct laws or legal systems: customary law, Islamic law and English-style laws. Customary law is indigenous to Nigeria, with each of the various ethnic groups in the country having its own distinctive customary law.¹⁶² The second form of legal pluralism in the country arises from the country’s federal system, whereby the federal and state governments share legislative power.¹⁴ The mechanism has resulted in differences between federal and state laws as well among individual states’ laws. For example, federal

¹⁵⁹ The Convention on the Elimination of all Forms of Discriminations against Women (CEDAW) is an International Convention adopted in 1979 by the United Nation General Assembly, which came into force on 3 September 1981. It is described as an international bill of rights for women.

¹⁶⁰ Susan Millns, ‘Reproducing inequalities: assisted conception and the challenge of legal pluralism’ (2002) 24 *Journal of Social Welfare and Family Law* 19, 36.

¹⁶¹ Tom De Boer, ‘The Limits of Legal Pluralism’ (2012) 25 *Leiden Journal of International Law* 543, 556.

¹⁶² See citations from Abdulmumini A. Oba, ‘Religious and Customary Laws in Nigeria’, (2011) 25 *Emory International Law Review* 882.

laws govern statutory marriages, while state laws govern Islamic and customary law marriages.¹⁶³

The third expression of legal pluralism in the country is connected to the country's political history. Colonial authorities administered the northern and southern protectorates separately until their amalgamation in 1914. With the introduction of regionalism in 1954, the country was divided into three regions: northern, western and eastern. These regions had a large measure of autonomy and thus developed along slightly different lines. Despite the subsequent creation of states, beginning in 1967 (Nigeria now has 36 states and a Federal Capital Territory), this regionalism holds the key to understanding current legal arrangements in the country. Until the regions were broken up into states, uniform laws applied in each territory. Today, the bulk of the laws in the states owe their origin to the era of regionalism. Uniformity of laws in the northern states, particularly regarding Islamic and customary laws, continued largely until 1999 when 12 of the 19 states in the north adopted Islamic law as the basic source of law in a largely uniform manner.¹⁶⁴

Legal pluralism was initially defined to pertain to solely colonial legal systems. Meanwhile, a shift in conceptions and perceptions has occurred at the international level. Indeed, given a sufficiently broad definition of the term 'legal system', virtually every society is legally plural, regardless of whether or not it has a colonial past. Legal pluralism is a central theme in the reconceptualisation of the law-society relation, and most significantly the European legal system is deemed, pluralist. The dynamic involved in approaches to legal pluralism evidences the paradigm shift from strict and geographical perceptions thereof.

The prevailing argument is that the legal pluralistic context of Nigeria, to a great extent, facilitates the practice of child trafficking.¹⁶⁵ Indeed, as previously mentioned, legal pluralism in Nigeria is evidenced by the presence of cultural settings, religious institutionalism and the legal system of the country. For instance, in the cultural context, some traditional communities in Nigeria have rules which they apply to internal affairs, such as child fostering, child custody. Consequently, children entrusted to some family members in the context of customary fostering are often systematically abused – most of them are trafficked to different areas for the purpose of exploitation. Customary child fostering being one of the common and widespread practices in West Africa, it has been well settled in the legal

¹⁶³ *ibid.*

¹⁶⁴ *ibid.*

¹⁶⁵ Natan Lerner, 'Group Rights and Legal Pluralism', (2011) 25 *Emory International Law Review* 828.

pluralistic context of many countries in the sub-region. Wanitzek observes that cases of child fostering and adoption are frequently brought to Ghanaian courts.¹⁶⁶ He notes that the applicants were close relatives of the children in many of these cases and had been fostering them in one way or another. Most significantly, while the fostering took place through informal arrangements under customary law within the extended family, formal adoption orders were granted by the court under state law. Indeed the relevance of these two different legal systems, of customary and state law, in one and the same group of cases reflects the framework of legal pluralism in Ghana within which, customary laws, religious laws and national state laws may play a role.¹⁶⁷

From a different perspective, the environment of legal pluralism in Nigeria has played an important role in the stability of the country. The traditional communities with their conservative views and the Islamic northern population of the country preserving their religious values would have hardly seen eye to eye with the federal and local authorities on many social issues had a single legal system been imposed. Obviously, the legal system (general law) that would have prevailed would have been the colonial legal system derived from values and perceptions pertaining to the British society. This said, it should not be ignored that conflictual interaction of different realms of law often occurs in Nigeria.¹⁶⁸

Engle argues that legal pluralism offers three critical insights about law. It shows that law affects social life in many ways, both inside and outside formal legal institutions.¹⁶⁹ These myriad instantiations of law are fragmented, inconsistent, and contradictory. They are a bricolage built up from practice, history, and the legacy of efforts to solve earlier problems.¹⁷⁰ Legal practices may be chaotic and incoherent, as a result of developing from a variety of local practices, yet they can be more attuned to local practices than is a remote state law.¹⁷¹ These systems are constantly interacting with one another and redefining each other. Law is, in practice, shaped through interactions among multiple legal orders.¹⁷²

¹⁶⁶ See Ulrike Wanitzek, 'Child adoption and foster care in the context of legal pluralism: Case study from Ghana' in Erdmute Alber, Jeannett Martin and Catrien Notermans (eds) *Child Fostering in West Africa: New Perspectives on Theory and Practices* (Brill, Leiden) 221.

¹⁶⁷ *ibid.*

¹⁶⁸ Ahmed B Yusuf, 'Nigerian Legal System: Pluralism and Conflict of Laws in Northern States' (National Publishing House, Delhi 1982).

¹⁶⁹ Merry S Engle, 'McGill Convocation Address: Legal Pluralism in Practice' (2013) 59 McGill Law Journal 1, 8.

¹⁷⁰ *ibid.*

¹⁷¹ *ibid.*

¹⁷² *ibid.*

Keith Jr notes that by gaining a greater appreciation of the multiplicities of perspectives on the law, one can more readily understand how the law actually operates in the world in which we live and what it means for us today.¹⁷³ He goes further to state that instead of seeking an indisputable articulation of the one true definition of the law through a linear analysis of case law, the legal pluralist recognizes the possibility of multiple and contested definitions.¹⁷⁴ The legal pluralistic context of Nigeria is also significant in the debate about child trafficking. Without blaming the prevailing legal pluralistic environment for the enduring child trafficking and child abuses it should be however acknowledged that the nature of such system has led to abuses. The cohabitation of various legal systems in Nigeria has its positive sides, but there are also drawbacks that are not easy to be addressed probably for fear of creating tensions between religious communities, traditional communities and the State. It is evident that the government will not condone adverse traditional practices on the ground that they are a part of a particular legal system. Equally, those relying on that system might not easily abandon some deeply rooted and well-accepted practices in their communities. Child trafficking is an undeniable fact in the Nigerian legal pluralistic context.¹⁷⁵ Therefore, the legal pluralism in Nigeria is to be properly understood in order to establish a harmonious legal environment which is the primary objective of legal pluralism.

2.2.3 Cultural Relativism

According to Korbin, Cultural relativism is the belief that each and every culture must be viewed on its own merits as being equal to all others, and that culturally sanctioned behaviours cannot be judged by the standards of another culture.¹⁷⁶ This statement brings in the cultural relativist narrative in the debate about child trafficking, and the views held by culture and traditions in Nigeria. Donnelly argues that cultural relativity is an undeniable fact; moral rules and social institutions evidence an astonishing cultural and historical variability. Cultural relativism is a doctrine that holds that (at least some) such variations are exempt from legitimate criticism by outsiders, a doctrine that is strongly supported by notions of

¹⁷³ Richotte Keith Jr, 'Legal pluralism and tribal constitutions' (2010) 36 William Mitchell Law Review 447.

¹⁷⁴ *ibid.*

¹⁷⁵ Thomas Uche Onyemachi, 'Children, Status and the Law in Nigeria' (2010) 4 African Research review 378, 398.

¹⁷⁶ Jill E Korbin, 'Issues of culture' in Kate Wilson and Adrian James (eds), *The Child protection handbook* (Baillière Tindall, Edinburgh 1995) 134.

communal autonomy and self-determination.¹⁷⁷ The cultural relativist narrative has even dragged in the exercise of the rule law. Nelson and Cabatingan write that:

“A related concern is whether the terminology of the rule of law contains an effort to impose a western or perhaps even a United States perspective of law on the rest of the world. Obviously different cultures and different legal traditions define law and its place in society differently. It would be wrongheaded to equate the rule of law with a particular legal tradition’s prescriptions for the character and role of legal institutions. Nonetheless, it may be possible to build a definition of the rule of law around a central tenet of western and non-western traditions, namely that law imposes limits on the exercise of government and private interests.”¹⁷⁸

In regard to the specific question of human rights, there has been a long-standing conception in Africa. As indicated elsewhere the conception of human rights in Africa derives from the various and well-established traditions and customs and the paradigm shift has not been as swiftly as expected. Oyowe observes that ‘in the years immediately following the independence of many African states, it was frequently noted in the face of serious abuses that human rights are not applicable to Africa. Instead, it was maintained that human rights talk constituted one further piece of evidence of Western imposition and imperialism. He argues notes that now; it is quite fashionable to talk about human rights in Africa and not just any conception of human right but the African variety.’¹⁷⁹

The Universalist nature of human rights would not have tolerated such argument from those who maintained that human rights do not apply to Africa. Although their arguments rested upon the traditional and customary beliefs, the fact that newly independent countries interred in the club of modern and civilised nations they had to undergo the transformation.¹⁸⁰ The argument about the non-application of human rights in Africa was in reality motivated by the heads of states’ determination to quash all opposition to their rules. Hence the worst forms of dictatorship and the worst type of human rights violation has been noted in African countries for over four decades. In such context, the leaders were reluctant to observe human rights values even after the inception of the Organisation of the African Unity (OAU). Indeed human rights were not a priority for them. Eventually, some consideration was given to

¹⁷⁷ Jack Donnelly, ‘Cultural Relativism and Universal Human Rights’ (1984) *Human Rights Quarterly* 400, 419.

¹⁷⁸ Robert Nelson and Lee Cabatingan, ‘A Preface and an Introduction’ in James J Heckman et al. (eds), *Global Perspectives on the Rule of Law* (Routledge-Cavendish, Abingdon, 2010) 3.

¹⁷⁹ Oyowe, Oritsegbubemi Anthony, ‘An African Conception of Human Rights? Comments on the Challenges of Relativism’ (2014) 15 *Human Rights Review* 329, 347.

¹⁸⁰ All independent countries or decolonised countries became de facto member of the United Nation hence the have to abide by the UN Charter and observes the stipulations of the Universal Declaration of Human Rights 1948.

human rights because the respects for human rights became the conditions imposed by most developed nations for their relations or partnership with African countries. In a context where human rights are not respected, it would have been difficult to focus on children's rights. The debate about the status of the child in society in Africa in general and in Nigeria, in particular, has heated up with the issue of child trafficking and various child abuses in Nigeria. Upon the idea that each culture is valued in a specific environment, child trafficking could be seen as a practice suitable to some traditional communities in Nigeria. Hence from a cultural perspective sending a child to place to work as a domestic or farm worker is not immoral or illegal. Meanwhile, Nigeria as a modern society has to abide by international laws and modern values that are often western based. Consequently, contradictory traditional practices must be eliminated in Nigerian society. The question arising from such situation is who has the legitimacy to decide on that set of culture is better than the other hence the inferior culture must disappear. In both the international and national arenas such question is not often properly answered giving rise thereby to conflicts between traditional views and modern views. Because the practice of child trafficking is deeply rooted in Nigerian traditions and the legal some of the legal responses to the problem emanates from international lawmakers who are themselves often influenced by Western values, the relevance of cultural relativism to this thesis becomes evident. It will permit to understanding how the middle ground could be found for an effective implantation and enforcement of laws and policies. The lack of a comprehensive approach to this question has led to the current status quo. On that issue, Murray observes that 'although OAU paid some attention to children, their rights remained neglected for many years as they were generally not seen within the scope of the African Commission on Human and People's Rights in Banjul while it awaited the adoption of the additional Charter on the Child and the appointment of its Commission.'¹⁸¹ This observation is evident in that law and policy makers in the African Union originate from cultural environments where child rights are not a priority. In a situation where they are compelled to observe human rights in general and child rights in particular because of their participation in the international community, they can still be confronted to resistances motivated by traditional and customary perceptions on the ground in in their individual countries.

¹⁸¹ Rachel Murray, 'Human Rights in Africa: From the AOU to the African Union' (Cambridge University Press, Cambridge 2004) 163.

2.2.5 Traditional Perspectives

The enduring practice of child trafficking rests upon the traditional mindsets of most indigenous communities. The practice of customary fostering in West Africa, for instance, is a fertile ground for a thriving trade in child trafficking.¹⁸² Child fostering in traditional kinship systems, and customary transactions in parenthood, are characteristic traits in West Africa. According to Castle, the term ‘fosterage’ used in her work refers to all forms of childhood residence with persons other than the natural (‘biological’) parents, involving the exercise of some parental rights and obligations by persons other than the natural parents, without surrendering the rights of the natural parents. She further observes that the “outright surrender by jural parents” of all rights seems never to occur traditionally in West Africa except perhaps in cases of pawning and in instances where children have been removed from their parents to take on the role of slaves.¹⁸³

Among the Fulani of West Africa in particular, many first-born male children are ‘given’ to their paternal grandmothers so that the child can be socialised and informally educated by his father’s parents. Thus, in effect, the values and traditions of the agnatic family are protected from any exogenous cultural influence.¹⁸⁴ The practice includes ‘kinship’ fostering, ‘crisis’ fostering following the dissolution of the family of origin, ‘apprentice’ fostering to learn a trade or skill, ‘domestic’ fostering to assist with household tasks and ‘educational’ fostering to attend a formal or Koranic school. No money, however, is ever said to be received by foster parents from the biological parents as a contribution to their upkeep. The consequences of children being away from the social and familial environment of their agnatic kin are enormous in many ways.¹⁸⁵

As emphasised previously, practices such as child trafficking, child labour and other practices resulting in child abuses are the continuum of well-established and uncontested traditions and cultures. Moreover, tradition and child trafficking in sub-Saharan Africa are linked intrinsically. The importance of traditional perspectives in regard to childhood is underscored when Lawrence writes that childhood is a construct that has varied over historical periods in different cultures, as well as in different social groups. Its meaning is in a

¹⁸² See Uche C Isiugo-Abanihe, ‘Child fostering in West Africa’, (1985) 11 *Population and Development* 53, 73.

¹⁸³ Sarah E Castle, ‘Child fostering and children’s nutritional outcomes in rural Mali: the role of female status in directing child transfers’ (1995) 40 *Social Science and Medicine* 679, 693.

¹⁸⁴ Enid Schildkrout, ‘The Fostering of Children in Urban Ghana: Problems of Ethnographic Analysis in a Multi-Cultural Context’ (1973) 2 *Urban Anthropology* 48, 73.

¹⁸⁵ *Ibid.*

Conclusion

Child trafficking is undoubtedly the most severe phenomenon ravaging West Africa in general and Nigeria in particular. The practice itself is characterised by the moving and displacement of millions of children from the cocoon of their family environment or usual habitat to the most antipathetic of environments to their development and future. Trafficking *per se* is a transitional phase to a greater predicament; however, it entails its own destructive elements. Children are often trafficked in inhumane conditions, from country to country and over several days. The persistent nature of the phenomenon requires a thorough analysis of the underlying challenging issues. From this standpoint, the historical, cultural, social, economic and political contexts need to be clarified.

While the root causes of child trafficking may be similar in countries that practice it, there are some characteristic elements peculiar to sub-Saharan Africa. This underpins the choice for placing special emphasis on certain concepts and theories. From this perspective, a better understanding of the context can certainly be achieved, with the ultimate goal of putting a halt to the practice of child trafficking and the violation of child rights altogether. This is crucial, because the urgent question remains the rights of the child in modern times. Indeed, children's rights are the human rights for all children. Universally accepted values are evolving, so as the 21st century progresses, children's rights will be seen differently. To reconcile the requirements set by international standards in regards to children's rights with national laws and policies it is necessary for scholars and authorities to grasp the contextual approach to child protection in Nigeria. The prerequisite for this is the setting of the conceptual and theoretical frameworks.

Chapter 3

Cultural and Legal Perspectives on Child Protection in the Context of Human Trafficking in Nigeria

Introduction

It is well acknowledged that child trafficking is an endemic problem and troubling in Nigerian society.¹⁸⁶ This chapter critically analyses the problem of child trafficking in the cultural and legal context of Nigeria. Until recently, the issue of child trafficking was debated in the broad context of human trafficking.¹⁸⁷ However, the increasing number of young children trafficked across Nigeria and abroad was the indication that traffickers are shifting their preference to children.¹⁸⁸ This new trend in the practice of trafficking in persons has made the issue a focus of national and international attention. Hence child trafficking became the main topic in child protection and child rights debate. Whether the debate about the predicaments of the child in Nigerian society relates to abuses, child cruelty, child labour or child trafficking, the concordant view is that the child should get the utmost protection from society as a whole. Traditional and religious communities, custodians of customary, traditional, religious values,¹⁸⁹ and government authorities have to find common grounds for the best interest of the child in a legal pluralistic society like Nigeria. The protection of the child in the context of human trafficking in Nigeria requires that conflicting cultural and traditional considerations with modern views on the status of the child in Nigerian society are

¹⁸⁶ Olubukola S Adesina, 'Modern Day Slavery: Poverty and Child trafficking in Nigeria (2014) 12 African Identities 165,180.

¹⁸⁷ The practice of child trafficking has existed long before the adoption of most of the human rights instruments that refer to child trafficking as well as the instruments related to trafficking in persons. The question of the human rights itself became a major concern for humanity after World War 2. As a result the Universal Declaration of Human Rights was adopted in 1948. However, it has taken quite some time to make child rights a priority. It is now effective that existing legal instruments related to human trafficking have special provisions about child trafficking.

¹⁸⁸ The shift of preference for children does not means that trafficker do not use adults anymore. Indeed the increasing demand for child labourer for domestic works, farm works, and prostitution has led traffickers to turn to more young children. The whole dynamic rests upon the fact that children are less likely to claims and defend the basic rights. In societies such as Nigeria it is rare for a child to challenge an adult.

¹⁸⁹ The custodians of traditional and religious values are designated leaders who look after traditional or religious precepts in the community. In Nigerian society many traditional or religious communities are very conservative hence they make sure that their traditional setting and religious precepts are perpetuated. Of course at certain point this creates conflicts between the modern institutions and traditional and religious settings.

effectively addressed. Hence this chapter aims to examine the contextual approach to child protection in Nigeria. This the chapter further focuses on the mutation of perceptions from the traditional settings to the modern legal context. The chapter also examines the different approaches to child abuses in the divers Nigerian traditions.

The conflicting views between traditional settings and the modern Nigeria where the rule of law should prevail are impeding factors to an effective implementation and enforcement of child protection instruments. In this chapter, it is argued that new paradigms must emerge from conflicting views so that Nigeria can overcome the existing challenges. In a complex cultural environment, it was an imperative for Nigerian authorities to adopt the adequate legal approach to the issue of human trafficking. Therefore, the Trafficking Law Enforcement and Administration Act was enacted in 2003. At the same time, the National Agency for the Prohibition of Trafficking In Person (NAPTIP) was established. The Act and its relevant Agency were regarded as the adequate response to combatting human trafficking in general and child trafficking in particular. Hence this chapter analyses the actions the NAPTIP and evaluates the efficacy of the Trafficking Law Enforcement and Administration Act 2003.

3.1 The Child in the Nigerian Society

3.1.1 Cultural Approaches

The Nigerian society is a composition of diverse traditions and customs. The perception of childhood among the tribes in northern Nigeria is not the same as those of the east, west or the south. Such diversity is underpinned by various customary settings. From the outset, it appears that defining who is a child in diverse cultural settings remains a challenge. This is acknowledged by Aderinto in his analysis of the childhood in the Nigerian colonial era. He writes that ‘Childhood was both a social and historical construction in colonial Nigeria. If a child was defined in accordance with the culture of each ethnic group in precolonial era, colonialism imposed unitary and inconsistent criteria for differentiating between a child and young person or adult.’¹⁹⁰ Aderinto further observes that children as “innocent” and “vulnerable” elements that needed to be “governed” by the will of adults was probably influenced by Yoruba culture of child rearing and “communal” parenting, which endorsed

¹⁹⁰ Saheed Aderinto, ‘Researching Colonial Childhoods: Images and Representation of Children in Nigerian Newspapers press, 1925 – 1950’ (2012) 39 History in Africa 241, 266.

corporal punishment and strict discipline as the best means of ensuring that children grow up to be responsible members of the society.¹⁹¹ Hence punishment and discipline were traditionally conceived as core components of formal and informal education and training.¹⁹²

Most significantly, the traditional Nigerian perception of the child places them at the bottom of the social hierarchy, with obedience and respect for adults being paramount. The traditional Yoruba family structure privileges seniority, with junior members of society expected to provide services in a submissive and deferent manner. Indeed traditional social stratification within southern Nigeria accords children the lowest social status.¹⁹³

The debate about the status and place of the child in society has also been an important issue in western societies. Again the occurrence of such situation in the western world was indeed based on cultural perceptions. As Hart and Pavlovic note, historically, the conceptualization and treatment of children has moved the child from being considered basically a nonentity or miniature adult to being a special class of human being; and from property to partial person status.¹⁹⁴

3.1.2 Conflicting Views

Indeed a child was defined in accordance with the culture of each tribe in precolonial Nigeria, but this perception is still prevalent today. Attempts from the colonial power to impose unitary criteria for defining a child, appears to have little effect among, mainly, indigenous communities. Throughout the colonial period, the definition of a child was contested despite an attempt by the British to impose a rigid dichotomy between a “child” and “young” person.¹⁹⁵

Long after the colonial era, Nigeria remains confronted with the divergence of perceptions in regards to who a child is. It is evident that the cultural and traditional perceptions become a hindering factor to Nigeria’s endeavour to become a complete modern society. The conflicting views transpire in the perceptions often expressed by such as Soyinka and

¹⁹¹ *ibid.*

¹⁹² *ibid.*

¹⁹³ E Secker, ‘Witchcraft stigmatization in Nigeria: Challenges and successes in the implementation of child rights’ (2013) 56 *International Social Work* 22, 36.

¹⁹⁴ S N Hart, and Z Pavlovic, ‘Children’s rights in education: An Historical Perspective’ (1991) 20 *School Psychology Review* 345, 358.

¹⁹⁵ *ibid.*

other observers of the African societies in general and the Nigerian society in particular.¹⁹⁶ The typology of the traditional child and that of the modern child is a determining element in the permanent choice of the traditional and modern Nigeria. Kalu writes that the traditional family imbues in the child the necessary characteristics of his cultural heritage: the values, norms, modes of performing certain activities requirements, obligation, beliefs, and status of roles, customs and festivals.¹⁹⁷ The child is present in the family unit when the unit is involved in such cultural experiences in the village. Even when he or she is not allowed to participate, he is near enough to learn what is going on and why. The modern child is increasingly either at school or living in a remote urban centre, when most of these experiences that will provide him or her with the essence of his cultural heritage take place.¹⁹⁸ The distinction between the traditional Nigerian child and the modern Nigerian child shows not only the sharp contrast in perceptions but also the definition of who is a child according to indigenous communities and the modern Nigeria.

The modern Nigerian child is essentially an urban-orientated child faced with enormous challenges of a complex world. Contemporary Nigerian childhood is caught within the currents of massive social changes. In a country in a traditional culture, but aspiring towards considerable industrialisation, a host of problems is likely to emerge in connection with the effective provision for childhood.¹⁹⁹ It is worth noting that the situation of the child caught in the middle of traditional and modern debates became more complex. Ebigbo notes that 'the multi-dimensional, social and political structure conjoined with the impact of industrialisation, cultural conflict, unemployment, the lack of education and urban drift, have produced in their challenge unique problems with regard to children in Nigeria.'²⁰⁰

¹⁹⁶ See Wole Soyinka, *The Lion and the Jewel* (1st edition Oxford University; 1963). See also Daniel Egiegba Agbiboa, 'Ethno-religious Conflicts and the Elusive Quest for National Identity in Nigeria' (2013) 44 *Journal of Black Studies* 3, 30.

¹⁹⁷ W J Kalu, 'Developing Concept for Childhood Survival in Modern Nigeria' (1982) 3 *School Psychology International* 161, 167.

¹⁹⁸ *ibid* at 161, 167.

¹⁹⁹ *ibid* at 161, 167.

²⁰⁰ P O Ebigbo, 'Child Abuse in Africa: Nigeria as focus' (2003) 35 *International Journal of Early Childhood* 95.

3.1.3 New Paradigms

This section examines the necessity to adopt new approaches in an irreversible trend towards modernism and globalisation in regard to the legal context of child protection. Kalu, asserting the observations of the World Bank in 1980, notes that a society's expectations of the child are expressed in terms of his or her development as a quality human resource material for the technological improvement of the society.²⁰¹ According to him, this expectation rests on a rather weak premise because the institutions which should socialise the child towards this reality, especially the family and schools, are handicapped in various ways.²⁰² Indeed these institutions are not in the position of assuming their responsibilities effectively either because they lack the necessary resources or because the society as a whole has created factors that limit their endeavours.

This observation embodies the orientation espoused by Nigeria as a modern nation. The expected change is towards providing Nigeria with citizens fit to face the challenges of modernisation and towards economic development. Therefore the country's focus on creating a safe and sound environment for childhood can be understood. However, the idea that the expectation rest upon weak premises is rather categorical. It should be understood that while Nigeria expects to embrace full development the urgent need to strengthen the families remains a priority among others issues.

3.2 Approaches to Child Abuse

3.2.1 Cultural Influences

The perception of the child in a specific cultural context is critical in the debate about adopting a universal definition of the concept of childhood. While certain attitudes towards children are not regarded as abuses in most indigenous societies, the law prohibits these very attitudes. The enduring nature of child abuses in many Nigerian traditional societies could be underpinned by the cultural endorsement by almost every member of the community.

Lachman considers that child protection is overshadowed by political and economic problems, the lack of resources, the enormity of the phenomenon, and the lack of research

²⁰¹ *ibid.*

²⁰² *ibid.*

culture and research experience.²⁰³ One of the difficulties in defining child abuse in the African context is that cultural attitudes towards abuse vary a great deal. Often the distinction between abuse and discipline is blurred.²⁰⁴

The conception that a child can better contribute to the community in his adult life strengthens the use of practices deemed by traditional communities the unchallengeable way of teaching social virtues. Noteworthy child abuse in its various forms exists in both rural and urban areas. Oyelaran observes that physical abuse and exploitative child labour are two common forms of child abuse in Nigeria.²⁰⁵ He notes that exploitative child labour exists in both the formal and informal sectors where children work as hairdressers, beggars' assistants, hawkers, and as factory and agricultural workers under conditions characterized by long hours, hazardous environment, and meagre remuneration.²⁰⁶

Okeahialam notes that there is an impression that child abuse does not occur in the traditional African society.²⁰⁷ He considers that such view rests upon the sociological perception of the extended family that embodies security, protection, love and care to the child within the cultural environment. Indeed the social advantages of this system tend to minimise the effects of some traditional practices which are abusive to children.²⁰⁸

Okeahialam goes further to place emphasis on the fact that there are traditional child rearing practices related to discipline and treatment of childhood diseases which inflict physical and emotional trauma on the child. Examples include severe corporal punishment for minor offences and scolding of the feet as a method of controlling convulsions. In Nigeria, various forms of child abuse have been observed in paediatric practice. Many of these are related to the culture and tradition of the rural society.²⁰⁹

Practice of child abuse does exist in different regions of Nigeria for example among the states of the West the belief in witchcraft and in syncretic churches and their prophets, who is believed to have the gift of vision, is so strong that there have been reports of prophets

²⁰³ P Lachman, 'Child protection in Africa: The road ahead' (1996) 20 *Child Abuse and Neglect* 543, 547.

²⁰⁴ *ibid.*

²⁰⁵ Eileen B Wilson-Oyelaran, 'The ecological model and the study of child abuse in Nigeria' (1989) 13 *Child Abuse and Neglect* 379, 387.

²⁰⁶ *Ibid.*

²⁰⁷ Theodore C Okeahialam, 'Child abuse in Nigeria' (1984) 8 *Child Abuse and Neglect* 69, 73.

²⁰⁸ *ibid.*

²⁰⁹ *ibid.*

roasting the fingers of children, who may be a bit delinquent, accusing them of being witches.²¹⁰

Ebigbo observes that child battering is very rampant the Eastern States, "Spare the rod and spoil the child" is the adage in the minds of parents. Especially exposed to such beatings are the domestic help. The originally veritable tradition of placing a child into the home of a relative is for the sole purpose of letting the child be properly trained.²¹¹ It is also for the child to enjoy good prospects from the friend or relation in exchange for the child's labour has deteriorated into the exploitation of house help who are the first to wake up in the house and the last to go to bed.²¹²

Cultural influence in raising children *per se* should not have been regarded as a threat to the children's welfare if negative impacts were not visible in the developmental and emotional status of the children. Unfortunately, children suffer the worst type of corporal punishment in the name of cultural values. Moreover, cultural and religious beliefs are have deeply deteriorated the welfare of the child in Nigerian society. On the specific question of religion and culture, Akhilomen observes that the religious and cultural theory that explains child abuse are from other perspective.²¹³ He argues s that many cultures and religions consider severe physical punishment as necessary for maintaining discipline, transmitting educational, cultural, moral, and religious ideas, pleasing gods and for expelling evil spirits.²¹⁴

The phenomenon of child witch is widespread in Nigerian traditional communities. To some extent the phenomenon has reached some urban areas in recent years. The stigmatisation of children as witches has resulted in the indescribable types of child abuses in Nigeria.

Secker observes that:

“Over the past decade, children have been increasingly falling victim to allegations of witchcraft. The stigmatisation of children as witches and resultant child rights abuse is particularly prevalent in Nigeria and has been recognized as a major barrier to the effective implementation of child rights in this state. Children who have been stigmatized as witches often become victims of violence, abuse and neglect both from their parents and from those into whose care they may be placed, such as church leaders and witchdoctors. Examples of abuse include severe beatings, burns caused by fire, boiling water or acid, poisoning by a

²¹⁰ Peter O Ebigbo, 'Child abuse in Africa: Nigeria as focus' (2003) 35 International Journal of Early Childhood 95.

²¹¹ *ibid.*

²¹² *ibid.*

²¹³ D O Akhilomen, 'Addressing child abuse in Southern Nigeria: The role of the Church' (2006) 12 Studies in World Christianity 235, 248.

²¹⁴ *ibid.*

local berry, parents or communities attempting to bury them alive, abandonment in forests or on the streets, rape, and trafficking for the purposes of forced labour and sexual exploitation.’²¹⁵

As indicated in chapter1, child abuse presents various forms. However the cultural justifications of practices that amount to child abuse render any attempt to uproot such practices very complex. For instance, Female Genital Mutilation that is practised by most Nigerian and West African communities is a deeply rooted practice that appears to be an element of the cultural heritage never to be abandoned. The complex issue in regard to Female Genital Mutilation arises when children are subjected to it. Indeed its amounts to child abuse because of its adverse effects on the girl- child who never had the opportunity to take part in the decision making regarding the practice of mutilation.²¹⁶

Child sexual abuse is also present in most traditional Nigerian communities. While underage girls are given in marriage to men often twice their age, culture and customs do not perceive that as abnormal. The generalisation of such cultural mindset can be noticed in some urban areas of Nigeria and other part of sub-Saharan Africa. As Lalor observes, there is an overwhelming amount of anecdotal evidence that the problem of sexual abuse and sexual exploitation (including commercial sexual exploitation) of children in the region is an extensive problem. Children are sexually abused and exploited in the home, school, community, in the workplace and brothels.²¹⁷

The crucial issue arising in regard to the debate about child abuse is the necessity to recognise a particular act as child abuse. The occurrence of child abuse among most traditional African communities is frequent, and a phenomenon like a child labour is a common form of child abuse but is never regarded as such by those who practise it. The phenomenon of child labour has become a matter of serious concern for Nigerian authorities. However, the nature of the practice and its long presence among traditional communities render all effort for eradication almost impossible. Togunde and Carter write that:

²¹⁵ Emilie Secker, ‘Witchcraft stigmatization in Nigeria: Challenges and successes in the implementation of child rights’ (2013) 56 *International Social Work* 23, 36.

²¹⁶ P Schroeder, ‘Female Genital Mutilation: A Form of Child Abuse’ (1994) 331 *The New England Journal of Medicine* 739, 740.

²¹⁷ K Lalor, ‘Child sexual abuse in sub-Saharan Africa: a literature review’ (2004) 28 *Child Abuse and Neglect* 439, 460.

“The causes of child labor have historical, economic, and cultural underpinnings. The emergence of child labor can be traced to the pre-colonial epoch, especially in African societies. In general, African cultures have regarded child labor as preparation for a child’s future occupation, particularly with farming.”²¹⁸

3.2.2 Conflicting Approaches

Indeed the inappropriate nature of abuses occurring in various Nigerian communities will inevitably create a conflict of perceptions given the fact that Nigeria as every country, aspires to a complete law and order in a modern environment. The indigenous communities have always put forward strong justification to their practices and never admit such practices as child abuse. In that respect, the conflicting views remain strong between the two main currents. Hart et al. argue that violence against children, a highly vulnerable group, can be understood as predicated on all the factors mentioned here.²¹⁹ Moreover, they note that the beating, demeaning, or raping of a child are certainly examples of a response to human needs (e.g., for power, securing identity, satisfying a human drive, protection from embarrassment or loss of status) gone wrong.²²⁰

The justification of corporal punishment by most tribes in Nigeria rests upon the idea that the child subjected to such punishment will be well prepared for his/her adult life and a positive contribution to the whole community. This approach derives from the norm “spare the rod and spoil the child”. However, the result often being a negative impact on the child’s developmental and emotional aspects, it is unlikely to regard most traditional approaches as the right ones. Indeed these are what can be categorised as cultural constructions. Most African societies established practices and customs that cannot be morally justified, yet they strongly rely on them, and most of them remain taboos that cannot be transgressed.²²¹

²¹⁸ D Togunde and A Carter, ‘Socioeconomic causes of child labor in urban Nigeria’ in Dwan Kaoukji and Najat M’Jid (eds) *‘Children’s Services in the Developing World’* (Ashgate Publishing Limited, Farnham 2009) 90.

²¹⁹ S N Hart et al., ‘A New Age for Child Protection-General Comment 13: Why it was constructed, and what it intend?’ (2004) 28 *Child Abuse and Neglect* 813, 815.

²²⁰ *ibid.*

²²¹ R A Dimka and S L Dein, ‘The work of a woman is to give birth to children: cultural constructions of infertility in Nigeria’ (2013) 17 *African journal of reproductive health* 102, 117. See also G A Makama, ‘Patriarchy and gender inequality in Nigeria: The way forward’ (2013) 9 *European Scientific Journal* 115.

Ayokunle et al. emphasise that most factors that are pertinent to human development cannot be separated from the proper upbringing of children in our global society.²²² Moreover, they note that each culture has an adaptive parenting method and a set of ancient customs that are put in place to maximise positive cultural ideas of the people. They conclude that relationship between child's discipline and socio-cultural factors, and child's upbringing through parenting style and socio-cultural factors is efficient.²²³ Where these ideas are implemented in their strict sense, they could be regarded as the ideal that should be sought after in any society. Unfortunately, while most Nigerian traditional communities premise their child upbringing practices on such ideal, the sharp contrast in practice ascertain the distorted nature of their approaches.

In the light of the negative impact of child abuse on Nigeria, Chinawa et al. are of the view that addressing this crippling problem of child abuse is an important issue in this twenty-first century.²²⁴ According to them the problem of child abuse has increased due to the real lack of interest by researchers and the paucity of empirical data which made it difficult to ascertain the prevalence of child abuse, particularly in Nigeria.²²⁵ They are of the view that study of the prevalence of child abuse in a wider community setting will make the impact and related problems to be appreciated better.²²⁶

3.2.3 New Paradigms

As social concern for child abuse and neglect increases, there is the likelihood that the government or other agencies will seek appropriate avenues for intervention. It is evident that without a solid theoretical understanding of the problem backed by an empirical support such intervention is likely to be haphazard.²²⁷ The urgency of the matter requires a new approach to tackling the issue. The major question in this context is: 'what should be the best approach to adopt in addressing child abuses in the Nigerian context'?

²²² A M Ayokunle et al., 'Influence of Socio-Cultural Factors on Child's Upbringing in Oshodi/solo Local Government Area of Lagos State, Nigeria' (2013) 21 *Ife Psychologia* 206

²²³ Ibid.

²²⁴ J M Chinawa et al., 'Prevalence and pattern of child abuse and associated factors in four secondary institutions in Enugu, Southeast Nigeria' (2014) 173 *European Journal of Pediatrics* 451, 456.

²²⁵ Ibid.

²²⁶ Ibid.

²²⁷ E B Wilson-Oyelaran, 'The ecological model and the study of child abuse in Nigeria' (1989) 13 *Child Abuse and Neglect* 379, 387.

The setting of an effective child protection system is aimed at eliminating all forms of child abuses in society. Equally, the preservation of some cultural and traditional values is important for the common aspiration that is social stability. However distorted cultural and traditional views often threaten the common aspiration. Hence, in Nigeria, the authorities have the responsibility to convince communities of the need to abandon practices that hinder modernisation and development. The occurrence of a new paradigm for Nigeria, therefore, rest upon the authority, NGOs and other agencies' actions towards a Nigerian society without child abuses in general and child abuses 'legitimised' by culture and customs in particular. In such perspective, the law could be one aspect of dealing with the problem. However, the complex nature of cultural settings and the necessity to maintain a peaceful social climate require a certain level of ingenuity from all actors involved in bringing about the much-needed change.

The new paradigm can definitely occur, in a context where perceptions are sharply divergent if the party on the wrong side is made to perceive the destructive and counterproductive effects of his endeavours. Indeed in the Nigerian context the authorities have the responsibility of persuading traditional communities to banish adverse practices on children. Therefore, they should put in place the resources and appropriate strategies to create the safer environment for all. As noted hereinbefore, legislation could not be the sole answer to the phenomenon. Several strategies can be devised in order to convince a conservative of the anti-social and anti-existentialist nature of their practices.

3.3 Approaches to Child Protection

3.3.1 Traditional Perceptions

The traditional settings also have their perception of child protection. The child needs to be protected for his/her vital role in the functioning of the community. Children's participation in house chores and rural activities such as farming, cattle herding, is deemed paramount.²²⁸ Hence, in most traditional African societies, parents not only find the necessity to have several children but they also make sure they are well protected for the vital role their offspring can play in the community.

²²⁸ M O Awogbade, *'Fulani pastoralism: Jos case study'* (Ahmadu Bello University Press Limited, Zaria 1983) 35.

Most remarkably, this though is viewed as the underlying motive of various traditional African communities' propensity for polygamous marriage. Indeed the size of the family is determining the size of the yields in farming activities. Igben observes that one of the most important factors conditioning the level of production and productivity on peasant farms is the composition and size of the farming family.²²⁹ Although such practice was frequent in colonial Nigeria as emphasised by Igben, most traditional communities still resort to it.

As indicated hereinbefore, the traditional Nigerian communities have a specific understanding of child protection. The purpose of protecting a child could be regarded as universal because the child as a human being needs to be protected. However, every community has its understanding of how to protect the child. In West Africa in general and in Nigeria in particular, the emphasis is placed on child fostering because a child who lives outside of his or her immediate family will learn a series of wisdom.²³⁰ Indeed if the child is living with the mother, what he or she will learn there is different from what they would learn under another person.²³¹ Serra notes that fostering is ubiquitous, especially in West Africa, and represents the most visible aspect of the wider phenomenon of extended family involvement in all aspects of child rearing.²³² Indeed customary fosterage is common in West Africa in general and Nigeria in particular. When children are placed in the care of family members in the context of customary fosterage, it cannot be regarded as unlawful, because no federal laws prohibit the practice. Moreover, in the legal pluralistic context of Nigeria, some customary practices are tolerated. The permissiveness of certain practices on the basis of legal pluralism creates a paradoxical situation. While legal pluralism has to be accepted in Nigeria, the strong prevalence of statute law appears to curtail other systems in this pluralistic context. At the same time, the prospect of abandoning legal pluralism in Nigeria is unrealistic in the foreseeable future it is high time there existed a mechanism to dissipate frequent clashes of systems often resulting in social distortions.²³³

²²⁹ M S Igben, *The Nigerian Farmer And Agricultural Institutions: An Assessment* (Nigerian Institute of Social and Economic Research, 1988) 12.

²³⁰ E P Renne, *Population and progress in a Yoruba town* (International African Library, London 2003) 89.

²³¹ Ibid.

²³² See R Serra, 'Child fostering in Africa: When labor and schooling motives may coexist' (2009) *Journal of Development Economics* 157, 170.

²³³ Mohammed H A Bolaji, 'Between Democracy and Federalism: Sharia in Northern Nigeria and the Paradox of Institutional Impetuses' (2013) 59 *Africa Today* 92, 117.

3.3.2 Conflicting Views

The perception of child protection in traditional setting differs from what is seen in modern societies. Children are protected not because they are an instrument but because it is inherent to their quality as human beings. This line of reasoning triggers the debate about human rights. The conflicting views lie in the very fact that often and obviously in traditional communities, children are seen as object whereas in modern and urban settings children are regarded as a subject of rights irrelevant of their origin their social condition or family background.

In the debate about child protection, the idea of who is a good parent is often underscored. According to Renne the idea about being a good parent not only include providing sufficient food, clothing, schooling and emotional support, but also stress the importance of knowing about modern conventions of health and diet. In that perspective, biological parents are said to be able to strike the best balance in terms of discipline and affection in child –rearing.²³⁴ Although the traditional approach to child protection is purposed to make the child a valued member of the community some practices in the established system of child protection are often detrimental to the child’s welfare.²³⁵

3.3.3 The Need for Protection

There is a need to protect the child irrelevant of what is perceived by traditional settings, cultural or customary values and the constraint of development. Hill and Tisdall rightly put that the welfare approach to children particularly recognises their need for special protection, their differences from adults in terms of culpability and rationality, the primacy (if not paramountcy) of their welfare.²³⁶ Indeed the approach is based on meeting children’s needs.²³⁷ Moreover, Aliyu notes, because children have peculiar physical and mental development needs they must receive legal protection and security, freedom and dignity.²³⁸

²³⁴ E P Renne, ‘*Population and progress in a Yoruba town*’ (n 41) 104.

²³⁵ R Serra, ‘Child fostering in Africa: When labor and schooling motives may coexist’ (2009) *Journal of Development Economics* 157, 170.

²³⁶ M Hill and K Tisdall, ‘*Children and Society*’ (Longman, London 1997) 195.

²³⁷ *ibid.*

²³⁸ A Aliyu, ‘Child labour in Zaria, Nigeria’ (2006) 5 *Annals of African Medicine* 97, 100.

Ezekwonna argues that the traditional African not be egoists, they had the interest of the community at heart because they knew that individual needed the community and that the community for them to achieve their aspirations.²³⁹ Hence the rationale for child protection not only derives from the consideration that the child must receive the training in the proper patterns of behaviour but also he must fully contribute in his adulthood to the life of the community.²⁴⁰ As Ezekwonna observes, among African, conscience is a very familiar concept because, for African, individual conscience works in tandem with the community conscience.²⁴¹ This fact is testimonial of traditional communities' clear understanding of their endeavours regarding child-rearing.

The guarantee for a better protection within the community increases when the child abides by the prescribed rules. In that respect, Amadi writes that respect for elders in Nigeria is of high importance and a child who fails to observe such cardinal article of the code of behaviour is not likely to turn out well.²⁴² He further notes that in the first place, the child's parents will practically disown him and in the second place the children of the elders to whom the child shows disrespect will make life extremely difficult for him.²⁴³

Hill and Tisdall write that the concept of child protection has become synonymous with the responses by official agencies to suspected and identified intra-familial abuse.²⁴⁴ This dominant idea underpins the actions of the federal and local authorities in devising strategies for a better protection of children in Nigeria as most abuses occur within the family environment. However the important issue effectiveness of the authorities' actions in regard to child protection in every part of the country. Chapter 1 placed emphasis on the fact that Nigeria evolved in a pluralistic legal context. This legal nature of the legal system raises the question of Islamic values and traditional and customary considerations that must be taken into account by law and policy makers in the country.

The state cannot solely rely on meetings and talks when it comes to child protection; it must make things different. Beckett writes that it is easy to fall into the trap of thinking that, simply by discussing a child or agreeing that she should be the subject of child protection

²³⁹ F Chukwuagozie Ezekwonna, *'African communitarian ethic: The Basis for the Moral Conscience and Autonomy of Individual, Igbo Culture as a Case Study'* (Peter Lang, AG European Academic Publishers, Bern 2005) 176.

²⁴⁰ Beatrice B Whiting, *'Six Culture: Studies of Child Rearing'* (Wiley and Sons Inc, London 1963) 156.

²⁴¹ *ibid* 49

²⁴² E Amadi, *'Ethics in Nigerian Culture'* (Heinemann Educational Books Ltd, Ibadan 1982) 54

²⁴³ *Ibid* 54.

²⁴⁴ M Hill and K Tisdall, *'Children and Society'* (Longman, London 1997) 198.

plan, we have somehow helped or protected her, but this is an illusion, related to the phenomenon of groupthink.²⁴⁵ Child protection must become a central issue in governments' development plan.²⁴⁶ This argument is pertinent in that significant change, and great improvement occurred when the Western government put their weight in child protection debate. Lesnik-Oberstein notes that children and childhood have in many ways become one of the central concerns of our time in terms of political and public policy and the media in Western culture.²⁴⁷

Child protection can be implemented in every aspect of the child social and economic life. While the moral and religious aspect of child protection are seen as the most underscored, the ethical aspect is often emphasised by the parents and the authorities. Gbadamosi writes that ethical questions often enter the discussion of advertising to children as there is a key argument that marketers are only interested in economic motives when sponsoring advertising messages.²⁴⁸

Most importantly they often lead vulnerable children to mount undue pressure on their parents regarding the purchase of the associated products or services. Even the use of children in such advertising messages provokes another dimension of criticism from various commentators. Based on the potential danger for the child's behaviour and social attitude, the Nigerian authorities have entrusted the protection of children against adverse effects of advertising with the Advertising Practitioner's Council of Nigeria (APCON) which is the main regulatory body charged with advertising.

As a result, a considerable level of regulation is available to marketers operating in the Nigerian marketing environment on how to practice socially responsible marketing in respect of advertising to children in Nigeria.²⁴⁹ The reasoning behind an emphasis placed on advertising is that there is an ostensible willingness of Nigerian authorities to put in place child protection structures. However, advertising is not characterised as an underpinning factor to child abuse, a reference to the authorities' action in this domain evidenced their capability to undertake ambitious actions towards child protection in the domain of various abuses.

²⁴⁵ C Beckett, *'Child Protection: An Introduction'* (2nd ed, Sage Publications, London 2007) 32.

²⁴⁶ P Townsend (ed) *'Building Decent societies'* (Palgrave Macmillan, 2009).

²⁴⁷ K Lesnik-Oberstein, 'Childhood and Textuality: Culture, History, Literature' in Karin Lesnik-Oberstein (ed) *'Children in Culture: Approaches to Childhood'* (Macmillan Press Ltd, LONDON 1998) 1.

²⁴⁸ A Gbadamosi, 'Regulating child-related advertising in Nigeria' (2010) 11 *Young Consumers* 204, 214.

²⁴⁹ *ibid.*

The debate on child protection in Nigeria cannot exclude the general topic of social protection because the former can be better guaranteed if the latter is properly dealt with by the state and other agencies. Umukoro observes that poverty is a pervasive problem in Nigeria. Several reports indicate that the problem has been persistent despite economic growth in the country. However, Nigeria is a middle-income country, it has the highest level of stunting in sub-Saharan Africa, and the third highest in the world, with 41 percent of all children under five classified as stunted and 23 percent as severely stunted. The emphasis on social security by scholars and international agencies has influenced the Nigerian government to include social protection in the Vision 20: 2020 program. The objective of this program for social protection is to increase productivity and income, reduce poverty and vulnerability by diminishing people's exposure to risk and enhancing their capacity to protect themselves against hazards and loss of income.²⁵⁰

3.4 Legal and Institutional Environment for Combatting Trafficking Child in Nigeria

3.4.1 The Federal Institutional and Legal Approaches to the Issue

Child trafficking is criminal activity punished by law. The punishment apparatus in Nigeria exists and functions in an institutional and legal environment which embodies the laws prohibiting and punishing the crime and the enforcement agencies. The analysis of child trafficking in the legal and institutional context of Nigeria focus on the fact that it is a criminal activity like any other activities deemed criminal. Hence it is sanctioned by the full force of the law in Nigeria. This section presents child trafficking as a criminal activity which places all offenders under the full force of relevant laws when they are caught. In a subsequent chapter, the human rights aspect will be invoked in order not only to identify and analyse the existing human rights instruments but also to raise awareness on the violation of children's basic rights and the grievous impacts of child rights violation through trafficking. At the federal level, the Nigerian Constitution²⁵¹ provides for the issue of human trafficking, which is against the freedom and dignity of human beings, according to Section 34, which guarantees the right to dignity and prohibits slavery, servitude and forced labour.

In essence, Section 34 of the Constitution provides that:

²⁵⁰ N Umukoro, 'Poverty and Social Protection in Nigeria' (2013) 29 *Journal of Developing Societies* 305, 322.

²⁵¹ Constitution of the Federal Republic of Nigeria 1999. Document available at <http://www.icnl.org/research/library/files/Nigeria/constitution2.pdf>, accessed 7 March 2015.

“Every individual is entitled to respect for the dignity of the person and, accordingly, no person shall be subjected to torture or to inhuman or degrading treatment, no person shall be held in slavery or servitude; and no person shall be required to perform forced or compulsory labour.”²⁵²

On the basis of the Constitution, child labour and other child abuses are prohibited. This constitutional principle transpires in most of the state’s anti-trafficking laws.²⁵³

Moreover, Nigeria adopted the Trafficking Law Enforcement and Administration Act in 2003, which was amended in 2005 then repealed in 2015. In the same vein Nigeria signed a bilateral agreement with Benin on the Prevention, Control and Supervision of Trafficking, Especially Women and Children in 2005. Earlier in 1984 Nigeria signed a Quadripartite Agreement on Information Sharing and Monitoring of Trafficking Routes, with Benin, Togo, and Ghana. With the same West African neighbours, Nigeria signed in 1996 a Quadripartite Treaty on Cross-border Crime. In terms of setting a workable institutional frameworks, the National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP) in 2003 was established by Nigeria. For a better grip on the issue, a National Action Plan was put in place in 2008.

In the institutional context, the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) was established in 2003. Section 1(1) of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003 provides that ‘(1) There is established a body to be known as the National Agency for the Prohibition of Traffic in Persons and Other Related Matters (in this Act referred to as "the Agency")’²⁵⁴ From the outset, the NAPTIP increased its efforts to raise national and public awareness. The Public Enlightenment Unit within NAPTIP has the mission of reaching out to a nationwide audience in order to make the population aware of the gravity of trafficking, especially in women and children. NAPTIP has put in place various strategies to achieve its goal of reaching remote areas of the country where the problem disaggregates communities; for example, it has organised sporting events such as an annual race against human trafficking in Edo, Benue and Kogi states. In order to

²⁵² Sections 34(1) (a) (b) and (c), respectively, prohibit torture and inhuman or degrading treatment, slavery, servitude and forced labour.

²⁵³ See S K Kigbu, ‘Legal Framework for Combating Human Trafficking In Nigeria: The Journey So Far’ (2015) 38 Journal of Law, Policy and Globalization. ISSN 2224-3259 (Online)

²⁵⁴ Section 1(1) Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003.

be more efficient in tackling cross-border trafficking, NAPTIP works with immigration services to monitor traffickers' movements and to identify the strategies they employ to avoid enforcement efforts. For the protection of their fundamental rights, the Trafficking in Persons Law Enforcement and Administration Act 2015 provides for protection, treatment and non-discriminatory practices for victims. Especially, the law specifies that no trafficking victim should be detained for any offence committed as a result of being trafficked. Although the Trafficking Law Enforcement and Administration Act, 2015 is considered to be the exclusive Human trafficking law in Nigeria, other laws play a significant role in the protection of the child. For instance, the Child Rights Act 2003 is in general related to the rights of the child in Nigeria, but some provision are related to the protection of the child.

The Nigerian Labour Act 1990 applies to all workers and all employers, except the armed forces, the police, prisons and intelligence agencies. It is worth noting that Section 73 of the Labour Act, in line with Section 31(1) (c) of the Nigerian Constitution, prohibits forced or compulsory labour. Articles 49 and 59 of the Labour Act set for employment and apprenticeships the minimum age at 12 years, except for light agricultural or domestic work performed for the family. Articles 59 and 61 prohibit children of less than 12 years from lifting or carrying any load likely to inhibit physical development, and they establish a minimum age of 15 years for industrial work and maritime employment. Article 60 prohibits work underground, on machines, at night, more than four consecutive hours or more than eight hours a day for children less than 16 years. Articles 59 and 65 of the Labour Act also prohibit children less than 18 years from entering into any employment that is dangerous or immoral, although this does not apply to domestic service. However the Nigerian Labour Act 1990 has not been enacted for the purpose of tackling human trafficking, the provision safeguard children who may be engaged in work as result of being trafficked internally.

3.4.2 Institutional and Legal Approaches to the Issue at States Level

Some of the 37 states composing the Federal Republic of Nigeria have been very proactive in addressing the issue of human trafficking in general and child trafficking in particular. The approach adopted by most states appears more proactive, in that they have chosen to combat the related phenomenon of child labour within their administrative territories. As indicated elsewhere, child trafficking is only a process toward a final point, namely that of child exploitation. In their endeavour to combat child trafficking, states opted to make the end goal

of child trafficking non-existent. Where there is no demand for child labourers in areas such as domestic work, agricultural, street begging, prostitution and other activities,²⁵⁵ it became evident that children will not be trafficked. Hence, the approach adopted by some Nigerian States seeks efficiently tackle the phenomenon of child trafficking.

In line with the various legislations in force, Ogun State and Oyo State have adopted an action plan to eliminate child labour. The ‘Ogun State Action Plan for the Elimination of Child Labour in Nigeria’ will span over three years, from 2014 to 2017. Based on the international, regional and sub-regional treaties ratified by the Federal Republic of Nigeria, Ogun State has improved its management of the issues of child trafficking and child labour. For example, the Child Rights Act 2003, passed by the Nigerian National Assembly, was passed into law in Ogun State in 2006, and it is known as the Child Rights Law 2006 (CRL 2006).²⁵⁶ In the same vein, Oyo State adopted the Action Plan for the Elimination of Child Labour in 2014.

The action plan promulgated by Oyo State also spans over three years, from 2014 to 2017, and like Ogun State, Oyo passed the Child Rights Act 2003 into law in 2006, known as the Child Right Law 2006 (CRL 2006). Oyo State entirely relies on existing legal and institutional frameworks set by the Federal Republic of Nigeria to conduct its plan of action in relation to the elimination of child labour and child trafficking.²⁵⁷ However, in May 2014 it established a state steering committee on child labour (SSC) which decided to adopt the National Action Plan for implementation at the state level.²⁵⁸

Another prominent Nigerian State, Edo State, has endeavoured to address the issue of trafficking, especially of women and children, by focusing on one aspect of the object of the practice within Nigeria and abroad. It is recognised that the incidence of trafficking in Edo State for prostitution is considerably high and in the light of the problem the State House Assembly had to pass a law amending the criminal code. Passed in 2000, it extends the reach of the law to criminalise accomplices such as family members, religious leaders and anyone

²⁵⁵ See UNICEF, ‘Where do children work in Nigeria?’ available at http://www.unicef.org/wcaro/WCARO_Nigeria_Factsheets_ChildLabour.pdf, accessed 7 March 2015.

²⁵⁶ See Ogun State Action Plan, available at http://www.ilo.org/wcmsp5/groups/public/---africa/---ro-addis_ababa/---ilo-abuja/documents/publication/wcms_303401.pdf, accessed 7 March 2015.

²⁵⁷ See Oyo State Action Plan available at http://www.ilo.org/wcmsp5/groups/public/---africa/---ro-addis_ababa/---ilo-abuja/documents/publication/wcms_302555.pdf, accessed 7 March 2015.

²⁵⁸ Ibid.

who facilitates the trafficking of women and children. However, although the approach adopted by Edo State aims at combating trafficking in women and children, it places more emphasis on prostitution.²⁵⁹

Section 222 (a) extends the ambit of the offence of causing or encouraging the seduction or prostitution of a girl to cover every female person in place of only “girls under the age of 13 years”. The sentence increases from 2 years to imprisonment for seven years or to a fine of N50, 000 (\$385). Moreover, Section 223 treats the procurement of a woman or a girl for prostitution as a felony – as opposed to the initial categorisation as a misdemeanour –and increases the punishment from two years’ to 14 years’ imprisonment.²⁶⁰

Additionally, Section 223 (a), brought in as a new section, that making it an offence the material or financial assistance to girls and women to enable them to outside Nigeria to become prostitutes. The punishment for such offence is It is also an offence, punishable by for ten years imprisonment or a fine of N 500,000 (\$3,846), or both.²⁶¹

The section sets out punishments for those who aid and abet overseas travel for potential prostitutes, but it does not address trafficking directly. Section 223(a) (2) introduces a compulsory medical examination for the purpose of determining sexually transmitted diseases (STDs) for those deported from foreign countries. Moreover, Section 223 (b) makes it an offence for any female person to offer herself knowingly for prostitution or any immoral activity within or outside Nigeria, which is punishable by two years’ imprisonment or a fine of N 20,000 (\$154). The law makes prostitution a criminal offence and neglects the right of an adult to offer sexual services voluntarily, especially in a country where it is legal, if that is her choice.²⁶²

Section 223 (c) makes it an offence, punishable by two years’ imprisonment or a fine of N10, 000 (\$77), for any man who patronises any woman in an act that can be considered prostitution. Section 223 (d) creates an offence punishable by two years’ imprisonment or a fine of N10, 000 (\$77), or both. For any woman who entices a male with gratification to

²⁵⁹ See ILO, ‘Review of Legislation and Policies in Nigeria on Human Trafficking and Forced Labour: Action Programme Against Trafficking and Forced Labour in West Africa’, available at http://www.ilo.org/global/topics/forced-labour/publications/WCMS_083149/lang--en/index.htm, accessed 2 March 2015.

²⁶⁰ *ibid.*

²⁶¹ *ibid.*

²⁶² *ibid.*

have carnal knowledge of her. It should be agreed that a common weakness in all these sections is the fact that the prescribed terms of imprisonment can be replaced by fines, and it is therefore at the discretion of the presiding judge to impose any of these penal measures. Indeed, this reduces the weight of the offences and the deterrent value of the sanctions imposed. This state of affairs leads one to conclude that the law addresses trafficking indirectly and does not specifically address those who actually engage in the trafficking of children and young women abroad for the purpose of other forms of labour besides sexual exploitation.²⁶³

3.5 The Issue of Law Implementation and Enforcement in Nigeria

3.5.1 Implementation Mechanisms

Implementation of international legal frameworks has often been a complex issue for most countries especially developing countries. Their infrastructures and the cultural environment appear to be among the reasons for the reluctance to domesticate some instruments.²⁶⁴ Human rights violations in general and child rights violation, in particular, has often been branded unconceivable attitudes hence severely punishable by law. However, this approach remains in theory. The International Labour Organisation (ILO) observes that ‘‘While most States condemn forced labour and the worst forms of child labour, national laws often lag behind international commitments. Following the adoption of the Palermo Protocol, States enacted new anti-trafficking laws or sought to bring their laws in line with international standards. In many countries, however, legislation does not yet cover all forms of trafficking, e.g. labour trafficking as compared to sex trafficking, or excludes certain groups of people as potential victims. Furthermore, while many States have now criminalized human trafficking, they are more reluctant to improve the legal status of likely and actual victims. Only a few countries allow identified victims to seek permanent resident status in the country of destination.’’²⁶⁵

In a bid to display a much better image at the international, regional and national levels the Nigerian Federal Government promulgated a flagship law exclusively related to trafficking in

²⁶³ Ibid at p 20.

²⁶⁴ Cho Seo-Young et al., ‘Compliance with Anti-Trafficking Protocol’ (2012) 28 European Journal of Political Economy 249, 265.

²⁶⁵ See ILO, ‘ILO Action against Trafficking in Human Beings’. Available http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_090356.pdf, accessed 07 September 2016.

persons and established an Agency. This move is, however, made in addition to the existing legal instruments that provide for trafficking in some of their Articles or sections. The Agency is deemed to have a grip on the issue nationwide in order to achieve the ultimate goal of eradicating not only child trafficking but also trafficking in adults.,. The extent of the problem in the country has forced the federal government to take measures considered to be a tough approach. The Trafficking (Prohibition) Law Enforcement Administration Act 2003, known as the ‘NAPTIP Act’, set up a special agency in 2004, called the National Agency for the Prohibition of Trafficking (NAPTIP), to oversee matters relating to human trafficking and related matters. The 2003 Act was regarded as a national legal framework developed to combat the enduring phenomenon of human trafficking. It was later amended in 2005.²⁶⁶ In terms of implementing international legal instruments, Nigeria has endeavoured to comply efficiently and to present a good record of treaty ratification at the international, regional and sub-regional levels. For example, the NAPTIP Act is regarded as the simple domestication of the Palermo protocol. Hence, Section 64 of the Act, which incorporates the universally accepted definition contained in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, albeit with some minor changes, provides that: ‘Trafficking includes 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.’²⁶⁷

²⁶⁶ See Trafficking in Persons (Prohibition) Law Enforcement and Administration (amendment) Act, 2005 available at <http://www.protectionproject.org/wp-content/uploads/2010/09/Nigeria-TIP-Amendment-Act-2005.pdf>, accessed 10 March 2015.

²⁶⁷ Section 64 The Trafficking (prohibition) Law Enforcement Administration Act 2003. In the new 2015 Act The definition of trafficking is provided under Section 82 as follow: 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.

It should be agreed that this definition goes beyond the Palermo Protocol definition in some aspects. The inclusion of the phrase “*attempted act*” makes prosecuting offenders easier when they are caught in the act of trafficking. This tougher approach in the law corresponds to the gravity of the situation in Nigeria. It must be recalled that Nigeria signed the Palermo protocol against human trafficking on 13 December 2000 and ratified it on 28 June 2001. The implementation process of the National Plan of Action 2008, NAPTIP, involved organising a workshop, thus gathering all stakeholders concerned with the issue of trafficking. The workshop, held in Kaduna, in the north of the country, was intended to raise stakeholders’ awareness and train them to deal with potential trafficking activities within their communities.

3.5.2 Enforcing Trafficking Laws

Law enforcement is the activity of making certain that the laws of an area are obeyed. It is intended to discover, deter, rehabilitate, or punish people who violate the rules and norms governing a society. Indeed Law Enforcement requires a direct involvement in patrols, surveillance to dissuade and discover criminal activities. It also involves those who investigate crimes or apprehend offenders. Although entities such as courts and prisons are involved in law enforcement, traditionally, the task is devolved to the police. The increasing criminal activities and the emergence of new type of crimes have led most governments to create various enforcement agencies. Of course, their work is carried out in partnership with the police, but they are usually specialised in dealing the specific issue for which they have been established. This is the case of The National Agency for the Prohibition of Trafficking In Person (NAPTIP) in Nigeria. The advent of NAPTIP evidences the alarming nature of human trafficking and other related matters in Nigeria. It is evident that such a serious crime in a highly populated country could have overwhelmed the National Police Force (NPF). Also, the trafficking activities being not only an internal activity but also a cross-border criminal activity the customs and immigration services at Nigerian borders would have lost focus on other criminal activities thereby putting national security at risk. After devising the adequate legal framework for the purpose of combatting human trafficking and establishing NATPTIP the expectation from the new Agency was very high in terms of efficiently combatting human trafficking in general and child trafficking in particular.

The Mechanisms

The function of the Agency, however, is determined under Section 4 of the Act.²⁶⁸ The enforcement mechanisms for NAPTIP are therefore determined under this section. General enforcement mechanisms include the working mechanisms of the Nigeria Police Force (NPF), the Nigeria Customs Service (NCS) as well as the Nigeria Immigration Service. At some stages, the court services play a major role.

Referring to the rights guaranteed under section 34 of the Constitution, Section 46 provides that any violation of its fundamental human rights provision is remediable by the High Court in the state where the violation occurs. Under Section 194 of the Nigerian Constitution, the Nigerian Police Force is recognised as an enforcement authority and has exclusive jurisdiction throughout the country. It performs conventional police functions and is responsible for internal security, and it also supports the prison, immigration and customs services. The mandate of the police concerning human trafficking includes investigating, apprehending and prosecuting traffickers, and they also have the mandate to raise public awareness about the phenomenon across Nigeria. In this respect, the National Police Force was performing this duty in the country well before the inception of NAPTIP.

For a better and more coordinated approach to tackling trafficking, the Nigerian Immigration Service works with NAPTIP and other law enforcement agencies. The immigration service is concerned with issuing travel documents and controlling the country's borders, and in 2003, it created an anti-trafficking unit to help tackle the problem in relation to women and children. The approach adopted involved identifying source routes for trafficking, and hence it established a unit in Edo State, Kano State and Ogun State.

²⁶⁸ Section (4) of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003 provides that 'The Agency shall be responsible for- (a) the enforcement and the due administration of this Act; (b) the co-ordination of all laws on traffic in persons and related offences and the enforcement of those laws; (c) adoption of measures to increase the effectiveness of eradication of traffic in persons; the facilitation or encouragement of the presence or availability of persons, including persons in custody, who consent to assist in investigations or participate in proceedings relating to traffic in persons and related offence; enhancing the effectiveness of law enforcement agents to suppress traffic in persons; f) establishing, maintaining and securing communication to facilitate the rapid exchange of information concerning offences, conduct research and improving international co-operation in the suppression of traffic in persons by road, sea and air'

Some progress achieved

Although various challenges substantially hamper the work of for enforcement agencies in Nigeria, some significant results have been achieved in terms of prosecutions. In regard to the efficiency of the enforcement process in Nigeria, the 2013 trafficking report, issued by the US Department of State, indicates that the Government of Nigeria demonstrated modest progress during the year. An amendment to the anti-trafficking law was introduced in 2011 by NAPTIP. The law gives more authority to prosecutors and restrict the ability of judges to offer fines instead of prison sentences. The modification was awaiting approval by the National Assembly at the end of the reporting period. The government reported that NAPTIP had initiated 117 trafficking investigations, commenced at least 17 prosecutions and achieved 25 convictions during the period covered by the report.²⁶⁹ The report also indicates that another 143 prosecutions remained pending at the end of 2012. However, a decrease in the number of investigations from the previous reporting period's 279 investigations was noticeable. The decrease was not seen as worrying because the report assumed that was most likely because law enforcement officers are better trained to deal with trafficking in persons and related matters.²⁷⁰

Prosecution for trafficking was effective in Attorney General of the *Federation Toyin Ogbemor*. From the fact of the case, it emerges that 'On 22 October 2005 the accused deceitfully induced four victims to go abroad. He promised them good jobs, such as working in a saloon and selling herbs. The accused, in her statement to NAPTIP (National Agency for Prohibition of Traffic in Persons), admitted that she had known that the girls had been going to be used for prostitution in Libya. Before the accused departed with the girls, she took them before a native doctor to take an oath of allegiance. Nigerian Immigration Officers arrested the accused as she was about to traffic a number of girls through the border to Libya'. The trafficker was found guilty on four counts of deceitfully inducing a person to go from any place. Under Section 19(b) of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003. Two years imprisonment and a fine of NGN 50,000 (approximately USD 310) was handed to the accused. In substance, the court held that imprisonment as punishment was to reform the accused and make her fit for fit for future roles in society.²⁷¹

²⁶⁹ See U.S. Department of State at <http://www.state.gov/j/tip/rls/tiprpt/countries/2013/215535.htm>, accessed 10 March 2015.

²⁷⁰ *ibid.*

²⁷¹ See Attorney General of the Federation and Toyin Ogbemor [NCT/140/06] High Court of Justice (7 April 2008). See also UNODC No.: NGA012 available <https://www.unodc.org/cld/case-law->

Several prosecutions regarding human trafficking in Nigeria were concerned with child trafficking. In *Attorney General of the Federation and Chioma Ogbonna*, the court dealt with the abduction of a child for the purpose of trafficking. It transpires from the case that ‘The accused allegedly kidnapped the daughter of the man she was living with and attempted to sell her to someone for a sum of money. There was no proof that this deal was concluded’. However, the defendant was found guilty on six counts of kidnapping under Section 19(1) (a) & (d) of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003. In the light of the increasing activities in human trafficking in Nigeria and given the grievous nature of the offence, the court noted that the punishment should be inflicted in a way that it serves a deterrent to others. Consequently, the accused was sentenced to two years imprisonment.²⁷²

As indicated before, child trafficking can happen internally, and this is the most frequent occurrence of moving children from their usual place of abode, their family environment to different areas of Nigeria for the purpose of exploitation. The internal child trafficking has been demonstrated in *Attorney General of the Federation v. Joseph Sunday Effiong*. From the facts of the case, the accused was alleged to have had custody of I.S. as a domestic helper and engaged in unlawful carnal knowledge with her, thus causing her to fall pregnant. He also detained her against her will and overpowered her by threatening her with a cutlass, a gun, and by gagging her mouth. The girls aged eleven not only was trafficked for the purpose of domestic work but was also sexually abused. Under Section 13(1) of the Trafficking Act 2003, the accused was found guilty.²⁷³ It was ordered that the sentences be served concurrently. As indicated elsewhere, internal child trafficking in Nigeria is more significant than the cross-border child trafficking. The demand for domestic workers essentially girls is very high in urban areas. The court has considered several aspects in this case in order to land the accused with a hefty term of imprisonment. Not only the child has been internally

doc/traffickingpersonscrimetype/nga/2008/attorney_general_of_the_federation_and_toyin_ogbebor.html?lng=en&tmpl=htms, accessed 17 September 2016.

²⁷² See *Attorney General of the Federation v Chioma Ogbonna* [HU/41C/2005] High Court of Akwa, Ibom State of Nigeria (22 February 2006). See also UNODC No.: NGA005, 2006-02-22 available at https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/nga/2006/attorney_general_of_the_federation_and_chioma_ogbonna.html?lng=en&tmpl=htms, accessed 17 September 2016.

²⁷³ Section 13(1) of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003.

trafficked for the purpose of domestic work, but she has also been sexually exploited.²⁷⁴ NAPTIP has reported from the period of July 2004 to 2013 over 6,700 trafficked victim have been rescued. In term of conviction within the same time frame, there have been 205 convictions for human trafficking. As of 2016, it is noted that over 157 cases are being prosecuted.

Table 3.1: Number of Cases Reported/Investigated/Prosecuted and Convicted by the Police/NAPTIP for Crime against Children in 2011-12

S/N	Types of Offence	No. of Cases Reported		No. of Cases Investigated		No. of Cases Prosecuted		No of Cases Gain Conviction	
		2011	2012	2011	2012	2011	2012	2011	2012
1	Pornography	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
2	Child Abuse	2	100	2	80	2	5		
3	Child Labour	8	54	8	47	3	17		
4	Rape/Indecent Assault/ Sexual Abuse	1,478	1,488	1,478	1,486	70	71		
5	Sexual Exploitation	143	156	143	152	126	127		29
6	Sexual Behaviour	Nil	Nil	Nil	Nil	Nil	Nil		
7	Child Kidnapping/ Abduction	17	53	17	47	9	9		

Source: The African Commission on Human and People's Rights (2014)

Beyond its enforcement role, NAPTIP engages in actions to prevent or reintegrated victims of trafficking into society. In that respect, it has provided a victim information pack to guide all victims about how they can receive the necessary assistance (see table 3 in Appendix). In collaboration with other organisations, NAPTIP has initiated actions to combat child trafficking and other related matters. The Academy related to the Prevention of Human Trafficking and other related Matters partnered with NAPTIP to train a group of 65 persons composed of law enforcement agents, legal practitioners, youths, educators, community

²⁷⁴ See Attorney General of the Federation v. Joseph Sunday Effiong [FHC/UY/70C/07] Federal Court of Nigeria (15 January 2008). See also UNODC No: NGA013. Available at https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/nga/2008/attorney_general_of_the_federation_v._joseph_sunday_effiong.html?lng=en&tmpl=htms

volunteers, religious groups and journalists. They trained in an Anti-Trafficking Advocacy course.²⁷⁵

3.5.3 Challenges to Enforcement

The constraints encountered by the police force in carrying out its mandate in this area include the complicity of parents and guardians in the trafficking of their minor children and the need for trained psychologists within the force. Some victims do not view themselves as having been exploited; indeed, they prefer to consider their situation as one of empowerment, as they had the opportunity to earn. As stated earlier, it is difficult to get people to testify as witnesses due to fear of reprisals, but the biggest challenge that the police face, however, is a lack of funds.²⁷⁶ Challenges to the effective enforcement mandate recognised by the Immigration Service involve the inadequate training of relevant officers on the end results of trafficking, the lack of capacity to detect victims and traffickers, inadequate training in the treatment of victims and traffickers and constraints in inter-agency relations between the police and the Immigration Service.²⁷⁷

Although the action of law enforcement agencies appears satisfactory, questions remain as for why despite legal reforms and well-established law enforcement agencies the prospect of total elimination is a farfetched. Thus, while it could be said that law and policies heavily weight in the balance of human trafficking elimination, their impact are yet to be effective. Hence revisiting some crucial questions need immediate answers.

Several contributing factors to human trafficking as well as child trafficking are to be addressed. These show that there gaps between the law and policy making process and the management of deeply rooted societal facts. As underscored by Ume-Ezeoke, the ineffectiveness of societal norms and values weakened family nets, and ignorant parents are amongst other issues that are often undervalued by policy and law makers. Indeed issues such as low level of education, inadequate training and, employment opportunities create a strong

²⁷⁵ See International Centre for Investigative Reporting, 'Group Trains 65 Anti-human Trafficking Campaigners'. Available at <http://icirnigeria.org/group-trains-65-anti-human-trafficking-campaigners/>, accessed 18 September 2016.

²⁷⁶ See ILO, 'Review of Legislation and Policies in Nigeria on Human Trafficking and Forced Labour: Action Programme Against Trafficking and Forced Labour in West Africa', available at http://www.ilo.org/global/topics/forced-labour/publications/WCMS_083149/lang--en/index.htm, accessed 2 March 2015.

²⁷⁷ Ibid.

desire to migrate in search of economic and social wellbeing. Moreover, as with trafficking, the erroneous belief by victims that the streets of most European countries and America are laced with Euro and Dollars makes matters more complex. This social fact is worsened by the involvement of international organised crime groups. Unfortunately, non-availability of adequate legislation on human trafficking in most developing countries or where available, the legislation is not stringent enough to deter traffickers.²⁷⁸

When cooperation does not function properly due to the lack of extradition treaty between Nigeria and the Netherlands the opportunity to prosecute an offender is missed by the criminal justice system. In *Attorney General of the Federation and Kingsley Edegbe* a case related to cross-border criminal activity involving human trafficking, the offender could not be extradited to face charges. From the fact of the case, it emerges that *the Dutch government as part of Operation KOOLVIS uncovered a recurring pattern in the stories told by Nigerian girls in Dutch asylum centres. Mr Edegbe was one of the suspected members of an international human trafficking syndicate. The Dutch Police authorities had successfully prosecuted three (3) other members of the human trafficking syndicate in Netherlands who worked with Kingsley Edegbe as their partner in Nigeria. They are now serving various jail terms in Netherland ranging from seven to fifteen years. As a result of the successful prosecution of the members of the human trafficking syndicate in Netherlands, the Government of the Netherland made a request to the Attorney General of the Federation and Minister of Justice for the extradition of Mr. Kingsley Edegbe to face trial in Netherland for his involvement in human trafficking.* The Judge ruled in the respondent's favour, stating that the application by the Netherlands was not made on the basis of an extradition treaty between the two countries and that the signing and ratification of United Nations Convention against Transnational Crime (UNTOC) with its protocols by the Nigerian and Netherlands did not signify a treaty. The *Attorney General of the Federation and Kingsley Edegbe* is a recent case that should appeal to Nigeria and partner countries in combatting human trafficking.²⁷⁹

²⁷⁸ See Juliet Ume-Ezeoke, 'Desk Review for the Programme of Action Against Trafficking in Minors and Young Women from Nigeria into Italy for the Purpose of Sexual Exploitation' Unicri/Unodc Project on Trafficking with Funding from Italian Government

²⁷⁹ See *Attorney General of the Federation and Kingsley Edegbe* [FHC/ABJ/CS/9072012] Federal High Court of Nigeria, Abuja Judicial Division (1 July 2014). See UNODC No: NGAx004. Available at https://www.unodc.org/cld/case-law-doc/criminalgroupcrimetype/nga/2014/attorney_general_of_the_federation_and_kingsley_edegbe.html?lng=en&tmpl=htms, accessed 17 September 2016.

This case has revealed some gaps in knowledge about the application of extradition laws in a serious case such as human trafficking. However, the Nigerian court has declared that the term of two years imprisonment inflicted to a child trafficker, *serves as a deterrent to others*, it does not appear severe enough to deter existing or future traffickers. The term of imprisonment between seven and fifteen years inflicted to traffickers caught in the Netherlands seems to be an effective deterrent. Moreover, it is an imperative for Nigeria to evaluate its extradition treaties with the new destination for traffickers.

It should be recalled that whereas the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2015 is the current legal framework for child trafficking and the NAPTIP is the institutional frameworks. Although they are not exclusively for child trafficking, for the purpose of this research they are the two relevant elements for addressing the phenomenon in Nigeria. NAPTIP as an Agency was empowered to enforce the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003. Hence NAPTIP has been actively engaged in combatting human trafficking for over thirteen years.

The International Labour Organisation has observed that *impunity is a major root cause of human trafficking. In order to end impunity of those reaping high profits from trafficking, strict enforcement of laws and regulations is required. The ILO Forced Labour Convention calls for “penalties imposed by law that are really adequate and strictly enforced” (Art. 25). The gap between the number of estimated and identified victims still remains puzzlingly high. It can be explained, in part, by the many obstacles that still hamper effective law enforcement.*²⁸⁰

As an ILO member state a been cited as the main source of trafficked persons including children in the African sub-region as well as Europe, Nigeria has been under growing pressure increase its efforts at all levels to halt child trafficking. It transpires from the ILO’s observations that trafficking offenders are not punished enough by national laws. Nigeria’s response to such observation was positive. As a result, some penalties were increased in order to deter a criminal. Indeed the 2005 Act amends the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003, No. 24 to expand its scope from investigation to the prosecution of human traffickers, seizure of properties and forfeiture. The penalties for

²⁸⁰ See ILO, ‘ILO Action against Trafficking in Human Beings’. Available http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_090356.pdf, accessed 07 September 2016.

labour trafficking increased to five years imprisonment and/or a \$670 fine. For trafficking of children, the penalties increased from 5 years to ten years imprisonment.

The amendment to Trafficking Act, 2003 allows the 2005 Act to expand its scope from investigation to the prosecution of traffickers, and the seizure of properties. The penalties for labour trafficking increase to five years imprisonment and/or a \$670 fine. For trafficking of children, the penalties increased from 5 years to ten years imprisonment. From its exclusive role has an enforcement Agency NAPTIP engaged actively in actions other than investigation and prosecution.

The trafficking activities especially child trafficking is more complex due to the socio-cultural environment of Nigeria hence an enforcement agency should be exclusively focused on the issue justifying its establishment. Although these actions have been devolved to the Public Enlightenment Department, it could prove difficult to achieve the expected results. Actions should be left to NGOs and other structures separated from government bodies. Notwithstanding the tough nature of the 2005 law, the Nigerian authorities pushed for another amendment. This time, the 2005 version of the Trafficking in Persons (Prohibition) Law Enforcement and Administration (Amendment) Act has been repealed then Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2015 was enacted. The 2015 version seeks to deal with the phenomenon of human trafficking once for all in Nigeria. Hence the minimum of seven years imprisonment or a minimum of fine for N1 million (\$ 3, 172.090) for offenders was imposed instead of the five years jail term of a fine of not less than N1 million (\$ 3, 172.090). Successive Amendment of the trafficking law and the reforms of the NAPTIP mechanisms reveal that human trafficking is a very challenging issue not only for the Government but also for law enforcement agencies. It is worth noting that the state of child trafficking in Nigeria after eleven years of creating the Public Enlightenment Department within NAPTIP and two amendments to the human trafficking law has not improved, the phenomenon is rampant.

In such context, the issue of child trafficking remains a matter of urgency. It appears that the adoption of new strategies should be devised. The intensive activities of local NGOs and international NGOs involved in the combat against child trafficking have not put a halt to the criminal activity either. The further question can be raised about the sincerity some of the government officials in the narrative about eradicating child trafficking in Nigeria. The 2016 Trafficking in Persons Report of the US Department of State indicates that however the

Nigerian government is making significant efforts, it does not fully comply with trafficking standards. The report indicates that the issue of combatting child trafficking became more complex because corruption is a generalised problem in Nigeria.²⁸¹

Following accusations that Nigerian officials subjected children in Internally Displaced Person (IDP) camps in northeast Nigeria to labour and sex trafficking, the Government convened a multi-agency taskforce including NAPTIP, security forces, and an international organisation to investigate such allegations. Paradoxically the Government concluded that there was no evidence of child trafficking. Moreover, it is observed that the Government did not report any other investigations, prosecutions, or convictions of government officials complicit in trafficking offences.²⁸² Another challenge to law enforcement is the recurring strikes in the public service. The US Department of State observed that a three-month strike by the judiciary had affected the conviction rate which fell from 30 in 2014 to 24 in 2015.²⁸³ From a holistic approach, it could be asserted that however the legal framework and the institutional framework to child trafficking are regarded as the most comprehensive element for combatting human trafficking, their efficacy is yet to be proven.

Conclusion

This chapter examined the contextual approach to child protection in Nigeria. It appears that child protection remains a complex and controversial issue in this West African country.

Upon scouring the various federal legal instruments, it can be asserted that Nigeria has strong legal frameworks in place to address the different aspects of the human trafficking process. This assertion is made because, in furthering the action undertaken by the federal state, some of the 37 Nigerian states have endeavoured to deal with the issue in accordance with their local or contextual circumstances

The need to protect the child in Nigeria should be perceived through various angles. However, traditional settings, parents and the State must know and understand how vital their roles are in protecting children. More importantly, they should understand the purpose of protecting a child in society. It should, therefore, be agreed with Stanley that ‘one of the main

²⁸¹ *ibid.*

²⁸² See US Department of State (Office to Monitor and Combat Trafficking in Persons), ‘2016 Trafficking in Persons Report: Nigeria’. Available at <http://www.state.gov/j/tip/rls/tiprpt/countries/2016/258834.htm>, accessed 19 September 2016.

²⁸³ *ibid.*

reason that should motivate every society is the fact that the children and youth of today will play a central role in the future environment – not only that related to climate change but intellectual, social and economic capability as well.²⁸⁴ From this standpoint, the cultural and legal perspectives on child protection in the context of human trafficking should lead to a comprehensive understanding of current priorities in asserting the best interest of the child. This chapter showed that Nigeria adopted a revolutionary and dynamic approach to child protection amid the growing concerns about child trafficking.

The promulgation of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2003 and the establishment of the National Agency for the Prohibition of Trafficking In person (NAPTIP) came as the most adequate legal and institutional responses to the alarming issue of human trafficking. However the two elements are exclusively designated to halt human trafficking in Nigeria, they are significant additions to other laws and enforcement agencies that were already dealing with trafficking incidentally. The penal code, the police, the immigration, and, the custom are among other elements that addressed human trafficking in person with a particular focus on child trafficking. Despite the strengthening of the legal and institutional environment to combat trafficking in Nigeria, the problem endures. Such state of affairs leads to the analysis of the nature of the problem and its societal impact in Nigeria. The quest for the adequate and definite response to the problem requires a holistic approach to response approach and a paradigm shift in perception.

²⁸⁴ F Stanley, 'The importance of caring for children' (2007) 76 Family Matters 44, 47.

Chapter 4

Child Trafficking in Nigeria: Nature of the Problem and Societal Impacts

Introduction

Trafficking in human is a contemporary and persisting phenomenon in Nigerian society. Marinova and James write that: ‘trafficking is a transnational crime that encompasses not only women but also children and men. It includes not only sex trafficking but also trafficking for the purposes of labor and organ transplants.’²⁸⁵ From this definition, it appears that trafficking in human is an illegal trade that exists across the globe. Its dynamic nature and various mechanisms put in place by traffickers render the issues more challenging for law and policy makers in their various attempts to provide the appropriate responses. Human trafficking comprises the issue of child trafficking that has drawn the attention of the world community recent years. However, the complex nature of child trafficking in Nigeria is appealing because the authorities’ attitude towards the issue also seems paradoxical.

Lee observes that: ‘social anxieties and moral indignation about the abuse of innocent children are important precursors to the contemporary trafficking discourse.’²⁸⁶ From this observation, emphasis should be placed on the current state of affairs regarding child trafficking in Nigerian society. Hence this chapter examines the socio-economic context of the issue in Nigerian Society.

The chapter examines the similarities between human trafficking in general and child trafficking in particular because the practices are often described as slavery-like practices. Hence the chapter examines the general perception about human trafficking in Nigerian society. The chapter also shows that the scale of child trafficking in Nigeria cannot be easily apprehended due to the quasi-inexistence of data in relations to the trade. It is evident that several factors participate to the dynamic of child trafficking in Nigeria. Hence the chapter examines their nature and influences. The chapter places an emphasis on the link between child trafficking and the persisting child labour in most West African countries.

²⁸⁵ Nadejda K Marinova and Patrick James, ‘The Tragedy of Human Trafficking: Competing Theories and European Evidence’ (2012) 8 Foreign Policy Analysis 231, 253.

²⁸⁶ Maggy Lee, *Trafficking and Global Crime Control* (Sage, London 2011).

Therefore this chapter attempts to show that child trafficking is a hampering phenomenon instead of a lucrative trade for the communities that practice it in Nigeria. Moreover, it is a predicament for a society such as Nigeria that endeavoured to embrace modern and progressive values with the protection of human rights as a sacrosanct principle.

4.1 Understanding the Practice and its Origin

4.1.1 A Slavery-like Practice

First and foremost the concept of child trafficking can be incorporated into the general concept of human trafficking. It could be agreed with Mollema that trafficking in persons is a much wider concept which includes trafficking for sexual exploitation, forced labour, armed conflict, child soldiers, irregular adoption, servitude, forced marriage, begging and the removal of human organs and body tissues.²⁸⁷ Pending the adoption of a comprehensive Human Trafficking Act, the above-fragmented laws are the only legislative measures available to charge people engaged in human trafficking.²⁸⁸

Child trafficking and women trafficking are often discussed on the same platforms.²⁸⁹ Unfortunately, these two categories of persons are often easily duped by recruiters into the sex trade and other domestic, agricultural, and commercial purposes. Trafficking in children has a long history in Africa²⁹⁰ in general and in Nigeria in particular. Indeed Africa is a central part of the history of trafficking in children because of its involvement in the global trade in slaves.²⁹¹ As of Nigeria, Eltis observes that ‘In mid-nineteenth-century south-east Nigeria, there were three distinct economic zones. These radiated inland from the coastal trading states with their reliance on slaves as canoe men and porter, through the palm oil belt with its small-scale producers and a mild form of domestic servitude, to the third and more

²⁸⁷ Nina Mollema, ‘Combating Human Trafficking in South Africa: A Comparative Legal Study’ (Thesis, University of South Africa 2013).

²⁸⁸ *ibid.*

²⁸⁹ Either the issues are dealt with in single legal instruments or discussed in conferences.

²⁹⁰ Suzanne Miers and Richard L Roberts, *The End of Slavery in Africa* (University of Wisconsin Press, Madison 1988).

²⁹¹ Benjamin N Lawrence and Richard L Roberts, ‘Contextualizing TRAFFICKING IN Women and Children in Africa’ in Benjamin N Lawrence and Richards L Roberts (eds) *Trafficking in Slavery’s Wake : Law and the Experience of Women and Children in Africa* (Ohio University Press, 2012) 1.

lightly populated northern and eastern areas with their slave settlements devoted to yam production.’²⁹²

It is evident that ‘Human trafficking has historical parallels with the traffic and exploitation of black African in previous centuries when the colonial slave trade was considered not only a lawful but desirable branch of commerce by European empires.’²⁹³ According to Okogbule, ‘Slave trade may simply be described as a trade in human beings; it thrived in Africa between the 16th and 18th centuries and peaked in the latter century.’²⁹⁴ However, 200 years later, this inhuman trade has re-emerged albeit in the form of human trafficking. Principally motivated by the quest for huge financial benefits, it involves gross violations of human rights.²⁹⁵

Comparing human trafficking in general and trafficking in children in particular with slavery is justified by the similarities in characteristics of both practices.²⁹⁶ It should be therefore be agreed with Akor that ‘the history of human trafficking, which includes trafficking of women and children, cannot be completely divorced from the phenomenon of slavery.’²⁹⁷ Akor’s observation is pertinent because slavery and trafficking have in common, the acquisition and transportation of human beings across local, national and international borders for servitude, with or without the consent of the trafficked person(s).²⁹⁸

Undoubtedly, the subject of both practices is a human being. Whereas slavery was primarily concerned with able-bodied African adults,²⁹⁹ trafficking in children is specifically concerned with children. However, both have human beings as subject matters. Slavery and trafficking in children are both concerned with transportation and exploitation of human being. More importantly, slavery and trafficking in children are equally destructive of the subject’s human

²⁹² David Eltis, *Economic Growth and the Ending of the Transatlantic Slave Trade* (Oxford University Press, Oxford 1987) 226.

²⁹³ Maggy Lee, *Trafficking and Global Crime Control* (Sage, London 2011) 1.

²⁹⁴ Nlerum S Okogbule, ‘Combating the “New Slavery” in Nigeria: An Appraisal of Legal and Policy Responses to Human Trafficking’ (2013) 57 *Journal of African Law* 57, 80.

²⁹⁵ *ibid.*

²⁹⁶ Maggy Lee (n 2).

²⁹⁷ Linus Akor, *Trafficking of Women in Nigeria: Causes, Consequences and the Way Forward* (2011) 2 *Corvinus Journal of Sociology and Social Policy* 89, 110.

²⁹⁸ *ibid.*

²⁹⁹ Children were equally enslaved during the slave trade. Scholarship on slavery in Africa shows that traffickers in the Indian Ocean region preferred children between the ages of ten and twenty. See Elisabeth McMahon, ‘Trafficking and Reenslavement: The social vulnerability of women and children in nineteenth-century East – Africa’ in Benjamin N Lawrence and Richards L Roberts (eds) *Trafficking in Slavery’s Wake : Law and the Experience of Women and Children in Africa* (Ohio University Press, Athens 2012) 33.

rights and dignity. The significance of human trafficking in general and child trafficking, in particular, must be apprehended through the perspective that patterns of the practice have been anchored to Nigerian society since the era of tolerated and widespread slavery.

4.1.2 Perceiving Human Trafficking in Nigerian Society

The geographical dynamics of human trafficking in Nigeria comprehensively includes the internal trafficking and the cross-border trafficking. A UNESCO research study titled “Human Trafficking, especially of Women and Children in West Africa (Benin, Togo, Nigeria) has described Nigeria as being the leading countries in human trafficking with cross-border and internal trafficking in Africa.”³⁰⁰ While the Research recalls that trafficking in persons is the third largest crime after economic fraud and the drug trade, it underscores the fact that internationally trafficked Nigerians come from all parts of Nigeria. Most of the victims of trafficking, essentially women and children, are from rural communities. The extent of the problem reveals that human trafficking is a phenomenon gripping every region of Nigeria. Each state of the Federal Republic faces the dynamic phenomena. The research shows that trafficking to these regions is predominantly for exploitative domestic work, farm labour and prostitution.³⁰¹

Nigeria’s role in international trafficking became considerable in recent years. The destination of trafficked women and children became varied. Unlike previously where victims of trafficking were transported in the West African sub-region, they are now sent as far as Europe and Asia. The countries of destination Nigerian trafficked women and children in West Africa are Côte d’Ivoire, Togo, Republic of Benin, Equatorial Guinea, Cameroon, Gabon and Guinea where the victims are destined to work mostly as domestic servants, in prostitution, and on farm plantations. Common European destinations for trafficked women and children from Nigeria are Belgium, Germany, Italy, Spain, the Netherlands and the United Kingdom. However, in the Middle East which is another destination, victims are essentially sent to Libya and Saudi Arabia..³⁰²

³⁰⁰ Human Trafficking in Nigeria: Root Causes and Recommendations Policy Paper No 14.2(E), document available at <http://unesdoc.unesco.org/images/0014/001478/147844e.pdf>, accessed 03 October 2016.

³⁰¹ *ibid.*

³⁰² *ibid.*

For instance in *Hon. Attorney General of the Federation v. Hussaina Ibrahim and Idris Aminus*, a victim of trafficking, was taken from Nigeria to Saudi Arabia. From the fact of the case it derives that *'According to the testimony provided by five witnesses, the defendants arranged for the victim to go travel to Saudi Arabia to work as a prostitute. It was not clear whether the victim actually knew that she would serve as a prostitute before she got to Saudi Arabia. The second defendant confiscated the victim's passport. The first defendant sent money to the second defendant to facilitate the transport of the victim to Saudi Arabia. After the victim arrived, she was taken to the house of one of the defendants. The victim was told that she owed expenses of her travel to the first defendant and thus had to work as a prostitute. The first defendant took whatever money she earned from her work. The victim only received money to buy cosmetics. She was kept locked away and this restriction of freedom remained for three or four weeks until she was deported.'*³⁰³

Trafficking in person seems so crucial in some communities that traffickers usually resort to mystic means to subdue their victims. Olateru-Olagbegi observes that 'Recruitment, particularly in Nigeria, is often sealed with the subjection of victims and families to juju or voodoo traditional oaths of secrecy.'³⁰⁴ Some of the rituals involve the use of their blood and other body parts, but regardless of how odious, the sole aim is to instil fear in victims and their unwitting families that prevent them from ever reneging.'³⁰⁵

The perception of human trafficking in Nigerian society appears complex due to the multiplicity of the underpinning factors and beliefs in regards to the issue. For example, efforts to extract victims of trafficking from the claws of traffickers and users results in returning some people back to Nigeria in order to reunite them with their families. However, the attitude to rescued victims of trafficking is often regarded as morally unacceptable. From a sociologic perspective, it appears that victims of trafficking are stereotyped and isolated in their return to Nigeria.³⁰⁶

³⁰³ *Hon. Attorney General of the Federation v. Hussaina Ibrahim and Idris Aminus* [K/1TPP/2003] High Court of Justice, Kano State of Nigeria (26 July 2005).

³⁰⁴ Bisi Olateru-Olagbegi, *'Path to Women's Development: Thoughts Vision and Passion'* (Women's Consortium of Nigeria, Lagos 2013) 7.

³⁰⁵ *ibid.*

³⁰⁶ Francisca Isi Omoro, 'Vulnerability of Nigerian Secondary School to Human Sex Trafficking in Nigeria' (2009) 13 *African Journal of Reproductive Health* 33, 48.

4.1.3 The Specific Nature of Child Centred-Trafficking

According to UNICEF, there are diverse reasons why many Nigerian children are vulnerable to trafficking, including widespread poverty, large family size, rapid urbanisation with deteriorating public services, low literacy levels and high school dropout rates. More significantly, the demand for cheap workers in the commercial sex sector contributes to the growth of the phenomenon and the thriving of criminal networks. UNICEF reports that heads of large family, often overburdened with the care of too many children, are prone to the trafficker's subterfuges entrusting some of their children with city residents or even strangers promising a better life for them.³⁰⁷ As indicated hereinbefore; it is frequent that traffickers exploit the trust of people rooted in a constant and well accepted, cultural practice of placement and fostering which is part of the extended family safety net in West Africa. It is common that poor, desperate, and ill-informed parents co-operate with the traffickers by giving away their children in exchange for a fee.³⁰⁸ Once in the hands of their unscrupulous guardians, the victims are increasingly trafficked and exploited for financial gain. The poor, disadvantaged economic conditions in Nigeria have led to high rate of unemployment and increasing school drop out. Consequently, a large pool of inactive unengaged children and adolescents occurred across Nigeria. These children and adolescents are much more vulnerable to trafficking than their peers who attend schools.³⁰⁹

From UNICEF's analysis, it appears that the specificity of child centre-trafficking resides in the fact that the children not only cannot express their opinion in the decision making. Whether this is with the participation of their parent or guardians, about the trafficking but also due to their young age, they are unable to challenge the users on various violation of their fundamental rights during the exploitation process. Unlike adult women or men who can facilitate their rescue operations in the event of grave violations, children are defenceless hence more vulnerable. Whereas adults, to some extent, can ask for salary or payment at the stage of exploitation or employment, children cannot make any request in this respect; they cannot engage in any negotiation with regard to their exploitation or employment.

³⁰⁷ See UNICEF Factsheet on Child Trafficking in Nigeria, available at http://www.unicef.org/wcaro/WCARO_Nigeria_Factsheets_ChildTrafficking.pdf, accessed 22 October 2014

³⁰⁸ *ibid.*

³⁰⁹ See UNICEF Factsheet on Child Trafficking in Nigeria, available at http://www.unicef.org/wcaro/WCARO_Nigeria_Factsheets_ChildTrafficking.pdf, accessed 22 October 2014.

From the sociological perspectives, it could be said that children in Nigerian society are seen as an economic asset thus as ‘non-rights holders’.³¹⁰ Based on such perception, the idealisation of the child as an object that can be subjected to pecuniary transactions, obviously, cannot be viewed as a socially disturbing approach. This analysis recalls the ongoing debate about child labour and the rights of the child in employment. From Garg’s analysis, it is confirmed that users prefer children to adults on the assumption that children possess little legal and political power. The view is that children are easier to exploit than adults because they perform monotonous work without complaining and are easily intimidated. In Nigeria as well as in other regions of the world they are targeted because they cannot form unions, do not receive social security, are ignorant of their legal rights, and can be discharged easily.³¹¹

From a historical and academic aspect, the mutations in the perception of childhood in non-western societies in general and in African societies, in particular, is not documented thus little is known about these temporal mutations, if such process has ever taken place. Hence, in the context of African societies the oral tradition is the plausible explanation for the lack of written records of any possible mutation of the conception of childhood from ancient African societies through modern time. Ayittey argues that primitive African societies have also encountered most of the historical event that occurred in Western societies although the written testimonial does not exist. He writes that:

“It would be preposterous to believe that African natives have never considered the threat of despotism in their history, never had revolution, and that present day despotism is ‘acceptable to them. Of course, they too had their ‘John Lockes,’ ‘Thomas Paines,’ ‘Adam Smiths and other’ classical liberals.’ They had revolution too-*Kirikiri* in Yoruba political tradition and *itwika* in Gikuyu’s. However, their works and thinking were not put into print but transmitted through the *oral tradition*, which is a poor means of communication over the ages since it relies on memory. Over time some fact get mangle or lost for ever. It generally starts like this: Many years ago...’³¹²

More importantly, the use of young girls in the trafficking process appears to be based on the traditional perception of the girl child within some indigenous communities. Stereotypes and

³¹⁰ Mary B Nwoke, ‘Influence of Cultural value System and Home on Child-Rearing Practices in the Contemporary Nigerian Society’ (2013) 3 Open journal of philosophy 200, 206.

³¹¹ Anjali Garg, ‘A child labor social clause: analysis and proposal for action’ (1999) 31 New York University Journal of International Law and Politics 473.

³¹² Georges B N Ayittey, ‘Traditional institutions and the state of accountability in Africa’ (2010) 77 Social Research 1183.

taboo often account for the early release of the girls into relationship or marriage. Upon such perception, the situation of the girl child in the general conception of the child in society appears to be worse. While the perception of the child in Nigerian society contributes to the enduring of child trafficking, a reference to some elements contributing to the perpetuation of the practice in this section should be understood in the sense that the participants in the trafficking process exploit the weakest point in traditional settings to achieve their goals. Child trafficking being a fact in Nigeria it is necessary to comprehend the scale of the problem.

4.1.4 The Nature and Magnitude of the Problem

The US Department of State admits that the nature of trafficking and its often hidden face makes it extremely difficult to develop accurate statistics on the extent of the phenomenon.³¹³ This fact is the most challenging element for all actors in the combat against trafficking in person in general. In such a complex context, the children victims of trafficking are more disadvantaged given their 'lack of voice' in efforts to reveal the scale of the problem. This fact equally applies to the Nigerian context of child trafficking. The lack of accurate and reliable statistics renders different approaches to combating the problem much more complex. It could be argued that the exact reasons for the lack of accurate statistics are often not explained. However, according to Savona, 'The desire to estimate the incidence of human trafficking has exceeded our ability to deliver useful numbers.'³¹⁴ In regard to the specific case of trafficking figures in Nigeria, the State Department alarmingly asserted that there were no government or NGO estimates on the extent of trafficking available. However, the magnitude of the problem is well knowledged.³¹⁵ This assertion from the Department of State was based on factors, such as the number of deportees returned to Nigeria and reports of victims from Nigeria stranded along trafficking routes, particularly in North African countries.³¹⁶ Moreover, in a survey directed by the International Labour Organisation (ILO)

³¹³US Department of State, 'Trafficking in Persons Report, June 5, 2002', Document available at <http://www.state.gov/documents/organization/10815.pdf>, accessed 3 October 2014.

³¹⁴ Ernesto U Savona, 'Measuring Human Trafficking: Complexities And Pitfalls' (Springer, Berlin 210) 57.

³¹⁵ See report of the state department, available at <http://www.state.gov/j/drl/rls/hrrpt/2008/af/119018.htm>, accessed 22 October 2014.

³¹⁶ibid.

which was done in some Nigerian States, it is observed that ‘As yet, there are no reliable estimates of the number of child labourers in Nigeria. The current estimate of 12 million gives no information about the types / categories subsumed under that general category. With respect to child trafficking, there is actually no estimate of the number of children being trafficked annually. Furthermore, there is as yet no empirical study of specific cases of communities engaged in specific aspect of the child trafficking process in the country.’³¹⁷ However in a global context, based on a much older report provided by the State Department in 2001 it was estimated that over 700,000 men, women, and children across the world were bought, sold, moved and held against their will in slave-like conditions.³¹⁸

Trafficking in person, in general, is difficult to detect from the outset, and this is much more complex in the case of children. The dependence of children on adults and their inability to understand the situation developing around them make the practice of child trafficking simply invisible. This fact leads to the understanding of why victims of child trafficking are usually identified as such only when they engage in various trades and activities for which they were initially trafficked. Reports and statistics are usually provided on the number of children found or rescued from various illegal or hazardous activities in which children are trapped. In highlighting the significance of Adepoju’s observation that “no single research methodology can adequately capture” the issue’s dimensions,³¹⁹ Otomola rightly puts that ‘in contrast to the child labor survey, data on trafficking remains inadequate, and the complexities of seasonal labor impede quantification.’³²⁰

Hence, in the absence of accurate statistics about child trafficking in Nigeria efforts are multiplied at the national level to tackle the phenomenon by all means. In that perspective, further clarifications can be found in the report of the US Department State in regard to the FOS/ILO National Child Labour Survey conducted in 2003. It was estimated that 15 million

³¹⁷ ILO, ‘Survey of Child Trafficking in Asewele, Ondo state Nigeria’. Available at http://www.ilo.org/wcmsp5/groups/public/---africa/---ro-addis_ababa/---ilo-abuja/documents/publication/wcms_303652.pdf, accessed 15 September 2016.

³¹⁸ US Department of State, ‘Trafficking in Persons Report, June 5, 2002’, Document available at <http://www.state.gov/documents/organization/10815.pdf>, accessed 3 October 2014.

³¹⁹ Aderanti Adepoju, ‘Review of Research and Data on Human Trafficking in sub-Saharan Africa’ (2005) 43 International Migration 75, 98.

³²⁰ Shola Omotola, ‘Combating Poverty for Sustainable Human Development in Nigeria: The Continuing Struggle’ (2008) 12 Journal of Poverty 496, 517. See also Aderanti Adepoju, ‘Review of Research and Data on Human Trafficking in sub-Saharan Africa’ (2005) 43 International Migration 75, 98.

children were engaged in child labour in Nigeria with 40 percent of them at the risk of being trafficked within Nigeria and abroad to be engaged in domestic and forced labour, prostitution, entertainment, pornography, armed conflict, and sometimes ritual killings.³²¹

In the meantime, it should be admitted that the lack of consistency in the various survey conducted on both child trafficking and child labour evidences the urgency of the problem. In such context, efforts to tackle the phenomena yield no satisfactory result. Nigeria being a source, transit and destination country for child trafficking, NAPTIP/UNICEF assessment of Child Trafficking in Southern Nigerian State in 2004 revealed that 46 percent of the victims returned to Nigeria were children, with a female to male ratio of 7:3. It is reported that 46 percent of the children are engaged in prostitution, 21 percent in domestic labour, 15 percent in forced labour and 8 percent in entertainment.³²² The internal trafficking of children in Nigeria was also mentioned. As to the internal trafficking, it is reported that 32 percent of the trafficked children were involved in forced labour, 31 percent in domestic labour and 30 percent in prostitution.³²³ More significantly it is revealed that through a joint effort of UNICEF in Nigeria and Benin more than 500 children from the Republic of Benin were rescued from granite quarries between October and December 2003 and repatriated back to their country of origin.³²⁴

The US State Department in its report stated that traffickers use violence, intimidation threats to compel victims to engage in sexual acts or to work under conditions comparable to slavery for the traffickers' financial gain.³²⁵ 'Traffickers often move victims from their home communities to other areas -within their country of origin or to foreign countries. The victims are then kept in isolation and unable to be familiar with the culture or to speak the language of the country of destination.³²⁶ In many cases, the victims do not have immigration documents, or they have fraudulent documents provided by the traffickers. After being deceived by the traffickers, the victims lose all and contact with their support network of friend and family. In such circumstances, deceived by the traffickers. Thus they become As

³²¹ *ibid.*

³²² See Report of the State Department, available at <http://www.state.gov/j/drl/rls/hrrpt/2008/af/119018.htm>, accessed 22 October 2014.

³²³ *ibid.*

³²⁴ *ibid.*

³²⁵ US Department of State, 'Trafficking in Persons Report, June 5, 2002', Document available at <http://www.state.gov/documents/organization/10815.pdf>, accessed 3 October 2014.

³²⁶ *ibid.*

they become more vulnerable to the traffickers' demands, and threats.'³²⁷ Child trafficking is despicable in that it violates the rights of children at every stage in the chain. The removal of children from their family environment; their transportation and arrival in another country; as well as the intolerable conditions in which they find themselves living and working cannot be justified on any ground.³²⁸ The despicable nature of problem transpires in the speech of Pahad when he asserts that:

“Trafficking in human beings is morally reprehensible, it is illegal; it robs people of their dignity and violates their fundamental human rights. It objectifies and commodifies individuals, preys on the vulnerable and the marginalized, it perpetuates their vulnerabilities and it repeatedly victimises and re-victimizes those who are the objects of trafficking.”³²⁹

Although child trafficking is frequently described as the most despicable trade, every attempt to eradicate the practice remained unsuccessful. The next section focuses on the typology of stakeholders involved in child trafficking in Nigeria.

4.2 Typology of the Stakeholders

Child trafficking has become a thriving trade in West Africa. Hence, an informal structure has been put in place to carry out the activity.³³⁰ In such context, there are stakeholders whose interests vary according to their position in the chain. The stakeholders or participants to the trade contribute to the perpetuation and the dynamic of the phenomenon in the region. Thus, a better understanding of the typology of the suppliers and the geographical location of the high volume of supply in Nigeria is necessary in an attempt to eradicate the phenomenon.

Equally, an accurate determination of the typology of the traffickers and users alike is significant to all endeavours to tackle the problem in Nigeria and the rest of West Africa. It must be noted that several categories of actors participate to the dynamic of child trafficking.

³²⁷ *ibid.*

³²⁸ UNICEF, 'Child trafficking in West Africa: Policy Responses' (Unicef Innocenti Research Centre, Florence 2002) 4.

³²⁹ Dr EG Pahad (Minister in the The Presidency at the Global Initiative to Counter Human Trafficking) Opening Address at Global Initiative to Fight Human Trafficking Interfaith Dialogue (Unpublished paper presented at Conference on Global Initiative to Fight Human Trafficking Interfaith Dialogue, UNODC and Sexual Offences & Community Affairs (SOCA) Unit within the National Prosecuting Authority (NPA) of South Africa, Cape Town 3-5 Oct 2007) 1.

³³⁰ Sally Cameron and Edward Newman, Trafficking in Humans: Structural Factors' in Sally Cameron and Edward Newman (eds), *Trafficking in Humans: Social, Cultural and Political Dimensions* (United Nations University Press, Tokyo 2008) 21.

For example, the process of child trafficking in Nigeria can involve suppliers, transporters who collaborate with traffickers, traditional priests, corrupt police officials, corrupt border guards.³³¹ However, the prominent participants in the trade are the victims, the suppliers and the users.

4. 2.1 Supply Side

The supply is usually operated by family members. They could be the children's parents or relatives who knowingly or inadvertently release the children into the hands of traffickers. Where the participation of the supplier is done knowingly, transactions between them and traffickers are made accordingly, and the child as a commodity is transferred to the trafficker. Whereas, when the supply is made after the parent or guardian has been duped it could not be said that the consent to participate in the trade has existed. However, the activity is still recognised as a trade because, the traffickers in return for money, convey the children to various users for exploitative purposes.³³²

As examined in previous sections, the typology of the suppliers is shaped by the cultural context of the areas where the children are originated. Although poverty appears to be the common denominator, some communities are less resilient to release their child than others. From this viewpoint, a community where fosterage is common will easily release the child in the event of extreme poverty because the customary practice created a habit whereby parents and relatives easily part with their children.³³³ The cultural element, therefore, leads to the understanding of the geographical dynamics of human trafficking in Nigeria in general. Child trafficking being apprehended in the broad context of human trafficking the narrative on the geographical dynamics of human trafficking equally applies to child trafficking. In the policy paper based on a UNESCO research study on "Human Trafficking, especially of Women and Children in West Africa (Benin, Togo, and Nigeria) it is reported that: in the last two decades, there has been an increase in the internal trafficking of Nigerian women and children. A considerable

³³¹ Bisi Olateru-Olagbegi, *'Path to Women's Development: Thoughts Vision and Passion'* (n 20) 95.

³³² John R Barner et al., *Socio-economic Inequality, Human Trafficking, and the Global Slave Trade'* (2014) 4 *Societies* 148, 160.

³³³ See Bisi Olateru-Olagbegi, *'Path to Women's Development: Thoughts Vision and Passion'* (Women's Consortium of n 20) 57.

number of people are trafficked from rural communities³³⁴ to cities such as Lagos, Abeokuta, Ibadan, Kano, Kaduna, Calabar and Port Harcourt. Trafficking to these regions is predominantly for exploitative domestic work, farm labour and prostitution, with incidents of human trafficking and forced labour particularly prevalent in Lagos.³³⁵

Child trafficking is often dissociated from human trafficking because the former is concerned with a specific category of persons whereas the latter is concerned not only with both adults and children but it is also with both sexes. Identifying the source of trafficked children with that of adults evidences the fact that the practice can only flourish where contributing factors are present. Hence, the geographical regions of Nigeria underscored in the policy paper are the most 'receptive' to the trade.

4.2.2 The Traffickers

Child trafficking being viewed as a trade, the actual traffickers are pivotal in the dealings. The traffickers are without a doubt the intermediary between the suppliers and the users. In the chain, traffickers could also be regarded as suppliers for the users when they transport the children to farms owners internally, in Nigeria or externally Cote d'Ivoire, Gabon, Cameroon or Ghana. They are the supply side for farms, industrial plants, factories, workshops, hotels or households that require workers. The role of the trafficker is described in the policy paper based on a UNESCO research study on Trafficking in Person in the West African region as follow:

“The trafficker is the link between supply and demand, on the one hand increasing supply through the recruitment, deception, transportation and exploitation process, and on the other hand boosting demand by providing easy access to the trafficked persons. This includes recruiters as well as transporters, receivers, pimps, brothel-keepers, corrupt border guards, and producers of false documentation, all of whom benefit as the trafficked persons pass

³³⁴ The rural areas are essentially located in Oyo, Osun and Ogun States in the South-West; Akwa-Ibom, Cross River, Bayelsa States in the South-South; Ebonyi and Imo in the South East; Benue, Niger, and Kwara States in the Middle Belt.

³³⁵ Human Trafficking in Nigeria: Root Causes and Recommendations Policy Paper No 14.2(E), document available at <http://unesdoc.unesco.org/images/0014/001478/147844e.pdf>, accessed 31 October 2014.

through their hands. The trafficker is often part of the extended family, has links with the family nucleus, or is someone known within the local community.”³³⁶

In the light of this characterisation of the trafficker, it appears that traffickers are not always strangers to the children’s family environment. Some traffickers are even family members. In that quality, the trafficker will play the role of supplier and trafficker. No intermediary hence is at play, therefore, and this evidenced the complex nature of the stakeholders in the child trafficking business. Moreover, the complex nature of the typology of trafficker has been characterised by Mollema when she observes that:

“Traffickers could be family members, parents, partners, friends, acquaintances, pimps, business contacts, strangers or any other person who lures any person, by means of enticement, force, threats, the use of hypnotic drugs or by other means, for the purposes of sale, forced prostitution, forced labour and servitude. Many traffickers come from the villages, communities and district of their victims and rely on connections and relationships they have in these areas to operate. Some have loose informal networks from source to border and to the destination point.”³³⁷

The characteristics highlighted by Mollema are peculiar to the African context of child trafficking. Hence, in Nigeria, the lax interpersonal and inter-community relations based on trust seem to create the type of individuals making the issues of child trafficking much more difficult to counter.³³⁸ In community relations indeed based on trust, it is unimaginable that members of the community conspire to dupe others in matters where the life of young children who are the future of the community is jeopardised.

4.2.3 The Users

If child trafficking is perceived as a trade or business and the trafficked children viewed as a commodity, the demand side or users of trafficked children may be regarded as consumers. As consumers, therefore, they have specific requirements in regard to the type of commodity they demand for. In that respect, the service of child domestic worker will only be required in family houses and other residential premises. The UNESCO research study on “Human Trafficking, especially of Women and Children in West Africa (Benin, Togo, and Nigeria) hereinbefore mentioned, describes the typology of users by noting:

³³⁶ Human Trafficking in Nigeria: Root Causes and Recommendations Policy Paper No 14.2(E), document available at <http://unesdoc.unesco.org/images/0014/001478/147844e.pdf>, accessed 31 October 2014.

³³⁷ Nina Mollema, ‘Combating Human Trafficking in South Africa: A Comparative Legal Study’ (Thesis, University of South Africa 2013).

³³⁸ *ibid.*

“The users of trafficked persons are at the end of a long chain. They can be either the users of sex workers or the heads of farms or shops needing access to cheap labor. Sometimes, prospective employers of trafficked persons directly approach the agents who negotiate with the trafficked persons or their relatives. According to UNICEF, “very often they do not perceive themselves as part of the trafficking network, although they are, in fact, an engine in the machinery of exploitation. Every aspect of the various roles of users requires further research. Users may act as individuals or are networked through access to other illegal activities such as prostitution and sexual abuse of children and forced labour. They may be unaware or unconcerned about trafficking or not perceive themselves as part of the trafficking network.”³³⁹

The child trafficking debate whether it is held at the universal level or national level is purposed to bring about the right approach to overcome the phenomenon. In that respect, it is important to grasp the degree of responsibility every stockholder involved the activity may have. Unlike the traffickers whose responsibility is obvious the suppliers and the users are usually unaware of the subjection of the child to trafficking. Both the parents and guardians ‘prospective’ trafficked children, the users can be duped regarding the subjection of the child to trafficking. Hence the *dolus malice* is the key element in determining the criminal responsibility of any person connected to child trafficking.³⁴⁰

The position of users is equally significant in the quest for an effective response to child trafficking, whether that be through law, policy or social plans. The users, who can also be regarded as employers, resort to the labour of children for various reasons. While the main purpose remains economic gain, the action of users can be the lack of option. Where adult labourers are not available, or the labour regulations in a given country are not favourable to labour relations, the propensity to resort to alternative means of labour force becomes unavoidable. The general observation about scholars’ work on child trafficking is that they remain confined to a mere description of the practice without analysing every possible element sustaining the dynamic of the problem. For example, if a family requires the services of a nanny or a cook, they should be able to liaise with the organisation or agency in charge of placing or supplying the required worker. In Nigeria, these structures are scarce hence informal entities tend to fill the vacuum that should have been filled by legal and legitimate employment or work placement structures. The complex nature of the mechanisms put in

³³⁹ Human Trafficking in Nigeria: Root Causes and Recommendations Policy Paper No 14.2(E), document available at <http://unesdoc.unesco.org/images/0014/001478/147844e.pdf>, accessed 31 October 2014.

³⁴⁰ See Olatundun A Oderinde, ‘The Religio – Cultural Context of Girl-child Trafficking in Nigeria’ (2014) 6 Review of European Studies.

place by trafficking networks demands that every aspect of the problem be dealt with accordingly.

The users or employers of trafficked children who are aware of the status of the child as victims of child trafficking also play a significant role in the dynamic of the phenomenon. Because they not only contribute to hiding the scale and mechanisms of the practice but they also nurture an environment of permanent demand for trafficked children. In the current socio-economic context of Nigeria coupled with the traditional context of some Nigerian communities the supply of children can easily be delivered whenever the demand is made. It appears therefore that the supply is made in accordance with the demand. Therefore, balancing the two sides may help in setting priorities to address challenging issues peculiar to each side. For instance, whereas poverty, that constitutes the principal cause for realising children knowingly or unknowingly to trafficker cannot be easily eradicated in Nigeria, all avenues for users can be closed, making it impossible for them to employ a child. Sadly, this is currently a far fetched. The situation is reinforced by the fact that the users operate illegally in the course of their actions. Moreover, they can easily refrain from delivering basic moral obligation owed to the child under their auspices.

4.2.4 The Trafficked Children (Victims)

Children trafficked internally or externally are obviously the commodity of a lingering and despicable trade. The question as to whether the child fully takes part to the trafficking process arises when some scholars observe that children express a positive view of the trade. For instance, Mollema writes that ‘In many cultures, especially in Africa, children do not consider themselves trafficked victims, but perceive their experiences as migration in search of better opportunities that turned into exploitation.’³⁴¹ Many also do not think of their traffickers as perpetrators of crime and villains; after all, in some instances, the traffickers are parents or close relatives.’³⁴² More specifically, it is observed that in Nigeria, children fall victim to human trafficking because of peer pressure of course nursed by their impoverished environment and the lack of alternative opportunities within their home communities. Hence

³⁴¹ Nina Mollema, ‘Combating Human Trafficking in South Africa: A Comparative Legal Study’ (n 3).

they often seek out traffickers on their own initiative in order to be recruited and sent to cities in the quest of good things and a better life.³⁴³

The prevailing argument in the different observations is that children can play a decisive role in their landing into human trafficking. Although the purpose for the children to surrender to traffickers is the quest for better life in regard to the actual conditions of extreme poverty they live in, there is neither legal nor moral basis to endorsing their endeavour. Hence, it is hard to admit that children have a say in the decision-making process before their surrender to traffickers. The rationale for this is the mere fact that they do not have the legal age to decide for themselves.

More significantly, due to the immoral and despicable nature of the trade and the presence of adults in the trade, it cannot be successfully argued that children make the decision by themselves. Such arrangement between the child and the adult *per se* amount to child abuse and it come on top of an existing illegal trade that is child trafficking. Whether the children surrendered themselves to the traffickers or given away by their parents or guardians, they remain victims of a despicable trade carried out by adults who are supposed to guarantee their physical and emotional development.

4.3 Child Trafficking and Child Labour Nexus

Among the contemporary forms of human trafficking, trafficking for labour exploitation appears to be the most prominent form in West Africa. While child all of the labourers in West Africa are not supplied through human trafficking, the majority of them are indeed recruited through the channel. It must be noted that most child labourers migrate to wealthier West African countries to seek for work. They usually migrate along with their families. On this particular issue the ILO admitted that:

“Migrants may come from a different part of a country or be foreign workers. Wherever they come from, migrant workers are always heavily disadvantaged regarding pay, social protection, housing and medical protection. The migrant labour force often consists of whole families, although only the head of the family is formally employed. In many countries, children of migrant and seasonal workers work next to their parents but do not figure on the

³⁴² *ibid.*

³⁴³ *ibid.*

payroll. As much work is paid on a piece-rate basis, migrant and seasonal workers need their children to work in order to achieve a living wage.’³⁴⁴

As most people migrate for economic reasons, it obvious that the family including children will engage in lucrative activities. Children are sent to farms quarries, workshops and others activities where they can gain economically. The fact, therefore, is that Instead of sending the children to school; they choose to send them for works.

Child trafficking serves as the most significant supply vehicle for child labour in the sub-region. The general observation about the nexus child trafficking child labour is that ‘trafficked persons typically incur what is known as debt bondage.’³⁴⁵ The initially told they must work to pay off the debt of the transport cost but have no idea how much the debt is, how much they earn, or how long they must work to pay it off.’³⁴⁶ Child labour in agricultural fields is common due to the extensive exploitation of farms and plantation in the sub-region.

More importantly due to the lack, mechanised agriculture in most developing countries alternative means such as manual work and use of traditional tools is prevalent. These means of farming are the most utilised in cocoa plantations, coffee plantations or palm plantations in Cote d’Ivoire, Ghana, Nigeria and other forested regions of the Gulf of Guinea. Child labour on Ghana and Cote d’Ivoire cocoa plantations is a well-documented problem hence globally acknowledged.³⁴⁷ The labour force in cocoa farms in Cote d’Ivoire is essentially supplied by traffickers.³⁴⁸ The work of children is required on plantations on the basis of several considerations. In order to increase the labour force on cocoa farms, children are trafficked from neighbouring countries in the Ecowas regions. The demand aspect here is significant in

³⁴⁴ See ILO/IPEC ‘Tackling hazardous child labour in agriculture Guidance on policy and practice’ (Guidebook 2, International Training Centre of the ILO, Turin 2006) 4. Document available at http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/instructionalmaterial/wcms_110200.pdf, accessed 4 November 2014.

³⁴⁵ Maggy Lee, *Trafficking and Global Crime Control* (Sage, London 2011) 38.

³⁴⁶ *ibid.*

³⁴⁷ See Benjamin N Lawrence, ‘From Child Labor “Problem” to Human Trafficking “Crisis”: Child Advocacy and Anti-Trafficking Legislation in Ghana’ (2010) 78 *International Labor and Working-Class History* 63, 88.

³⁴⁸ Bisi Olateru-Olagbegi, *Path to Women’s Development: Thoughts Vision and Passion* (n 20) 41.

the debate about the displacement of children across the Ecowas region. The US Department of State reported that:

“Cote d'Ivoire is primarily a destination for children trafficked to labor as plantation and other agricultural laborers, as mine workers, and as domestic servants, under conditions in some cases approaching involuntary servitude. Foreign nationals are trafficked from neighboring countries, primarily Mali and Burkina Faso, but also Benin, Togo, Guinea, Ghana, and Nigeria. An age-old pattern of child-migration in search of a better life has been perverted in relatively recent times by intermediaries who "buy" children from families and then place them in jobs where they are often threatened, mistreated, and not free to leave. Some women from Cote d'Ivoire are also trafficked to Europe and the Middle East for purposes of prostitution, and some women from the region are brought to Cote d'Ivoire's large cities for the same reason.”³⁴⁹

As emphasised, child labourers are preferred to adult labourers for various reasons. Among other reasons, Olateru-Olagbegi notes that ‘Trafficked labourers typically have to work without a contract, have no time off, nor insurance, nor access to health or social security services or pay, and often work excessively long hours.’³⁵⁰ More significantly, especially on farms and other hazardous occupations employers or users exploit the ignorance of children about risks. On that particular point, the ILO observes that due to lack of information and experience, children engaging in work do not always perceive danger correctly.³⁵¹ In some cases, they lack the experience to judge a situation, anticipate what will happen and decide quickly what is to be done. Indeed children may not know how to behave when faced with a series of events which will result in an accident, or when an accident has taken place. They are less likely to know what to do when accidents occur and lack familiarity with the machines, tools and equipment they are expected to use. However the children are not supposed to be caught up in such situation they should at least receive proper training to use any tools or machine in the process of their participation to work.

Most children blame themselves for their injuries and almost never complain to their parents or consult a doctor unless it is a serious accident.³⁵² The legal vacuum in the agricultural sector of most developing countries evidences the difficulty in halting the flow of trafficked

³⁴⁹US Department of State, <http://www.state.gov/j/tip/rls/tiprpt/2002/10679.htm#cotedivoire>, accessed 3 October 2014.

³⁵⁰Maggy Lee, *Trafficking and Global Crime Control* (Sage, London 2011) 40.

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³⁵² See ILO/IPEC ‘Tackling hazardous child labour in agriculture Guidance on policy and practice’ (International Training Centre of the ILO, Turin 2006) 11. Document available at http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/instructionalmaterial/wcms_110200.pdf, accessed 03 October 2016.

children in the agricultural sector. Whereas adult workers will be prone to put claim their labour rights, demand for regular salary and others advantages, children will remain voiceless and powerless. The extent of the plight of trafficked children can be better understood through what adult victim of trafficking experienced during the whole process. In that respect Gueraldi observes that:

“Unlike the victim of smuggling, who, in general, becomes an illegal worker, even openly competing in labor markets abroad for the low cost of service offered, the trafficked person becomes invisible, reappearing only in lists of the expelled and deported. This invisibility is maintained by a number of factors. The victims are tied to criminal networks that exploit them by force, which prevents them from denouncing their oppressors to local authorities and asking for help from their consulates. But force is not the only element responsible for the maintenance and acceleration of the global market in people.”³⁵³

As underscored in previous sections, the preference of child labourers to adult labourers may be for economic reasons but there is also an issue legal frameworks. It is obvious that weak legislation or even the lack of labour legislation applicable to the issue. The ILO admitted that in some countries, there is a lack of cover ‘for adult and child workers in the agricultural sector.’³⁵⁴ Moreover, it recognised that they are exempt from safety and health laws covering other categories of adult workers.³⁵⁵ Children, for example, are allowed to operate machinery and drive tractors at a younger age in agriculture than in other sectors.’³⁵⁶ The attitude of adults towards the labour environment in most developing countries in general and in Nigeria, in particular, is determined by the benefits embodied in the relevant laws. The hardship of manual work, the dangerous nature of some works, the lack of social security, the lack of career prospect in agricultural areas and other informal areas, of course, drive away most adults.

The preference to office works and other public administration position is prevalent among working age groups whether they are qualified or not. Hence, the shortages of manual labourers in these difficult but lucrative areas lead owners to recruit among children. To some extent, farms owners, quarry manager, workshops manager and other premises employing children resort to this category of labourers in order to keep their businesses up and running.

³⁵³Michelle Gueraldi, ‘Human Rights Law: The case of Brazil Human trafficking and challenges to States’ compliance with International’ (2013) 25 Cultural Dynamics165.

³⁵⁴ *ibid* 75

³⁵⁵ *ibid*

³⁵⁶ *ibid*.

It could, therefore, be argued that most employers or business owners resort to child labour because they have no other choice. Indeed in such circumstances, the only option left is the recruitment of child labourers. The estimates of children trafficked to Cote d'Ivoire for labour purpose is detailed in the ILO/IPEC guidebooks published in 2006 covered several challenging issues arising in child labour in the agriculture. In regard to the link between child trafficking and child labour in West and Central Africa reveals that:

“In 2002, a study of child labour on some 1,500 cocoa-producing farms in Cameroon, the Côte d'Ivoire, Ghana and Nigeria was carried out by the Sustainable Tree Crops Program of the International Institute of Tropical Agriculture in cooperation with IPEC. The study found that hundreds of thousands of children were engaged in hazardous tasks on cocoa farms. Many child labourers came from impoverished countries in the region like Burkina Faso, Mali and Togo. Parents often sold their children in the belief they would find work and send earnings home. However, once removed from their families, the boys were forced to work in slave-like conditions. In the Côte d'Ivoire alone, nearly 12,000 of the child labourers had no relatives in the area, suggesting they were trafficked. In its 2000 report on human rights the US Department of State observed that children are regularly trafficked into the country from neighbouring countries and sold into forced labour.”³⁵⁷

The connection between child trafficking and child labour is significant in the discourse about child trafficking in Nigeria. It has become a dominant topic of other types of child abuses have provoked a public outcry in West Africa and across the world. In this respect, Olateru-Olagbegi writes that ‘in Nigeria and indeed many parts of Africa, public recognition and focus on forced child labour and trafficking have only recently started to manifest more precisely, since the 1990s as a result of the massive repatriation of trafficked victims of prostitution from Europe and Middle-East. Thus, while the problem of trafficking of children, both internally and externally, for forced labour had been there for several years without any attention, it is the publicity surrounding trafficking for prostitution which generated interest in the issue of human trafficking.’³⁵⁸

Child trafficking and child labour nexus has often helped to estimate the number of children trafficked around the world. Although child labourers are not always victims of child trafficking by ILO’s global estimate about child labour, remain an important indication. In the African region particularly, it is probable that a large number of child labourer estimated by ILO (see Table 1 below) has been supplied through trafficking.

³⁵⁷ See ILO/IPEC ‘Tackling hazardous child labour in agriculture Guidance on policy and practice’ (Guidebook 2, International Training Centre of the ILO, Turin 2006) 12. Document available at http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/instructionalmaterial/wcms_110200.pdf, accessed 4 November 2014.

³⁵⁸ Bisi Olateru-Olagbegi, ‘*Path to Women’s Development: Thoughts Vision and Passion*’ (n 20) 55.

Table 4.1: Regional estimates of child labour, 5-17 years old, 2012

Region	Total children	Children in employment		Child labour		Hazardous work	
	('000)	('000)	%	('000)	%	('000)	%
World	1,585,566	264,427	16.7	167,956	10.6	85,344	5.4
Asia and the Pacific	835,334	129,358	15.5	77,723	9.3	33,860	4.1
Latin America and the Caribbean	142,693	17,843	12.5	12,505	8.8	9,638	6.8
Sub Saharan Africa	275,397	83,570	30.3	59,031	21.4	28,767	10.4
Other regions	332,143	33,656	10.1	18,697	5.6	13,078	3.9
of which MENA	110,411	13,307	12.1	9,244	8.4	5,224	4.7

Source ILO: Making progress against child labour: Global estimates and trends 2008-2012

4.3.1 Poverty Rationale

As noted earlier, the practice of child trafficking cannot be morally justified. However, in the majority of cases, poverty is regarded as the main cause of the phenomenon. While this factor cannot justify cruel treatments to children in society either, it remains a challenging factor to all attempts to eradicate human trafficking in general. The poverty argument in the child trafficking narrative in Nigeria can prevail depending on which side the stakeholder stands. Whereas traffickers engage in the activity out of greed and the pursue of massive financial gain, the supply side which usually comprises the parents or guardians of the child, is often constrained to release the children due to abject poverty. Relying on this societal fact, traffickers usually prey on individuals, predominantly women and children who are in extreme poverty, frequently unemployed or underemployed and who may lack access to social safety nets.³⁵⁹

More importantly, the majority of trafficked children are sourced from rural areas where the impact of poverty is acute. Hence, according to Omotola ‘the spatial dimension of poverty in Nigeria reveals that it is much more entrenched in the rural areas. Studies have shown that the rural core poor rose from 6.5% in 1980 to 14.8% and 31.6% in 1985 and 1996, respectively, while that of the urban core poor rose from 3% to 7.5% and 25.2% during the same period. It

³⁵⁹ Simeon T O Arinde, ‘*Child’s Trafficking in Nigeria*’ (Lambert Academic Publishing, Saarbrucken 2011) 35.

has also been revealed that occupationally, people in agriculture, forestry, service industries and transport are more affected than their counterparts in administration, manufacturing and processing, and professional/technical occupations.³⁶⁰

“The rural areas of Nigeria, where the bulk of the population resides, are not industrialized. There are few job opportunities or institutions of higher learning. Consequently, even when the children do receive some education up to secondary school, there are no jobs at the end of their schooling nor additional institutions for them to attend. The economic situation is such that most parents are unable to care and properly feed their families. Parents subject their children to various forms of labor, including trafficking for economic gains.”³⁶¹

Emphasis on poverty in the child trafficking narrative is significant because many developing countries that face the phenomenon have the tendency to wage ‘war against’ it without initially addressing the principal cause. This argument applies to the subsequent activities the trafficked children engage in when they are transported to a given geographical zone. Worthwhile, child trafficking is only the process whereby the child is sent to a given area for various exploitative purposes. Whether the debate is about child labour, child soldier, domestic work or streets children, poverty, as determining factor ought to be addressed. Anger is of the view that such approach should be taken with the understanding that ‘Poverty has various manifestations, including lack of income and productive resources sufficient to ensure sustainable livelihood; hunger and malnutrition, ill health; limited or lack of access to education and other basic services, increase morbidity and mortality from illness, homelessness and inadequate housing; unsafe environments, social discriminations and exclusion.’³⁶²

From Anger’s assertion, it is evident that poverty strikes in both rural and urban areas. Hence, child trafficking and its attendant evils are present in the two areas of Nigerian society.³⁶³ The acute level of poverty in rural and urban zones in Nigeria and the relatively wealthy status of the country has led many scholars perplex. The paradoxical situation is highlighted by Omotola when he writes that:

³⁶⁰ Shola Omotola, ‘Combating Poverty for Sustainable Human Development in Nigeria: The Continuing Struggle’ (2008) 12 *Journal of Poverty* 496, 517.

³⁶¹ Human Trafficking in Nigeria: Root Causes and Recommendations Policy Paper No 14.2(E), document available at <http://unesdoc.unesco.org/images/0014/001478/147844e.pdf>, accessed 31 October 2014.

³⁶² Barnes Anger, ‘Poverty Eradication, Millennium Development Goals and Sustainable Development in Nigeria’ (2010) 3 *Journal of Sustainable Development* 158.

³⁶³ *ibid.*

“Poverty is by all standards a condition of deprivation that impedes human development. Given Nigeria’s vast resource base, she ordinarily should have no business with poverty. In fact, she should rank among the richest countries of the world. Ironically, the reverse has so far been the case.”³⁶⁴

Although Omotola’s observations are legitimate, his thirst for answers will hardly be quenched in the current context of political governance of Nigeria.³⁶⁵ As indicated before, the poverty narrative in the context of child trafficking is applied exclusively on the side of those who supply children to traffickers. Traffickers are usually individuals or organised criminals who work in an orderly manner as they regard the activity as their source of income. In such quality, the traffickers will obviously be better off financially.

The suppliers instead usually act on a one-off basis since they release one child or two. The undertakings of most parents or guardians to entrust their children with a family member with the prospect that the child will have a better future is underpinned by poverty. The lack of resources or financial means to provide for the child creates the sentiment of exploring all available routes to guarantee a better future for the child. Whether the parent or guardian releases the child in for financial gain or they entrust the child with a family member or an acquaintance, the common denominator to their decision is poverty. Hence it will be worthwhile addressing the complexity of child trafficking due to the recurring collusions at decision-making levels.

4.3.4 The Situation of Collusion and the Complexity of the Issue

While globalisation is seen as the best approach to solving global differences and world economic disparities, it is blamed to have enhanced or favoured the thriving of the practice in the sub-Saharan Africa in particular. In that respect, Marinova and James observe that ‘One of the corollaries of globalization is the worsening of economic disparity in the global South and in so-called second world countries in transition.’³⁶⁶ In such complex context characterised by impunity frequently enjoyed by transnational criminal networks, human trafficking becomes the modern version of slavery.’³⁶⁷ In response to the current trend, every

³⁶⁴ *ibid* 82.

³⁶⁵ *ibid*.

³⁶⁶ Nadejda K Marinova and Patrick James, ‘The Tragedy of Human Trafficking: Competing Theories and European Evidence’ (2012) 8 Foreign Policy Analysis 231, 253.

³⁶⁷ *ibid*.

government ought to adopt an approach that is favourable to human development and sustainable development. The paradigm shift in approach is justified not only by such adverse activity against the economic prosperity of the country but also by the grave human rights violations occurring as a result.

As discussed in chapter 2, the issue of governance in Nigeria constitutes the principal element of attention in addressing various social problems for a real economic development and social stability. Nigeria is a resourceful nation and as such the welfare system could be well developed and functional. However, as Human Right Watch observes ‘Successive government have misused the oil revenues which the oil companies have helped to prevent from being embezzled in foreign accounts rather than investing in education, health, and other social investments, and mismanaging the national economy to the point of collapse.’³⁶⁸ This state of affairs is recurring and actual hence the ability for the government agencies to efficiently function is hindered. Structures may exist to address every social issue in the country. However, the lack of resources to carry out their duty can only impede the social progress expected by the disadvantaged sections of the population.

The Nigerian authorities’ attitude towards frequent criticisms about their handling of public affairs and the management of public resources seems paradoxical. Smith writes that: ‘in Nigeria, the question of whether the misuse of public office for private gain constitutes corruption varies significantly depending on the context.’³⁶⁹ The social morality of behaviour figures much more prominently in popular assessments of corruption than does any technical definition.’³⁷⁰ The issue of corruption becomes more complex with the attitude of some members of the community. The majority of the population seem to be accustomed to bad governance in such a way that they tend to accept it. On this critical issue, Smith writes that:

“Inherent in a political economy of patronage is the role that ordinary citizens play in the social reproduction of corruption, even as the vast majority of people are accurately aware that the system disproportionately benefits a few at the expense of the many. The most elite politicians, government officials, and economic moguls-federal ministers, state governors,

³⁶⁸ Human Rights Watch, ‘*The Price of Oil and Human Rights Violations in Nigeria’s Oil Producing Communities*’ (Human Rights Watch, New York 1999) 2, 3.

³⁶⁹ Daniel Jordan Smith, ‘*A Culture of Corruption: Every Deception and Popular Discontent in Nigeria*’ (Princeton University Press, Princeton 2007) 16.

³⁷⁰ *ibid.*

NNPC managers, major construction and petroleum industry contractors, and so on – commonly reap millions of dollars through corruption.’³⁷¹

Law and policy responses to critical issues highlighted by scholars and various observers about governance in Nigeria may abound, but from practical perspectives, tangible results are scarce among communities. The authorities are often criticised for collusion with Transnational Corporations (TNCs) in the area of human rights violation. Human Rights states that: ‘In countries characterized by severe human right violation, such as Nigeria, corporations argue that their presence and their operations in the country will improve respect for rights, but then adopted no substantive measures to achieve that end.’³⁷² Clapham writes that: ‘corporate responsibility refers to any attempt to get corporations to behave responsibly on a voluntary basis, out of either ethical or bottom-line considerations.’³⁷³ He further notes that: ‘corporate accountability for (or compliance) ‘refers to requiring corporations to behave according to social norms or face the consequences.’³⁷⁴ From this definition, TNCs in Nigeria should have understood that they need to contribute to the change in social conditions of communities.

The lack of basic resources for families and communities is presented as the principal cause of adverse activities such as child trafficking and child labour in Nigeria. Poverty rationale indeed underpins the ongoing plight of children in a country where oil revenues may be well spent in order to improve the social conditions of families. The change of attitude of TNCs towards children’s misery in Nigeria depends on the authorities’ willingness to bring about changes while dealing with TNCs. The plight of children endures in a context where governments collude with MNCs instead of promoting their rights. In that respect Clapham

³⁷¹ Daniel Jordan Smith, *‘A Culture of Corruption: Every Deception and Popular Discontent in Nigeria’* (Princeton University Press, Princeton 2007) 13.

³⁷² Human Rights Watch, *‘The Price of Oil and Human Rights Violations in Nigeria’s Oil Producing Communities’* (Human Rights Watch, New York 1999) 3.

³⁷³ Andrew Clapham, *‘Human Rights Obligations of Non-State Actors’* (Oxford University Press, Oxford 2006) 195. Joshua Karliner and Kenny Bruno, ‘ Responsibility vs. accountability’ International Herald Tribune , 1 July 2002, at 14.

³⁷⁴ Andrew Clapham, *‘Human Rights Obligations of Non-State Actors’* (Oxford University Press, Oxford 2006) 195.

writes that: ‘we can also see that to deny the applicability of human rights to powerful non-state actors is to deny the empowerment which accompanies human rights claims.’³⁷⁵

4.3.3 The Political Weakness and Effect of Child Trafficking on Nigeria’s Image

Poor law enforcement or the lack of law enforcement is an evidence of the political defect in delivering general election pledges. The authorities’ shortcomings in delivering most of their tasks are often attributed to governance issues. Indeed in analysing the broad issue of governance, political defect encapsulates practices such as corruption which itself constitutes a fundamental element in the thriving of child trafficking in general and human trafficking in particular.

The political mandate entrusted to authorities at both the federal and national state levels is to deliver the social contract between them and the people. However, the deeply rooted phenomenon of corruption in Nigerian political and social environment appears to be hostile to the effective execution of the social contract. The role of corruption in the thriving of child trafficking is significant. Indeed, staggering corruption in the country has an impact on the efficacy of laws and the enforcement agencies. Rather than preventing the expansion of child trafficking, authorities’ inclination to bad governance favours it.

Given the fact that any plausible justification can be given for the political defect, the authorities at both federal and state levels are compelled to address the issue of ineffective law enforcement. The issue of child trafficking being a crucial topic in the human rights protection narrative, the enforcement of the relevant laws is as crucial as that of other laws and policies. Most significantly, when at the starting point of the process, laws are not implemented the expected goal is often not achieved. In this respect Jojarth writes that:

“The first element of behavioural uncertainty – governance incapacity- refers to non-compliance resulting from state’s insufficient capacity to implement a policy, even one that is genuinely endorsed. The question, therefore, arises: to what extent does the success of a global institution rely on substantive contributions by states with weak governance capacities?”³⁷⁶

³⁷⁵ Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press, Oxford 2006) 53.

³⁷⁶ Christine Jojarth, *Crime, War, and Global Trafficking: Designing International Cooperation* (Cambridge University Press, Cambridge 2009) 244.

From Jojarth's analysis, it transpires that the government's insufficient capacity to implement law and policy can be detrimental to global undertakings such as the elimination of child trafficking in particular and human trafficking in general. It should, therefore, be understood that the contribution of Nigeria the implementation of international legal instruments related to human trafficking and its subsequent role in ensuring that they are enforced, is necessary. The authorities' shortcomings in coordinating the whole process of implementation and enforcement usually create a situation complete lethargy that considerably impacts the good functioning of the society.

Ibekwe writes that: 'the concept of national image subsumes a mental picture in which a nation-state portrays or projects about herself in her relations with other nation-states in international system.'³⁷⁷ It is a significant factor or an essential element for the perception and assessment of national character'.³⁷⁸ In the same vain, Morgenthau describes national character as the fundamental intellectual and moral traits which reveals themselves on all levels of thought and action and which give each nation its unmistakable distinctiveness.³⁷⁹ Ibekwe rightly puts that it is in recognition of the need to portray good image at both national and international levels that Nigeria established NAPTIP and improves collaboration with various organisations in the fight against human trafficking.³⁸⁰ However, paradoxically, the authorities seem not to be efficient in yielding good result in term of reducing the scale of child trafficking in Nigeria. Equally as indicated in a recent report in 2014 despite the considerable number of ratification of relevant ILO Conventions by almost all African nations, child labour remain rampant.

In a 2014 report, the ILO indicates that 59 million of children were in child labour. This figure represents one in four children aged between 5 and 17 years.³⁸¹ The report indicates that 28.8 million children were employed in hazardous labour which represents half of all the child labourers.³⁸² Moreover, the reports indicated that 52 of the 54 African countries had ratified ILO Convention 138 and 182.³⁸³ The alarming situation obviously led ILO to come up with the idea of accelerating action against child labour. The whole situation leads to the

³⁷⁷ Mathew Ibekwe, 'Can brain drain benefit everyone?' The Punch 12.

³⁷⁸ *ibid.*

³⁷⁹ Hans J Morgenthau, 'Politics Among Nations' (7eds McGraw-Hill Education, London 2005) 96.

³⁸⁰ Mathew Ibekwe, 'Can brain drain benefit everyone?' (n 99).

³⁸¹ ILO, 'Accelerating Action Against Child labour in Africa'. Available at http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_126752.pdf, accessed 03 October 2016

³⁸² *ibid.*

³⁸³ *ibid.*

question as to whether there is a genuine interest in addressing challenging issues to the welfare of the child not only in Nigeria but also in the African region of the ILO. The importance of children in society cannot be denied, investment at all levels must be done for their protection. Hence Hendrick writes that:

“Where children as investments are concerned, few historians would deny that this has been the dominant perspective of them in the policy making process, usually in relation to programmes of a racial, educational, familial, social and political nature.”³⁸⁴

4.4 Societal Impacts

4.4.1 Threat to Education and Child Welfare

Since the 1990s, the role of Education has been crucial in the global agenda for development. Indeed northern and southern governments international bodies and non-governmental organisations agree on emphasising the virtues of investment in education as a key strategy in the fight against poverty and achieving development. As a result, “new” objectives, priorities and goals are being established on a global scale to increase education level among the population as a whole and to increase its effectiveness as a means of reducing poverty.³⁸⁵

Under Article 18 (1) of the Constitution of the Federal Republic of Nigeria, the Government required directing its policy towards ensuring that there are equal and adequate educational opportunities at all levels’.³⁸⁶ There is also an emphasis on education in the Federal Republic of Nigeria Child’s Rights Act 2003 in its section 15 subsections 1-7 which provide free and compulsory and universal primary, secondary, and university education. It is obvious that education is ranked among the fundamental objectives and directive principles of the State policies and therefore placed at the centre of the development of modern Nigeria. Thus it is evident that any factor that jeopardised the fulfilment of such objective should be regarded as

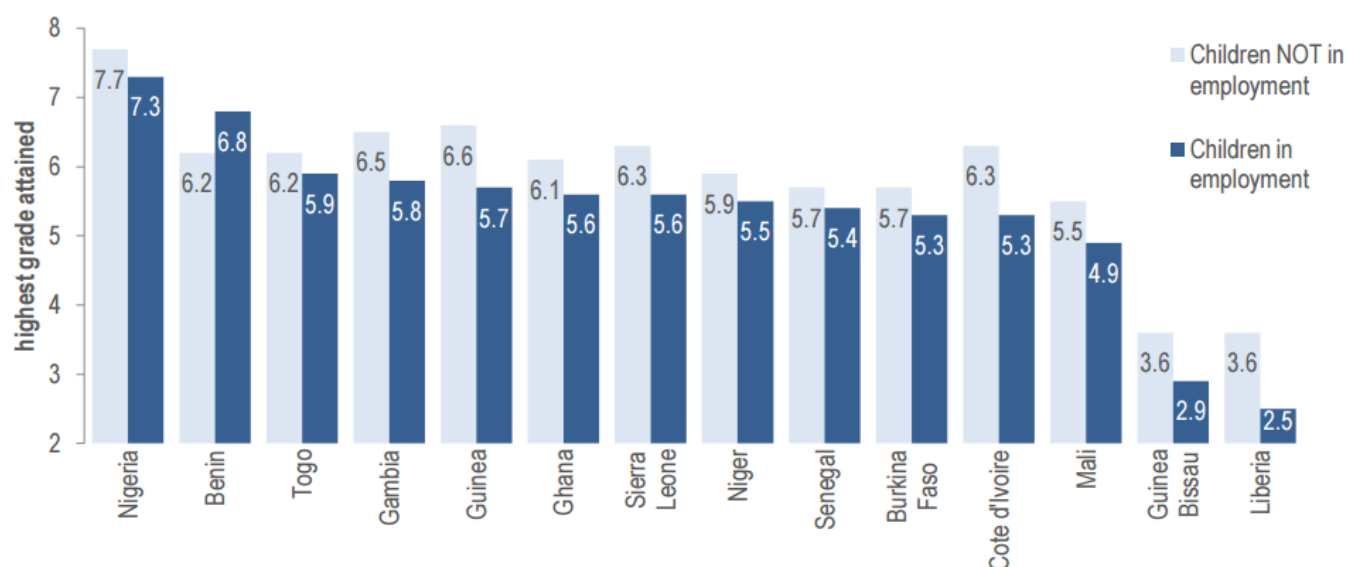
³⁸⁴ Harry Hendrick, ‘*Children and Social Policy*’ in ‘*Harry Hendrick’s Child Welfare and Social Policy: An Essential Reader*’ (Policy press, Bristol 2005)32.

³⁸⁵ Aina Tarabini, ‘Education and poverty in the global development agenda: Emergence, evolution and consolidation’ (2010) 30 *International Journal of Educational Development* 204, 212.

³⁸⁶ The Constitution of the Federal Republic of Nigeria. Document available at <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm>, accessed 06 December 2016.

a threat. It is well acknowledged that child trafficking creates a situation of displacement which prevents the trafficked children from remaining at a specific location. As a result, the children have very little chance of being enrolled in primary education. Rafferty rightly puts that ‘Children who are trafficked are robbed of the few educational opportunities available to them and, thus, a chance to improve their future economic situation.’³⁸⁷ As children are trafficked for the purpose of being engaged in various employments, they become child labourers. Hence from trafficking, they are led to child labour. A survey conducted by the International Labour (ILO) in ECOWAS region where Nigeria belong, has evidence such situation (see figure below).

Figure 4.1: Children combining school and work lag behind their non-working peers in terms of grade progression highest grade completed at age 14 years, children currently attending school, by involvement in employment, by country



Source: Source: UCW calculations based on national household surveys (see Table 2).

The impacts of child trafficking can be more significant depending on the gender of the child. Where for instance girls are preferred to boys, it is evident that the rate of girls out education will be higher. Moreover, when the ethnic group is considered as the determining element in the choice of child worker, the impacts of such choice is unavoidable on the future

³⁸⁷ Yvonne Rafferty, ‘The Impact of Trafficking on Children: Psychological and Social Policy Perspectives’ (2008) 2 Child Development Perspectives 13, 18.

generations of that specific community. In regard to the use of trafficked children in various economic activities in West Africa and abroad, Dottridge observes that the demand in urban areas appears to be significantly higher for girls than boys. According to Dottridge the rationale for that is the preference expressed by those who use of child labourers.³⁸⁸ For instance, for the purpose of domestic work and prostitution, young girls are preferred by employers because they are obedient.³⁸⁹

4.4.2 Psychological Impacts on Children

The psychological impact can have a long lasting effect on the child even in his or her adult life. On that issue, Rafferty observes that ‘The experiences associated with trafficking can lead to lasting psychological challenges. Children experience physical and emotional trauma associated with removal from their families, homes, and communities; their subsequent encounters involve substantial harm through physical, emotional, and sexual abuse.’³⁹⁰ It is obvious that a child with a disturbed psychological state cannot grow in a safe state of mind to become a reliable and stable adult. Child trafficking has an immense psychological impact on children in that they suffer brutal separation with their biological parent or they are moved from their usual place of abode. The psychological impact is rarely noticed in most developing countries. In that respect, Guglielmo argues that national and international anti-trafficking efforts be focused on the criminal aspect of the phenomenon instead of placing more emphasis on the psycho-social services that victims and survivors typically require.³⁹¹

Rafferty notes that despite the paucity of empirical research on the physical and emotional health of children who have been trafficked, published studies, protocols, and declarations suggest that the effects may seriously hamper children’s physical, psychological, and social-emotional development.³⁹² Furthermore, she observes that when children are trafficked away from their families, friends, communities, and support networks, their development and

³⁸⁸ Mike Dottridge, ‘Trafficking in Children in West and Central Africa’ (2002) 10 *Gender and Development* 38, 42.

³⁸⁹ *ibid.*

³⁹⁰ Yvonne Rafferty, ‘The Impact of Trafficking on Children: Psychological and Social Policy Perspectives’ (2008) 2 *Child Development Perspectives* 13, 18.

³⁹¹ Schinina Guglielmo, ‘Psychosocial Support to Groups of Victims of Human Trafficking in Transit Situations’ (Psychology Notebook Vol 4, International Organization for Migration (IOM), Geneva 2004).

³⁹² Yvonne Rafferty, ‘Child Trafficking and Commercial Sexual Exploitation: A Review of Promising Prevention Policies and Programs’ (2013) 83 *American Journal of Orthopsychiatry* 559, 575.

survival are seriously threatened, as they are forced to live in abominable conditions and stripped of their fundamental human rights to protection, health, and education.³⁹³ More significantly, children who are transported across international borders to unfamiliar locations where they do not speak the local language are even more disempowered because of their diminished capacity to seek assistance or escape.³⁹⁴ In the lights of these observations, it appears that child trafficking remains a serious threat not to the expression of children's human rights but also of threat demographic sustainability of the regions affected by child trafficking.

4.4.3 Threat to Social and Political Stability

The US Department of State in its 2016 crime and safety report in the capital Lagos, indicated that the crime rating is critical. It emphasised that endemic poverty, lack of basic infrastructure such as reliable electricity, income inequality, unemployment, a poor education system) lead to mass dissatisfaction among the local population.³⁹⁵ It appears in the report that poor education system constitutes one of the key factors enabling the dysfunction of the society. It is worth noting that trafficked children are often denied basic education which jeopardises their employability in adult life. Of course, as argued elsewhere, they lack the required skills to take stable and better-remunerated employments. Social instability is also created by religious and cultural differences in Nigeria. Uzoma argues that 'Religious pluralism threatens Nigeria's social stability and its hard-won democracy by putting different religious and cultural beliefs'.³⁹⁶ While such argument is founded, it is worth nothing that the lack of education and the capacity for the mass to understand certain principles of life in a society regulated by laws, the threat to social and political stability remain rampant. Human trafficking and the issue of cultural and religious conflicts have a common denominator which is lack of education. The argument that child trafficking can threaten social and political stability rest upon the idea that trafficking and its underlying practices jeopardise the

³⁹³ *ibid.*

³⁹⁴ *ibid.*

³⁹⁵ See US Department of State, 'Nigeria 2016 Crime and Safety Report: Lagos'. Available at <https://www.osac.gov/Pages/ContentReportDetails.aspx?cid=19502>, accessed 15 September 2016.

³⁹⁶ Rose C Uzoma, 'Religious pluralism, cultural differences, and social stability in Nigeria' (2004) 2004 Brigham Young University Law Review 651, 664.

chance for the country to have enlightened citizen who as a result understand basic principles required for social and political stability or social consensus.³⁹⁷

4.4.4 Adversity to Development Perspectives

Child trafficking and its underlying phenomena can have a hampering effect on the development of a country. Not only the country's reputation on the international scene can be affected by such despicable practices but also the human capital can be threatened. For instance, the ILO asserted that child labour depreciates the human capital that a country needs for economic and social development, exposes the children to violence, vices and social inconvenience (for example by getting pregnant), and inflicts physical and psychological injuries on them, thereby reducing their socio-economic chances in the society.³⁹⁸ In addition to the problem of trafficking developing countries like Nigeria are often confronted with the issue of internal migration whereby rural population migrate to urban cities without the necessary skills to get employments. These are demographic patterns that exist since Nigeria become independent. On the issue Shanti writes that:

“The urban environment usually raises the aspirations and expectation of in-migrants, who often lack the skills with which to make use of productive opportunities in new profession. But even if the newcomers could acquire the necessary skills, cities faced with capital scarcity and rapid natural increases of their population are unable to absorb the inflow of labor.”³⁹⁹

It is acknowledged that formal education remains one the most efficient route for providing the adequate manpower to a country pursuant its development agenda. To some extent, it could be argued that child trafficking equates to brain drain. Indeed child trafficking can only produce unskilled citizen for a country. Such situation for a developing country like Nigeria can have a social, industrial, and financial cost. The lack of highly skilled human capital has often led developing countries to resort to foreign expertise. Undoubtedly child trafficking

³⁹⁷ Stephen P Heyneman, 'Education and Social Stability in Russia: an essay' (1997) 27 Compare: A Journal of Comparative and International Education 5, 18.

³⁹⁸ See ILO, 'Good Practice Report: Eliminating the Worst Forms of Child Labour and Strengthening Sub-Regional Cooperation through ECOWAS: Nigeria'. Available at http://www.ilo.org/wcmsp5/groups/public/---africa/---ro-addis_ababa/---ilo-abuja/documents/publication/wcms_303411.pdf, accessed 16 September 2016.

³⁹⁹ Shanti S Tangri 'Population and Reproduction: Comparative or Complementary? In H Peter Gray and Shantis S Tangri 'Economic Development and Population Growth: A Conflict?' (D C Heath and Company , Lexington 1970) 81.

deprives a country of its existing and future high skilled manpower. In the case of Nigeria, the problem seems to be less preoccupying for the authorities.⁴⁰⁰ This paradoxical because governments in developing countries have always expressed their willingness to make accelerated developing their priority. Whether it is a trend or a genuine aspiration, it is hard to assert after over fifty years of independence in most African countries that adversities to development perspectives are adequately dealt with. Smock and Smock write that:

“Throughout Africa, governments have assumed primary responsibility for promoting development. The nature of the political system, or more specifically its organization, effectiveness, and ethos, determine both the selection of development programs and the ability of the government to implement them. The ethos or attitudes and orientations infusing the political system significantly influence the priorities and programs enunciated by the government.”⁴⁰¹

4.4.5 Perpetuation of Poverty

As argued elsewhere, child trafficking and its underlying practices prevent millions of children from attending school. They do not have the opportunity to get the required education and the necessary skills to get employment in their adult life. Hendrick rightly puts that poverty can follow the child into adulthood, leading to educational and employment disadvantage. As a result, plan to reduce child poverty need to tackle both the immediate and the longer-term effects of childhood deprivation.⁴⁰² Hence without the necessary resources, it is evident that those who grew up in abject poverty will have their children trapped in the same conditions. The narrative is that millions of children, boys and girls who have not had the chance to receive formal education and training lack the required skills to get employments remunerated enough to allow them to offer better socioeconomic conditions to their children. As a result, poverty is perpetuated, and the vicious cycle continues. Millar writes that:

“Social and demographic change, especially changes in family and household structure, tend to make certain groups such as lone parents more vulnerable to poverty. However, the underlying causes of poverty are economic and the main reason why poverty has increased

⁴⁰⁰ See Ngoma A Lawan and Isma N Wana, ‘The Impact of Brain Drain on Human Capital in Developing Countries’ (2013) *South African Journal of Economics* 211, 224.

⁴⁰¹ David R Smock, Audrey C Smock, ‘Cultural Political Aspects of Rural Transformation: A Case Study of Easter Nigeria’ (Prager Publisher, New York 1972) 10.

⁴⁰² Harry Hendrick, ‘Child Welfare: Historical Dimension, Contemporary Debate’ (The Policy Press, Bristol 2003)16.

over the past decade is that growing numbers of people can no longer obtain an adequate and secure income from employment.”⁴⁰³

In such a challenging employment environment those who did not have the minimum aptitude and required skills will contribute to the perpetuation of poverty which itself was caused by the fact that they missed education and training due to trafficking and child labour. It is worth noting that in a context where parents are unemployed and remain in abject poverty, children are kept out of school. Consequently, they become vulnerable to all sort of abuses and exploitation chiefly child trafficking and subsequently child labour. The scale of the problem in Nigeria was exposed by UNICEF in the following terms:

“The Universal Basic Education scheme adopted by the Federal Government of Nigeria provides for a nine year continuous basic education comprising six years of Primary education and three years of Junior Secondary education. This nine-year cycle is free and compulsory for all children. However, as at 2006, only 22 per cent of the over 10.5 million eligible children between 12 and 14 years of age were enrolled in Junior Secondary Schools. Over the last 10 years, the enrolment ratio improved only marginally. Many adolescents do not attend school because their parents are unable to afford the monetary cost of schooling. For others, they have to start working to support their family.”⁴⁰⁴

The extent of the situation in Nigeria is clearly known by the ILO. However it appears that little has been achieved to overcome the problem.

Conclusion

Child trafficking apprehended in Nigerian socio-economic and political context appears to be a complex and challenging phenomenon. The child trafficking discourse in Nigeria cannot exclude the whole West Africa, Europe and the Middle –East because these regions are the selected destination of trafficked persons including children. The scale of the problem is difficult to determine due to the characteristics of the trade and the mechanisms put in place by various participants in the trade. Child trafficking in Nigeria is indeed surrounded by secrecy. Hence it appears impossible for law and policy makers to deliver the appropriate response to combat the practice. Child trafficking also persists because of the perversion of cultural traditions and the increasing aspirations for economic gain.

⁴⁰³ Jane Millar, ‘The Continuing Trend in Rising Poverty’ in Adrian Sinfield’ Poverty, Inequality and Justice’ New Waverley Papers, Social Policy Series’ (The University of Edinburgh, Edinburgh 1993) 15.

⁴⁰⁴ See Unicef, The Children in Nigeria’ available at http://www.unicef.org/nigeria/children_1941.html, access 12 July 2016.

This chapter demonstrated that the general observation of trafficking in human reveals that countries of origin have poverty rates that are among the highest in West and Central Africa. Increasing inequalities and declining living standards have seen an exponential rise in child trafficking in Nigeria. Although several contributing factors are known to sustain the dynamic of child trafficking in Nigeria, the most significant seem to be the management of the country's wealth and the redistribution of that wealth among the population. The ethical issues in Nigeria's governance are often put forward as an impediment to tackling various social predicaments.⁴⁰⁵ Indeed the ethical issue among those in the leadership position has continued to worsen leading to Transparency International, at one time, ranking Nigeria among the top three most corrupt nations on earth.⁴⁰⁶ However, amid the current social and political disarray, law and policy makers at both national and international levels endeavour to set workable legal frameworks to address the lingering phenomenon. Hence, it is important to analyse of the international and domestic legal response to child trafficking in this research.

⁴⁰⁵ Ezimma Kate Nwadiogwa, 'Nnabuike Defining and enforcing ethical leadership in Nigeria' (2010) 1 African Journal of Economic and Management Studies 25.

⁴⁰⁶ *ibid.*

Chapter 5

International and Domestic Legal Response to Child Trafficking: Human Rights Based Approach

Introduction

The legal response to child trafficking is evidenced at international, regional and sub-regional levels. Eventually, through the domestication procedure, the letter and the spirit of most of these instruments are cascaded in national legal systems. In addition to evident legal responses, non-legislative actions are also taken to combat the phenomenon worldwide. In a previous chapter, Nigeria's legal response to child trafficking has been examined in order to grasp the general perception of the government, law and policy makers as well as the general public about the issue in the country. However a previous chapter has examined the Nigeria's legal response to child trafficking, the present chapter aims to examine combatting child trafficking at international and domestic levels with a focus on the human rights aspect. Nigeria is member of both the United Nations⁴⁰⁷ and the African Union.⁴⁰⁸ Nigeria has signed and ratified most the human rights instruments promoted by the two institutions. Undoubtedly the issue of child trafficking in Nigeria has an impact on the global efforts to eliminate the phenomenon. Hence it cannot be isolated in the discourse about the efficacy of international human rights instruments. The letter and the spirit of the laws are cascaded to national levels through the domestication process in a coordinated manner. Because systematic domestication often meets contextual challenges thus weakening further the original spirit of the laws, every country should endeavour to maintain the ultimate goal of the international human rights instruments. Such initiative is crucial in that they are premised on the equal inherent dignity of every person.⁴⁰⁹ Hence a thorough analysis of key international, regional and sub-regional legal instruments is necessary. It will appeal to states

⁴⁰⁷ Nigeria became member of the United Nations on 07 October 1960. See United Nations 'State Members'. Available at <http://www.un.org/en/member-states/>, accessed 13 September 2016.

⁴⁰⁸ Nigeria is one the 32 African states that had achieved independence at that time agreed to establish the Organisation of African Unity On May 25 1963 in Addis Ababa, Ethiopia. As a founding member, Nigeria was still a member state when the OUA became African Union (AU) in 2000.

⁴⁰⁹ See Joseph M Isanga, 'Foundations of human rights and development: a critique of African human rights instruments' (2012) 11 Ave Maria Law Review 123.

as it will put pressure on them to amend domestic laws or to enact the relevant laws where such instrument does not exist in their legal system. This chapter analyses the issue of child trafficking in the light of international human rights instruments. Indeed perceiving child trafficking essentially from human rights perspectives could permit a better and thorough understanding of the issue at both international and national levels. Endeavour from every nation especially developing countries to grasp the specific provisions of the instruments is necessary not only in fulfilling the domestication as it is expected but also in giving the assurance that global eradication can be achieved. Eradication through legislation and actions can be achieved if child trafficking is effectively perceived in the human rights perspectives and the magnitude of the problem is well apprehended. Hence this chapter aims at analysing specific provisions of the existing human rights instruments in order to entice focus on achieving palpable global results in combatting child abuses in general and trafficking in particular.

5.1 Protection of Child Trafficking Victims under the International Bill of Human Rights (1948, 1966)

Following a study on Violence against Children initiated by the United Nations in October 2006 and carried out by the Independent Expert for the Secretary-General, it was advised that violence against children should be perceived in five settings.⁴¹⁰ Indeed it is recommended that emphasis be placed on the home and family, schools and educational settings, care and justice institutions, the work place, and the community.⁴¹¹ The identification of these settings was essential in the endeavour to engage an effective fight against child rights violations including child trafficking. Eventually, recommendations were made including a number of setting specific recommendations that represent a comprehensive framework for follow-up action. A year later in October 2007 the Independent Expert presented his progress on the implementation of the recommendations to the General Assembly.⁴¹² In regard to the progress made on the implementation, the independent expert highlighted several facts.

⁴¹⁰ See United Nations Human Rights: The United Nations Study on Violence against Children. Available at <http://www.ohchr.org/EN/HRBodies/CRC/Study/Pages/StudyViolenceChildren.aspx>, accessed 30 October 2016.

⁴¹¹ Ibid.

⁴¹² Ibid.

Indeed the independent expert noted that the study carried out over three-year served as a catalyst to promote a broad range of action all over the world.⁴¹³

He expressed his gratitude to all those who provided information on follow-up activities as such approach was essential in the implementation process.⁴¹⁴ The independent expert acknowledged that since the study report was issued, a number of countries have appointed national focal points on violence against children. As a result, significant progress was noted in the relations between stakeholders and partners engaged in establishing or strengthening networks or committee to address child rights issues and violence against children.⁴¹⁵ The independent expert acknowledged that there was a considerable number of comprehensive legal reforms that covered violence against children as well as specific forms of violence.⁴¹⁶ More importantly, the independent expert placed an emphasis on the fact that not only seven eastern and southern African countries have passed but also a number of them drafted legislation that focuses on sexual violence.⁴¹⁷ However, he underscored the fact that laws prohibiting corporal punishment were passed in nineteen countries across the globe.⁴¹⁸ The independent expert noted that some regional initiatives are noteworthy. A review of legal frameworks about the Convention on the Rights of the Child as well as other international standards for children was completed in 18 countries in eastern and southern Africa in May 2007.⁴¹⁹ In term progress on implementation, it could be admitted that there has been a positive response worldwide.

The US Department of State Report on Human Rights published in 2015, it is observed that child abuse remained common throughout Nigeria, but the government took no significant measures to combat it.⁴²⁰ Also, in a report titled ‘Nigeria Violence Against Children Survey’ released On 10 September 2015, UNICEF revealed that approximately six of every ten children under age 18 went through some form of emotional, physical, or sexual violence

⁴¹³ See Final Report of the Independent Expert for the Secretary-General Study on Violence against Children presented to the UN General Assembly in October 2006. Document available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N07/452/43/PDF/N0745243.pdf?OpenElement>, accessed 30 October 2016.

⁴¹⁴ *ibid.*

⁴¹⁵ *ibid.*

⁴¹⁶ *ibid.*

⁴¹⁷ *ibid.*

⁴¹⁸ *ibid.*

⁴¹⁹ *ibid.*

⁴²⁰ See US Department of State, ‘Nigeria 2015 Human Rights Report’. Available at <http://www.state.gov/documents/organization/252927.pdf>, accessed 06 September 2016.

during childhood.⁴²¹ More significantly it is indicated that in some states children accused of witchcraft were killed or suffered abuse, such as kidnapping and torture. For instance, a man in Plateau State burned a young girl to death after accusing her of being a witch.⁴²² The despicable situation of human rights in Nigeria can become more worrying with accusations against the government itself. Indeed the US Department of State reported that: *'The government and its agents committed numerous arbitrary and unlawful killings. The national police, army, and other security services committed extrajudicial killings and used lethal and excessive force to apprehend criminals and suspects as well as to disperse protesters. Authorities generally did not hold police, military, or other security force personnel accountable for the use of excessive or deadly force or for the deaths of persons in custody. State and federal panels of inquiry investigating suspicious deaths did not make their findings public.'*⁴²³

It is observed that Children's basic rights are not respected. In regard to education which is promoted by all child rights laws, it appears that the situation is alarming. Indeed public schools remained substandard, and limited facilities precluded access to education for many children. It is noted that under Nigerian constitution, education is merely a directive policy, not a legal entitlement. Hence every government in the country is required by law to provide compulsory universal basic education for every child for free at primary and junior secondary school levels.⁴²⁴ More significantly, the Constitution specified fine and jail terms for parents and guardians who fail to abide by this legal requirement by omitting to send their children to school. Paradoxically Authorities, however, often charged school fees and rarely complied with the law.

It seems that Human rights seem less prioritised. There is a Government Human Rights Bodies in charge of making human rights effective in Nigeria. The law establishes the

⁴²¹ UNICEF, 'Release of the findings of the Nigeria Violence Against Children Survey'. 'Available at http://www.unicef.org/nigeria/media_9588.html, accessed 29 September 2016

⁴²² Chris Stein, 'Girl Burned to Death in Nigeria after Witchcraft Allegation' (VOA News, 19 June 2015) <<http://www.voanews.com/a/girl-burned-to-death-in-nigeria-after-witchcraft-allegation/2829215.html>> accessed 29 September 2016.

⁴²³ US Department of State, 'Nigeria 2015 Human Rights Report'. Available at <http://www.state.gov/documents/organization/252927.pdf>, accessed 06 September 2016.

⁴²⁴ *ibid.*

National Human Rights Commission (NHRC)⁴²⁵ as an independent non-judicial mechanism to protect and promote human rights. The NHRC is responsible for monitoring human rights throughout the country. It carried out its work through affiliates in various zones of the country's six political regions. In cases of allegations of human rights abuses, the NHRC will launch investigations and publishes its findings.⁴²⁶ In the perspective of rights protection, trafficking is seen by the United Nations as a violation of human rights. Under international human rights law phenomena such as child prostitution, forced child marriage, child exploitation are trafficking-related practices therefore prohibited.⁴²⁷

The rationale behind the protection of the child is that he/she holds inherent rights as a human being. Hence, from Donnelly's definitional approach, it can be noted that human rights are essential to the lives of human beings, as they are basic standards without which people cannot survive and develop in a dignified manner – they are rights that one has simply by virtue of being human.⁴²⁸ Furthermore, they are inherent in the human person, inalienable and universal. Morsink writes that people everywhere and at all times have rights that are not man-made but are instead inherent in the human person from the moment of birth.⁴²⁹ Whether rich, poor, strong, weak, male, female or of any race or religion, all human beings deserve to be treated equally and respected for their inherent worth as human beings. Does mankind understand this unquestionable fact, or it is yet to be inculcated in every single mind?

Fortin writes that, indeed, had it not been for the driving force of international human rights lawyers, ideas and theories about children's rights, they may have remained in the realms of intellectual speculation.⁴³⁰ The significance of this observation is proven by the swift shift to consolidating children's rights in international human rights frameworks. Indeed, the notion that children are, as human beings, entitled to human rights has been gradually accepted in both international and domestic contexts.

⁴²⁵ The National Human Rights Commission was established by the National Human Rights Commission (NHRC) Act, 1995, as amended by the NHRC Act, 2010

⁴²⁶ *ibid.*

⁴²⁷ See United Nations Human Rights, 'Human Rights and Human Trafficking'. Available at http://www.ohchr.org/Documents/Publications/FS36_en.pdf, accessed 15 September 2016.

⁴²⁸ Jack Donnelly, 'Human Rights, Democracy, and Development' (1999) 21 *Human Rights Quarterly* 608-632.

⁴²⁹ Johannes Morsink, '*Inherent Human Right: Philosophical Roots of the Universal Declaration*' (University of Pennsylvania Press, Philadelphia 2009) 17.

⁴³⁰ Jane Fortin, '*Children's Rights and the Developing Law*' (Cambridge University Press, Cambridge 2009) 32.

Assuming that children's rights were theoretically no different from those of adults, as it became widely acknowledged during the second half of the twentieth century, they too were entitled to certain fundamental moral rights under the force of international laws.⁴³¹ Moreover, as Donnelly rightly puts it, today, human rights are backed by the world's preponderant political, economic and cultural powers and have become ideologically hegemonic in international society.⁴³² It should be acknowledged that the world community has achieved a tremendous progress by fashioning the Universal Declaration of Human rights. Indeed it is a significant progress in mankind's quest for human rights protection worldwide. Chigara writes that "positive international law's recognition of human rights that derive from the status of being human is the focus of the Universal Declaration of Human Rights, 1948 (UDHR) which heralded the dawn of the positive human rights law tradition, and of several other international Conventions and Treaties."⁴³³ The UDHR itself was initiated after humanity measured the extent of the horrors of Nazi Germany.⁴³⁴

Whatever forms the discourse about child rights takes in each part of the world today, and regardless of the fact that the essence of UDHR rights has been weakened by the fact that the universe is no society, there is a global tendency to provide and maintain adequate scope for child rights in domestic human rights frameworks.⁴³⁵ From the above analysis, it should be noted that the child is also a right holder, and as such, the child cannot be excluded from the scope of human rights set by the Universal Declaration of Human Rights. More importantly law- and policymakers, as well as government agencies concerned with addressing issues such as child trafficking, should premise their analyses on the idea that children's rights are denied to them or systematically violated every time they find themselves trapped in the vicious circle of trafficking. It is evident that the mandate for nations to respect human rights in general and child rights, in particular, has existed since the Declaration was issued, for the nations who first adhered to it since 1948 and for most African states who became independent in 1960. Nigeria being one of the nations who, due to their de facto membership

⁴³¹ Ben Chigara, 'Deconstructing Southern African Development Community land relations challenges: Towards a new, sustainable land relations policy?' in Ben Chigara (ed) '*Re-conceiving Property Rights in the New Millennium: Towards a New Sustainable Land Relations Policy*' (Routledge, Oxon 2012) 223.

⁴³² Jack Donnelly, 'The Relative Universality of Human Rights' (2007) 29 *Human Rights Quarterly* 281, 306.

⁴³³ Ben Chigara, '*Amnesty in International Law: The Legality under International Law of National Amnesty Laws*' (Pearson Education Limited, London 2002) 127.

⁴³⁴ See Olufemi Amao, '*Corporate Social Responsibility, Human Rights and the Law: Multinational Corporations in Developing Countries*' (Routledge, London 2011) 25.

⁴³⁵ The rate of convention and treaty ratification in some countries is remarkable. Although there is still, concerning most developing countries, an apparent indecisiveness or reluctance to adapt conventions and treaties to internal laws, the overall attitude of states today is deemed satisfactory.

to the United Nations upon gaining independence from Great Britain had to observe human rights values strictly.

Child trafficking and its associated evils are serious threats to the lives of those children trapped in such practices. The right to life, i.e. the inherent right of each human, is confirmed by the International Covenant on Cultural and Political Rights (ICCPR)⁴³⁶, which provides in Article 6(1) that law shall protect the inherent right to life for every human being and this right. No one shall be arbitrarily deprived of his life.” Hence, the right to life is recognised in adults and children alike. Without interpreting such an approach as discriminatory, the special status given to young persons through Article 10 paragraph 2(b) could be justified by the fact that children in regard to their physical, mental capacity make them a special category in society. Although Article 2 and Article 10(3) refer to the separation of accused juvenile persons from adults, its interest resides in the fact that State parties should place the child in a special category and provide treatments appropriate to their age. The Covenant goes further to provide in its Article 24 that the family, the state and society should be the custodians of the child’s rights protection. More importantly, Article 24 emphasises the child’s registration at birth, as this can facilitate identification of the child if he or she later becomes a victim of trafficking, child labour or other abuses. To achieve its purposes the Covenant commits state parties to respecting requirements concerning both adults and children.

The International Covenant on Economic, Social and Cultural Rights (ICESCR)⁴³⁷, amongst other issues concerning child rights, emphasises the crucial issue of education. Undoubtedly, education is one of the most precious opportunities missed by a child finding himself trapped in trafficking and its attendant evils, and it is highly likely that such a child will miss the opportunity to receive even a primary level of education. In this respect Article, 13 of the Covenant emphasises the importance of education.⁴³⁸ More importantly, such emphasis is

⁴³⁶ The International Covenant on Civil and Political Rights (ICCPR 1966) is a core International Human rights instruments adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49.

⁴³⁷ The International Covenant on Economic, Social and Cultural Rights (CESCR) was adopted UN General Assembly resolution 2200A (XXI) of 16 December 1966. It entered into force on 3 January 1976 in accordance with Article 27. See documents at United Nations, *Treaty Series*, vol. 993, p. 3.

⁴³⁸ Article 13(1) The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance

underpinned by the idea that education is the best way to strengthen human rights values and fundamental freedom in society. The pertinence of human rights promoted and protected through the ICESCR is that its mandate to commit state parties to promulgating economic, social and cultural rights for individuals, including labour rights and the right to health, education and an adequate standard of living. As these rights are recognised to adults and children, the answer to phenomenon such as child trafficking child labour could be easily found. The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all UN Member States.⁴³⁹ The Periodic provides an opportunity for all States to declare actions taken to regarding the improvement of the human rights questions in their countries and to overcome challenges to the enjoyment of human rights.⁴⁴⁰ For instance in Nigeria, the UPR will assess the extent to which the country respects its human rights obligations set out in the UN Charter; the Universal Declaration of Human Rights. Human rights treaties ratified by Nigeria (see Appendix 4); pledges made voluntarily and commitments made by the Nigeria regarding national human rights policies and programmes implemented and applicable international humanitarian law.⁴⁴¹ The country's reports are submitted to the Office of the High Commissioner for Human Rights (OHCHR). For the 2016 reports, it observed that as at 24 June only 63 out of the 193 UN member states submitted, on a voluntary basis, their UPR mid-term reports. Nigeria has yet to submit its report for the indicated period.⁴⁴²

In compliance with the UPR Nigerian authorities have submitted a report containing the changes made enhance the protection ad promotion of human rights the country. The report produced on 30 July 2013 has enumerated five points at paragraph 121.⁴⁴³ The five important points presented as hampering factors to the promotion of human rights in the country are the

and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace'.

⁴³⁹ See United Nations Human Rights, 'Universal Periodic Review'. Available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>, accessed 14 September 2016.

⁴⁴⁰ *ibid.*

⁴⁴¹ See United Nations Human Rights, 'Basic Facts about the UPR'. Available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>, accessed 13 September 2016.

⁴⁴² See United Nations Human Rights, 'UPR Mid-term reports'. Available at <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx>, accessed 13 September 2016.

⁴⁴³ See the Office of the United Nations High Commissioner for Human Rights, 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Nigeria'. Available at http://lib.ohchr.org/HRBodies/UPR/_layouts/15/WopiFrame.aspx?sourcedoc=/HRBodies/UPR/Documents/Session17/NG/A_HRC_WG.6_17_NGA_1_Nigeria_E_iDrits.doc&action=default&DefaultItemOpen, accessed 14 September 2016.

same factors referred to in all debates about child trafficking and child labour. The plural nature and size of Nigeria has been presented as the first factor. It is indicated that heterogeneous and diverse nature of Nigeria creates practical difficulties for the harmonisation of views, strategies and programmes for promotion and protection of human rights. It appears that the Nigerian legal environment is the second hampering factor. Indeed the context of legal pluralism characterised by the co-existence of customary law, sharia law, received English law makes it often complex to implement and enforce laws from Federal or State authorities. As a result, the majority of Nigerians conduct their personal activities in accordance with and subject to customary law.

Customary law is considered to have a significant impact in the area of personal law regarding issues such traditional authority, marriage, and inheritance. Some customary laws are in conflict with human rights laws guaranteeing equality between men and women. Another important issue is that most government officials consider the corruption narrative about country highly exaggerated. It nevertheless poses a significant danger to the protection of human rights, particularly the economic and social rights and the right to sustainable development. The government also acknowledged that security in the country is a big challenge to the promotion and protection of human rights. Thus, the incidence of violence and insurgency in the country affects human rights. The government also note that difficulties in breaking through entrenched mindsets on harmful traditional practices.⁴⁴⁴ In response to the report submitted by Nigeria the Working Group on the Universal Periodic Review published a report on 16 December 2013.⁴⁴⁵

In the light of the challenges presented, among other recommendations, the Working Group urged Nigeria to continue to strengthen its human rights institutions and develop further measures to ensure the effective implementation of ratified legal instruments. It also requested that Nigeria continues efforts to effectively prevent human trafficking, including that the prevention of sexual abuse, neglect and trafficking of children, child prostitution and pornography, in line with commitments under the OP-CRC-SCS and reinforce law enforcement and the training enforcement agencies. Moreover, Nigeria was asked to take

⁴⁴⁴ *ibid.*

⁴⁴⁵ See the Office of the United Nations High Commissioner for Human Rights, 'Report of the Working Group on the Universal Periodic Review: Nigeria'. Available at http://lib.ohchr.org/HRBodies/UPR/_layouts/15/WopiFrame.aspx?sourcedoc=/HRBodies/UPR/Documents/Session17/NG/A_HRC_25_6_Nigeria_E_iDrits.doc&action=default&DefaultItemOpen=1, accessed 14 September 2016.

further measures towards the implementation of the 2010 recommendations made by the Committee, about the domestication of the Convention on the Rights of the Child (CRC) with emphasis on the right of the child to nutrition and health and protecting girls from early marriage and the right to education.⁴⁴⁶

5.1.1 Child Trafficking and United Nations Convention on the Rights of the Child, 1989

It could be emphasised that the Convention on the Rights of the Child, 1989 (CRC)⁴⁴⁷ is the accomplishment of centuries of discourse, hesitation and reluctance to recognise children's human rights in society. Quennerstedt emphasises that, rather than merely protecting the child's welfare, like its predecessors (the UN declarations of 1924 and 1959 on the rights of the child) had provided for, the convention now demands respect for the child as a human being.⁴⁴⁸ Such demand is made because the child is described as a person with rights and dignity like anyone else. From the weakness of the two previous of declarations (1924 and 1959) to the 'Magna Carta for children' produced in 1989, children's rights are now tightly enshrined in the human rights framework. Hence, Fottrell writes that "the CRC is a significant legal and political achievement: It elevated the child to the status of an independent rights-holder and placed children's issues at the centre of the mainstream human rights agenda."⁴⁴⁹

However, although the Convention does not identify any particular abuse directed at children, the practice of child trafficking does fall within the ambit of some of its Articles, either requiring state parties to pay particular attention to certain issues or stipulating the prohibition of certain practices detrimental to children's various fundamental rights. For instance, Article 4 provides that "State Parties shall endeavour to undertake the necessary for measures for the implementation of the rights provided in the Convention. Regarding economic, social and cultural rights, State Parties are urged to take steps that to maximise their available resources within the framework of co-operation. This provision emphasises the importance for State

⁴⁴⁶ *ibid.*

⁴⁴⁷ See United Nations General Assembly resolution 44/25 of 20 November 1989. Entry into force 2 September 1990. Available at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>, accessed 12 September 2016.

⁴⁴⁸ Ann Quennerstedt, 'Balancing the Rights of the Child and the Rights of Parents in the Convention on the Rights of the Child' (2009) 8 *Journal of Human Rights* 162, 176.

⁴⁴⁹ D Fottrell, 'Revisiting Children's Rights: 10 Years of the UN Convention on the Rights of the Child' (Kluwer Law International, London 2001) 1.

Parties to implement the Convention. Meanwhile, the provision is flexible in terms of resources available to the States in the implementation process.”

The flexibility that can also be interpreted as an exception to a principle could be justified by the inequality of resources between state parties. Whereas a developed country could possess all or most of the resources required for the effective implementation of the Convention, a developing country may find itself short of such resources. At this stage of the analysis, there should be no concern regarding the achievement of the purposes of international legal instruments, but questions nevertheless arise when flexibility serves as a leeway for a country like Nigeria to disregard the violation of millions of children’s fundamental human rights. The simple example of the wrong interpretation of resource availability can be seen by the lack of birth registrations in most developing countries, yet Article 7 of the CRC provides that the child shall be registered immediately after birth, as this important endeavour will create more rights for the child in later life.⁴⁵⁰

The critical issue emanating from the analysis of Article 4 amongst others is that a developing country without enough resources could blame the lack of registration at birth on a shortage of resources to achieve the requirement set by most international human rights legal instruments. In the same vein, where a developing country does not make information a priority, adequate means of communication to reach out to the majority of the population may not be put in place. In such a context of inertia or lack of political will, public awareness might never be raised as per the provision of Article 42 of the CRC.⁴⁵¹ However, the provisions of the CRC appear to be the most appropriate in terms of child rights protection in the current global context; it is important that law and policy makers grasp the essence of those provisions in Nigeria. Grasping the core idea or the spirit of the provisions cannot be translated by the systematic transposing of the Convention in Nigerian legal system. Instead, law and policy makers should comprehend the universal goals to be achieved through the provision in term of child rights protection. Individuals should have a perfect knowledge of their rights to seize the relevant treaty body for complaint. As it the case for every human rights treaty body, the Committee on the Rights of the Child can consider individual

⁴⁵⁰ The lack of birth registration is one of the common problems in most rural communities in Nigeria. An unregistered child at birth may not be identified by the authorities. See Atam E Adi et al., ‘Understanding whose births get registered: across sectorial study in Bauchi and Cross River states, Nigeria’ (2015) 8 BMC Research Notes 79.

⁴⁵¹ Article 42 of the United Convention on the Rights of the Child (1989) provides that ‘States parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike’.

communications. Indeed the Committee considers alleged violation of the Convention and its two previous protocols on the extent of child pornography child prostitution and the involvement of children in armed conflict by States who signed the third optional protocol on a communication procedure.⁴⁵²

For instance Article 12 of the Optional Protocol to the Convention on the Rights of the Child, 1989 on a Communication Procedure stipulates that the relevant committee can consider a complaint from a State party who believe that another state party is not giving effect to the provision of the CRC.⁴⁵³ The procedure applies only to states parties who have made a declaration accepting the competence of the Committee in this regard.⁴⁵⁴ Nigeria has a treaty obligation to report to the United Nations regarding the implementation of the various human rights instruments it has ratified (see Appendix 3). Indeed the rights-based approach to child trafficking requires that the state of affairs regarding Nigeria's current position in the international human rights legal environment be specified. First and foremost it should be noted Nigeria has ratified the existing human rights instruments elaborated by the United Nations

Nigeria's good collaboration with the United Nations Committee on the Rights of the Child contributes to a great extent to improving the state of affairs regarding the implementation and enforcement mechanisms. For example, on 2 January 2010 the UN Committee on the Rights of the Child requested Nigeria to provide information in regards to measures taken by the State to domesticate the UN Convention on the Rights of the Child. The request was worded as follow:

“Please provide information on measures taken by the State party to ensure the compatibility of national legislation with the Convention (concluding observations of the Committee (CRC/C/15/Add.257, para. 12)), especially with respect to the definition of the child, the prohibition of corporal punishment and the minimum age of criminal responsibility. What steps have been taken by the State party to enact the Child Rights Act in all states and what are the obstacles posed by Sharia and customary law to ensure its full application?”⁴⁵⁵

⁴⁵² See United Nations Human Rights: Human Rights Bodies - Complaints Procedures. Available at <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>, accessed 06 September 2016.

⁴⁵³ Article 12(1) A State party to the present Protocol may, at any time, declare that it recognizes the competence of the Committee to receive and consider

communications in which a State party claims that another State party is not fulfilling its obligations under any of the following instruments to which the State is a party:...

⁴⁵⁴ See United Nations Human Rights: Human Rights Bodies - Complaints Procedures. Available at <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>, accessed 06 September 2016.

⁴⁵⁵ See UN Committee on the Rights of the Child (CRC), *Implementation of the Convention on the Rights of the Child : list of issues related to the consideration of the 3rd and 4th periodic reports of Nigeria (CRC/C/NGA/3-*

The content of this request is appealing to Nigerian authorities, and all the actors concerned with child rights protection and promotion in the country. In order to maintain good rapports with the UN Committee on the Rights of the Child, in providing its report, Nigeria will address the different points emphasised in the requested document.

In previous years the relations between Nigeria and the UN Committee on the Rights of the Child have proven satisfactory. This good cooperation is evidenced by the report issued by the Committee on 2 March 2010. The preface of the UN Committee on the Rights of the Child's report reads a follow:

“The Federal Republic of Nigeria in the last nine years of democratic governance has recorded significant increase in awareness and political will at all levels to recognize, respect and protect children's rights. Accordingly, the initiatives and reform programmes of the current administration have created a positive and conducive programming environment for achieving increases in the enjoyment of children's rights through accelerated programmes, increased investments in children and women development issues, and allocation of disaggregated quality resources. These interventions are a manifestation of Nigeria's commitment to achieving the targets of the Millennium Development Goals. To this effect, the Nigerian government has put in place institutional and legal mechanisms to achieve protection services to children and women, and empowerment through building capacities among families and communities.”⁴⁵⁶

The Convention on the Elimination of all Forms of Discriminations Against Women (CEDAW) is one of the prominent human rights instruments adopted by the United Nations General Assembly.⁴⁵⁷ It is observed that most of the trafficked persons were women and also the level of discrimination against women mainly during the trafficking process was so significant that Nigeria was compelled to domesticate the CEDAW immediately.⁴⁵⁸ Nigeria also has to report to the Committee on the Elimination of Discrimination Against Women.⁴⁵⁹

4) , 2 March 2010, CRC/C/NGA/Q/3-4, available at: <http://www.refworld.org/docid/513749952.html>, accessed 28 May 2015.

⁴⁵⁶ UN Committee on the Rights of the Child (CRC), Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: 3rd and 4th periodic report of States parties due in 2008 : Nigeria, 5 January 2009, CRC/C/NGA/3-4, available at: <http://www.refworld.org/docid/4c32df7f2.html>, accessed 28 May 2015.

⁴⁵⁷ The United Nations Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) is an International Instrument for the Protection of Women's Rights, adopted by the General Assembly of the United Nations in 1979, but entered into force in 1981.

⁴⁵⁸ See the Nigeria CEDAW NGO coalition shadow report submitted to the 41st session of the United Nations committee on the elimination of all forms of discrimination against women. Available at <http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/BAOBADNigeria41.pdf>, accessed 28 May 2015.

⁴⁵⁹ According to Article 18 of the Convention State Parties are obliged to submit periodic reports to the CEDAW Committee every four years. Nigeria has been a state party since 1985 and in compliance to her

The Report further stated that 64 cases were investigated out of which 18 cases were filed in court. The report indicates that seven convictions with jail terms of 2 to 7 years for trafficking offences. Moreover, the report indicates the rescuing, sheltering, and counselling of 520 locally and internationally trafficked women were rescued.⁴⁶⁰ In its concluding observations, the Committee appreciated the close collaboration of Nigeria with civil society groups, NGOs involved in the promotion of gender equality and women's rights through contribution to legislative processes and consultations.⁴⁶¹ The Committee encouraged the Government to develop such collaboration further.⁴⁶² The Committee welcomed efforts undertaken by Nigeria with regard to legal reform, the publication of a study compiling national, state and local laws, policies and practices relating to the status of women and children.⁴⁶³ The Committee also welcomed the setting of a Committee on Reform of Discriminatory Laws against Women in Nigeria.⁴⁶⁴ The Committee also urged the Nigeria to ensure that its states that have yet adopted the Child Rights Act 2003 to do so without delay and ensure its effective implementation.⁴⁶⁵ The Committee requested that the concluding observations be broadly disseminated in Nigeria. The purpose of such wide dissemination is to create public awareness among the general public, the politician, governments officials members of parliament and other organisation in the country.⁴⁶⁶

5.1.2 The UN Trafficking in Person Protocol, 2000

The UN Trafficking in Person [Protocol⁴⁶⁷ by definition, is a Protocol that places n emphasis on women and children.⁴⁶⁸ It is evident that the objectives of the Protocol are not only to prevent the practice of trafficking in persons but also to protecting and assisting the victims of trafficking with respect to their human rights. From the statement of purposes, it is

obligation under the above article submitted the 6th country periodic report in 2006, which was deliberated upon on July 3, 2008.

⁴⁶⁰ *ibid.*

⁴⁶¹ *ibid.*

⁴⁶² *ibid.*

⁴⁶³ *ibid.*

⁴⁶⁴ *ibid.*

⁴⁶⁵ *ibid.*

⁴⁶⁶ *ibid.*

⁴⁶⁷ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing United Nations Convention against Transnational Organised Crime. See United Nations *Treaty Series*, Vol. 2237, p.319; Doc, A/55/383.

⁴⁶⁸ *ibid.*

understood that this instrument is designed to combat trafficking in general and child trafficking in particular. The special reference to women and children indicates that these two categories of persons represent the most vulnerable in society. As with most international legal instruments, the Protocol considers a person less than 18 years of age a child.⁴⁶⁹ According to Article 3 (c) of the Protocol, the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation amounts to trafficking. The protocol also commits each state party to take legislative and other measures necessary to criminalise offences set out in Article 3 when the offences are committed intentionally. The element of intention in this process is essential, in that activities that may require a similar process to those described in Article 3 may not be performed for the purpose of exploitation.

It should be recalled that the Trafficking Protocol is one the three Palermo Protocols comprising the Protocol against the Smuggling of Migrants by Land, Sea and Air. The Protocol entered into force on 28 January 2004 and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition that entered into force on 3 July 2005. The three Protocols supplement the United Nations Convention against Transnational Organized Crime.⁴⁷⁰ The convention and the protocols obligate ratifying states to introduce national trafficking legislation. Nigeria has ratified all the three protocols supplementing the United Nations Convention against Transnational Organized Crime (see Table below). Subsequently, Nigeria has domesticated the Protocol by enacting the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015 and established the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) in 2003 which have been examined in chapter three. Indeed the relevant protocol to this thesis is the UN TIP Protocol. The Protocol is the said to be the first global legally binding instrument that has an agreed definition on trafficking cases.⁴⁷¹ More importantly, it is asserted that the intention behind the definition is to facilitate the convergence of national approaches about the establishment of domestic criminal offences that support effective and efficient international cooperation in the area of investigation and prosecution of human trafficking. Article 6 (2) of the Protocol stipulates that each State Party shall make sure that

⁴⁶⁹ Article 3(d), “Child” shall mean any person under 18 years of age.

⁴⁷⁰ The United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000, is the main international instrument in the fight against transnational organized crime.

⁴⁷¹ See United Nations Office on Drugs and Crime at <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>, accessed 21 February 2015.

its national legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases. This approach has been significant in the formulating of most of the provisions of Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2015 in Nigeria. Indeed the Trafficking is the domesticated version of the UN TIP Protocol in Nigerian legal system.

Table 5.1: Ratifications of the Palermo Protocols by Nigeria

Protocols	Signature	Ratification, Acceptance(A), Approval(AA), Accession(a), Succession(d)
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children	13 Dec 2000	28 Jun 2001
Protocol against the Smuggling of Migrants by Land, Sea and Air	13 Dec 2000	27 Sep 2001
Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition,	13 Nov 2001	3 Mar 2006

Source: United Nations, Treaty Series, Vol. 2237, p. 319; Doc.A/55/383, United Nations, Treaty Series, Vol. 2241, p. 507; Doc.A/55/383, United Nations, Treaty Series, Vol. 2326, p. 208; Doc.A/55/383

In order to prevent trafficking in persons and establish an effective cooperation between the countries, the Protocol provides that States Parties shall establish comprehensive policies, programmes and other measures.⁴⁷² The protocol ensures that definitions of trafficking reflect the need for special safeguards and care for children, including appropriate legal protection.⁴⁷³ Article 8 guarantees the right to repatriation for victims, which is an important guarantee in combating child trafficking, especially given that trafficking deprives children of

⁴⁷² Article 9 (1) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

⁴⁷³ Article 6 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

their family environment, and so the opportunity to repatriate them back into their usual habitat will contribute to their moral and emotional stability. Under this provision the return and acceptance of children who have been victims of cross-border trafficking, with due regard to their safety is must be respected by the country of origin and the country of destination..⁴⁷⁴ Where the child cannot be repatriated the receiving state has an obligation to protect the child. The guarantee that the receiving state will assist that child *per se* is also an important factor in the promotion and projection of te fundamental rights of the child.

5.1.3 The International Labour Organisation’s Approach

ILO Convention Concerning the Minimum Age for Admission to Employment

Combating trafficking across the globe became paramount on the ILO’s agenda. The ILO’s fight against practices resulting in child rights violations has been engaged through the Minimum Age Convention, 1973 (No. 138) and the Convention on the Worst Forms of Child Labour (No.182). Indeed ILO Convention No. 138 seeks a national policy for the effective stamping out of child labour and a specification of minimum age. It specified working ages as follows: general basic minimum ages of 15 and 14 are specified as an exception for developing countries; 18 was specified for hazardous work, with no exception for developing countries. Ages 13-15 were specified for light work for all countries, and 12-14 years specified as an exception for developing countries.

However, nearly two decades after the adoption of the Convention, age restrictions in employment remain a challenging issue for the organisation and state members. The ILO Minimum Age Convention, 1973 (No. 138),⁴⁷⁵ does not specify the type of work in which a child should not engage. However, Article 3(1) does stipulate that “The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18.” This provision is relevant to the debate about combating child trafficking and its associated repercussions.

⁴⁷⁴ Article 8(1) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

⁴⁷⁵ Convention concerning Minimum Age for Admission to Employment (entry into force: 19 June 1976).

It is understood that child trafficking itself is a transitional phase, before moving on to more specific types of child exploitation or child abuses. When the Minimum Age Convention prevents the employment of children under the age of 18, there is obviously an endeavour to prevent the situation to child trafficking. For instance, if a person under the age of 18 becomes the victim of trafficking for the purpose of child labour, no employer should accept such an under-aged person in his business or trade. This approach appears to be the rationale behind the framers' wording of Article 3 of the Convention. Hence, in the Minimum Age Convention (No 138), although it addresses labour issues, it should be understood that the practice of child trafficking can be halted if employers do not accept children under the minimum age required by law to enter into employment. The circumstances and conditions of children and young person's participation in work have been clarified through the exceptions set out in Articles 6 and 7 of the Convention. Article 6 provides that:

This Convention does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, and is an integral part of:

- (a) a course of education or training for which a school or training institution is primarily responsible;
- (b) a programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or
- (c) a programme of guidance or orientation designed to facilitate the choice of an occupation or a line of training.

The Minimum Age Convention seeks to achieve, as its ultimate goal, the eradication of children's employment at an age deemed inadequate to engage in certain types of work. While such an approach appeals directly to state members, it also seeks to raise awareness about the necessity to protect under-aged people with policy- and lawmakers, employers and all stakeholders in work environments. However, an analysis of Article 3 and Article 6 shows that it is more difficult to achieve the goal set in Article 3, because employment mechanisms in most developing countries are informal, and as a result, a 14-year-old child employed on a farm or in a quarry may never be identified by the authorities. Whereas a person of at least 14 years of age enrolled in formal education or a training institution can work in accordance

with the regulations in place,⁴⁷⁶ a child of the same age will work in informal sectors, in breach of basic standards and rules, thereby jeopardising his development and health. Meanwhile, in all circumstances, the Convention stands among the most relevant legal instruments on the issue analysed in this chapter, because it has the merit of addressing an issue that is crucial in solving child trafficking.

ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour

The adoption of ILO Convention N0 182 known as the Worst Forms of Child Labour Convention⁴⁷⁷ was perceived as a comprehensive approach to combating child labour and all forms of child exploitation. ILO Convention No. 182 recognises that child labour is, largely, caused by poverty and that the effective solution lies in sustained economic growth, which would lead to social progress, particularly, poverty alleviation and universal education.

The ILO Convention No.182 expressly classifies the trafficking of children in the worst forms of child labour. Child trafficking – other than being a child’s human rights issue – is a labour issue, because the primary goal of the traffickers and users is to exploit their victims for financial gain, which is usually done in work environments. The Convention emphasises the necessity to eliminate these practices and urges state members to take adequate measures to achieve this goal. In regard to the type of work targeted for total elimination, Article 3 of the Convention stipulates that:

For the purposes of this Convention, the term ‘the worst forms of child labour’ comprises:

- (a) 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;
- (b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

⁴⁷⁶ See Article 6 of ILO Minimum Age Convention, 1973 (No.138).

⁴⁷⁷ Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (entry into force: 19 November 2000).

(c) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

The new approach, adopted in Convention No.182 to fight child labour and other exploitative practices, is remarkable. Moreover, the Convention urges state members to implement all measures with the intention of total elimination. In this respect, Article 6 stipulates that:

1. Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.

2. Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate.

Although the ILO seeks to create necessary harmony for the worldwide implementation of Convention No 182, the opportunity given to member states to determine the type of work they deem the worst forms of child labour leaves an open the door to contextual interpretation. Indeed, Article 4(1) of the Convention specifies that the types of work mentioned in Article 3(d) must be determined by domestic laws or regulations or by the competent authority. Before the determination is made, a consultation with the organisations of employers and workers must take place. The consultation is necessary in that it takes into consideration relevant international particularly paragraph 3 and 4 of Convention No 182. The idea that national laws must determine the type of work deemed the worst forms of child labour may not be beneficial regarding achieving the ultimate goal of total elimination, as most developing countries are still engulfed in the turmoil of cultural and traditional perceptions regarding the various issues designated by the Convention. From this standpoint, some countries' understanding of the concept of 'worst forms' may vary.⁴⁷⁸ Notwithstanding the ILO's much tougher approach to combating the worst forms of child labour, the leeway given to states members in determining the type of practices to be determined as worst forms of child labour could make the Convention less effective regarding achieving the ILO's goals across the globe. Overall ILO requires that state members provide a regular report on the implementation of its conventions. Nigeria's obligations as ILO member state, also involve

⁴⁷⁸ The contextual approaches to the issue could be influenced by culture or tradition. See Welbourne Penelope, 'Culture, Children's rights and child protection' (2002) 11 Child Abuse Review 345, 358.

regular reporting to the ILO. The regular reporting is concerned with ratified Conventions. Article 22 of the ILO Constitution stipulates that: *‘Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request.’*⁴⁷⁹ The report is evaluated by the ILO Committee of Experts on the Application of Conventions and Recommendations who can make observations or a direct request to the member state regarding their effective implementation of ILO standards. Regarding child rights protection, it is worth noting that the regular reporting system helps the ILO to appreciate the improvement made by Nigeria in the implementation of the Worst Forms of Child Labour which effectively addresses the issue of child trafficking. Hence regarding Article 7(2) of the Worst Forms of Child Labour Convention, 1999 (No.182) ratified by Nigeria in 2002, set the obligation for the authorities to provided information about victims on a regular basis.⁴⁸⁰ Particular attention has to be paid to child victims of trafficking who have benefited from the NAPTIP’s rehabilitation centres.⁴⁸¹ This request was made following the ILO–IPEC report of 2014 which indicated that based on the framework of the ECOWAS-II project, 779 children victims of child labour, were reached by prevention and withdrawal services.⁴⁸² It is noted 108 of the children received support from NAPTIP in the form of shelters, vocational training and school enrolment.⁴⁸³

Pursuant the provision of Article 8 of the Worst Forms of Child Labour Convention, 1998 (No.182) the committee noted that Nigeria has failed to provide information about its bilateral cooperation with European countries in combatting child trafficking. The Committee Having been informed of previous reports that Nigerian government has signed a bilateral agreement with some European countries relating to the reduction of child trafficking has

⁴⁷⁹ International Labour Organization (ILO), *Constitution of the International Labour Organisation (ILO)*, 1 April 1919, available at: <http://www.refworld.org/docid/3ddb5391a.html> [accessed 04 October 2016].

⁴⁸⁰ See ILO, ‘Direct Request (CEACR) - adopted 2015, published 105th ILC session (2016)’. Available at http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3245224, accessed 14 September 2016.

⁴⁸¹ See ILO, ‘Direct Request (CEACR) - adopted 2015, published 105th ILC session (2016)’. Available at http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3245224, accessed 14 September 2016.

⁴⁸² See ILO, ‘Direct Request (CEACR) - adopted 2015, published 105th ILC session (2016)’. Available at http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3245224, accessed 14 September 2016.

⁴⁸³ Ibid.

reiterated its request for Nigeria to provide information *on the impact of these bilateral agreements in combating the trafficking of children*.⁴⁸⁴

In its observations on a report submitted by Nigeria, The Committee raised concern about the high rate of children out of school. The Committee noted that: 'while noting the measures taken by the Government, the Committee urges the Government to intensify its efforts to improve the functioning of the education system and to facilitate access of all children to free basic education. In this regard, the Committee requests the Government to take the necessary measures, to increase the school enrolment rates at the primary and secondary levels and to decrease the school drop-out rates. It requests the Government to provide information on the concrete measures taken in this regard and to provide updated statistical information on the results obtained, particularly with regard to reducing the number of out-of-school children at the primary and secondary levels'.⁴⁸⁵

5.2 The Regional Systems for Combatting Child Trafficking

5.2.1 The Approach in the European Region

European Union Framework Decision on Combating Trafficking in Human Beings, 2002

As indicated elsewhere children are trafficked from African countries, especially Nigeria, to Europe. Combating child trafficking in Europe involves tackling activities of traffickers operating within the continent by also the activities of those operating between Africa and Europe. At the European regional level, the Council of Europe is engaged in the combat against trafficking. As already stated herein, the major destinations for trafficked people, including children, are Europe and Asia. Regarding child trafficking in Europe, the BBC reported that the Italian police conducted 'Operation Viola' which led to the arrest of 51 gang members in Italy and 15 in other parts of Europe.⁴⁸⁶ It is emphasised that the gang traffic in majority women and children, some of whom had been kidnapped from Nigerian orphanages.⁴⁸⁷

⁴⁸⁴ See ILO, 'Observation (CEACR) –adopted 2015 Published 105th ILC session (2016)'. Available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0:::P13100_COMMENT_ID:3245227, accessed 14 September 2016

⁴⁸⁵ Ibid.

⁴⁸⁶ BBC News Channel, 'Italy police smash Nigerian gang' *BBC NEWS* (Tuesday, 15 January 2008)< available at <http://news.bbc.co.uk/1/hi/world/europe/7189703.stm>> accessed 04 October 2016.

⁴⁸⁷ Ibid.

As for Europe, various measures have been put in place to combat the problem. Hence, in 2002, the then Council of Europe established the Council Frameworks Decision, in which paragraph 5 of the preamble emphasises the special status of children in the general debate about trafficking.⁴⁸⁸ Moreover, paragraph 8 underscores the necessity to introduce sufficiently severe sanctions against perpetrators of trafficking. Article 7(2) of the framework decision urges state members to consider children victims of trafficking as particularly vulnerable. Furthermore, Article 7 (3) urges member states to take all measures possible to ensure appropriate assistance for the child and his family. One of the significant elements in the framework decision is that the liability of legal persons appears under Article 4, which provides that:

Each Member State shall take the necessary measures to ensure that legal persons can be held liable for an offence referred to in Articles 1 and 2, committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- (a) a power of representation of the legal person, or
- (b) an authority to take decisions on behalf of the legal person, or
- (c) an authority to exercise control within the legal person.⁴⁸⁹

It is obvious that human trafficking between Africa and Europe requires the involvement of more than one individual, and very often a legal person. Article 4(4) provides that “For the purpose of this Framework Decision, legal person shall mean any entity having such status under the applicable law, except for States or other public bodies in the exercise of State authority and for public international organisations.” From this standpoint the law is applicable to all parties involved in the process of trafficking, and so it could apply to carriage companies operating by air or by sea. The law is specific on this issue, in that a legal person cannot escape prosecution in Europe if they commit an offence. This specification related to legal persons is almost non-existent in legal instruments applicable to cross-border trafficking in West Africa, and such a lack of provision allows carriers or transporters to avoid prosecution in most cases.

⁴⁸⁸ See European Union: Council of European Union, Council Framework Decision 2002/629 on Combatting Trafficking in Human Beings, July 2002, 2002/629/JHA, available at <http://www.refworld.org/docid/3ddcfb7b2.html>, accessed 13 September 2016.

⁴⁸⁹ *ibid.*

Council of Europe Convention on Action against Trafficking in Human Beings

The ‘Council of Europe Convention on Action against Trafficking in Human Beings’ is also a regional human rights treaty, the aims of which are to prevent and combat all forms of human trafficking. The scope of the treaty extends to transnational activities directed at the issues surrounding human trafficking⁴⁹⁰ in West African, including Nigeria. The Convention also aims at protecting and assisting victims and witnesses of trafficking, and it ensures that effective investigations and prosecutions are paramount at all times. More importantly, it promotes international cooperation. Article 4(d) of the Convention defines a child as a person under 18 years of age. The Convention appears more proactive in its approach, in that measures to discourage the practice are put in place. For instance, Article 6 provides that:

To discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each Party shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures including:

- a, research on best practices, methods and strategies;
- b, raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings;
- c, target information campaigns involving, as appropriate, inter alia, public authorities and policymakers;
- d, preventive measures, including educational programmes for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being.⁴⁹¹

The Convention provides some guarantees in a situation where the age of the victim is uncertain. In this respect, Article 10(3) stipulates that there are reasons to believe that the victim is a child when his or her age is uncertain. As a result, he or she should be accorded particular attention until his or her age is verified. This provision is significant, in that it allows enforcement authorities to take actions that could violate the fundamental rights of a child.

⁴⁹⁰ Article 2 of the Convention provides that ‘Scope This Convention shall apply to all forms of trafficking in human beings, whether national or transnational, whether or not connected with organised crime.’

⁴⁹¹ See Council of Europe, ‘Council of Europe Convention on Action against Trafficking in Human Beings’, 16 May 2005 CETS 197. Available at <http://www.refworld.org/docid/43fded544.html>, accessed 12 September 2016.

Article 10(4) stipulates that once an unaccompanied child is identified a representation of the child victim by a legal guardian, must be provided and organisations or authorities shall act in the best interests of that child. The State Member in charge of the welfare of the child is urged to take the appropriate measures to establish the child's identity and nationality. Furthermore, the State Member is required to endeavour to locate the child's family as long as such step is in the best interests of the child. The Convention sets more guarantees regarding the child's legal status in the country of destination. Article 14(2) stipulates in the case of necessity the residence permits for child victims should be provided in accordance with the best interests of the child and, where appropriate, renewed under the same conditions. Hence, the child cannot be an alien in a state member country that rescues him from a trafficking network. In the same vein, under Article 16 (7) child victims cannot be returned to a country if such return is against their best interest. In the light of all these guarantees, it is obvious that European countries have adopted a comprehensive approach to the phenomenon of human trafficking in general and child trafficking in particular.⁴⁹²

The Convention also provides for sanctions against legal persons. Corporate liability in this context relates to intermediaries and various companies involved in trafficking to a state member, and they cannot escape prosecution when an offence occurs in a state member country.⁴⁹³ Article 22 stipulates that each party shall endeavour to pass laws and take measures to ensure that a legal person is liable for a criminal offence under the provisions of the Convention

⁴⁹² Article 28(3) provides that "A child victim shall be afforded special protection measures taking into account the best interests of the child."

⁴⁹³ The Convention gives jurisdiction to each state member over offences committed in their territories. Article 31 in this respect provides that each party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed: in its territory; on board a ship flying the flag of that party; on board an aircraft registered under the laws of that party; by one of its nationals or by a stateless person who has his or her habitual residence in its territory, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any state, i.e. against one of its nationals.

5.2.2 The Approach in the African Region

The African Union

Discussing human rights issues in the context of the African Union requires a better understanding of the mission of this regional organisation, because child rights are encompassed by the general topic of human rights, the credentials of the AU's approach to human rights, in general, will determine that of children's rights. It appears that the African Union Act does not elaborate on the question of human rights. Meanwhile, the Act does reaffirm adherence to the principles of human rights and people's rights and freedoms, contained in the declarations, convention and relevant instruments adopted by the defunct Organisation of African Unity (OAU), though it does not include sufficient provisions for human rights.

The African Union recognised that the impacts of trafficking included the violation of human rights, social exclusion and crime, undermining public health, undermining authority, sustaining illicit activities and organised crime and the erosion of human capital.⁴⁹⁴ As a result, the African Union took up an initiative against trafficking on the continent. Its campaign was based on five core principles.⁴⁹⁵ There must be a root-cause approach to the issue of trafficking in Africa, there must be a sound victims protection approach, all actions must take in consideration of the best interests of the child.⁴⁹⁶ Moreover, women and girls must be empowered to deal with every situation related to trafficking and, finally, African nations must have greater respect for the African Union and United Nations conventions. The campaign known as the 'African Union Commission Initiative against Trafficking' (AU COMMIT) was launched on 16 June 2014 at the organisation's headquarters.⁴⁹⁷

To adopt a much more straightforward approach to the issue of trafficking, the African Union set up the Ouagadougou Action Plan.⁴⁹⁸ The Ouagadougou Action Plan was adopted by

⁴⁹⁴ See 'African Union Commission Initiative against Trafficking', available at http://www.ohchr.org/Documents/Issues/Trafficking/Dakar_Protection_Kapp-Marais.pdf, accessed 24 February 2015.

⁴⁹⁵ *ibid.*

⁴⁹⁶ *ibid.*

⁴⁹⁷ *ibid.*

⁴⁹⁸ Through the Ouagadougou Action Plan, Europeans and African States Reaffirmed their commitments to most of the relevant International and Regional legal instruments such as the Universal Declaration of Human Rights (1948), the UN Convention on the Elimination of all Forms of Discrimination against Women (1979), the Beijing Declaration and Platform of Action (1995), the UN convention on the Rights of the Child (1989), the UN Convention against Transnational Organised Crime and its Protocol to Prevent, Suppress and Punish

government officials especially ministers for foreign affairs and migration, ministers in charge of the development of African and the European Union member and African and European Commission commissioners in Tripoli, Libya, in November 2006.⁴⁹⁹ The Ouagadougou Action Plan was adapted to Combat Trafficking in Human Beings, Especially Women and Children. The Action Plan placed emphasis on prevention and awareness. In that respect education and training, including life-skills and awareness are seen as key [preventive measure to combat trafficking in human beings. The Action Plan includes victim protection and assistance. Based on their policies, programmes and other measures for victim protection and assistance States have to fully rely on international human rights laws, including those related to the rights of women and children, forced labour, child labour and trafficking in human beings. In term of Legislative Framework, Policy Development and Law Enforcement State parties have to sign, ratify and effectively implement the Convention against Transnational Organised Crime and the Trafficking in Person Protocol.⁵⁰⁰ The Ouagadougou Action Plan is a major endeavour between Europeans and African Countries to trigger significant progress in the combat against human trafficking in general and child trafficking in particular.

In regard to the challenging issue of child trafficking plaguing Africa in general and Nigeria in particular, Article 29 of The African Charter on the Rights and Welfare of the Child (ACRWC) provides that:

State parties to the present Charter shall take appropriate measures to prevent:

- (a) the abduction, the sale of, or traffic in children for any purpose or in any form, by any person including parents or legal guardians of the child;
- (b) the use of children in all forms of begging.⁵⁰¹

Trafficking in Persons, especially Women and Children (2000), the Declaration of the World Summit for Children (1990) the ILO Convention on worst form of child labour (1999).

⁴⁹⁹ See 'Ouagadougou Action Plan to Combat Trafficking in Human Beings Especially Women and Children', available at <http://www.au.int/en/sites/default/files/Ouagadougou%20Action%20Plan%20-%20E.pdf>, access 24 February 2015.

⁵⁰⁰ See African Union, 'The Ouagadougou Action Plan. Document available at <http://sa.au.int/en/content/ouagadougou-action-plan-combat-trafficking-human-beings-especially-women-and-children-0>, accessed 30 October 2016.

⁵⁰¹ African's Charter on the Rights and Welfare of the child (1999). See OAU Doc. CAB/LEG/24.9/49 (1990), *entered into force* Nov. 29, 1999.

The African Charter on Human and People's Rights, 1981

In the preambular paragraph of the African Charter on Human and People's Rights, emphasis is placed on the necessity for the African States to adhere to human rights values and that states reiterate their adherence to the principles of human and people's rights and freedom. This obligation is contained in the declarations, conventions and other instruments of the OAU, the Movement of the Non-Aligned Countries and the United Nations. The wording of most human rights instruments adopted within the former Organisation of African Unity appears to commit state parties to adhere or to refer to other standing legal instruments. Such an approach may have been adopted to address issues that are not covered by a treaty. Therefore, any reference to instruments from the United Nations, for instance, implies that the Charter recognises the general human and child rights mechanisms adopted by the United Nations. It must be noted that before the inception of the Charter, most African countries were members of the OAU and the United Nations. Although the CRC was not yet adopted, some declarations from the defunct League of Nations and its successor the United Nations were already in place.⁵⁰² Equally, a UN agency such as the ILO also adopted instruments such as the Minimum Age Convention (Convention No.138).⁵⁰³

It could be agreed with Naldi that the African Charter makes the briefest of express references to the rights of children.⁵⁰⁴ Article 18(3)⁵⁰⁵ happens to be the only provision mentioning the term 'child rights'; however, it is significant to note that the Charter contains provisions that address special circumstances of children in terms of protecting their fundamental human rights. The relevance of an analysis of the Charter in relation to regional instruments addressing and combating phenomena such as child trafficking, child labour and various child abuses transpires in Article 5. Indeed it stipulates that "Every individual shall have the right to the respect of the dignity inherent in a human being and the recognition of

⁵⁰² The declaration of the Rights of the Child proclaimed by General Assembly Resolution 1386 (XIV) of 20 November 1959 was already in place as well as the previous Geneva Declaration of the Rights of the Child adopted on 26 September 1924 by the League of Nations.

⁵⁰³ The Convention Concerning Minimum Age for Admission to Employment was adopted by the International Labour Organisation on 26 June 1973 entered into force on 19 June 1976.

⁵⁰⁴ See Gino J Naldi, 'Future trends in human rights in Africa: The increased role of the OAU?' in Michael Evan and Rachel Murray *The African Charter on People's Rights: The system in Practice, 1986-2000* (Cambridge University Press, Cambridge 2002) 5.

⁵⁰⁵ Article 18(3) The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.

his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”⁵⁰⁶ As indicated herein beforehand, education remains one of the key approaches to combating human rights violations in general and child rights abuses in particular. Hence, by referring to education in its Article 17, the Charter emphasises the importance of formal education in solving human rights issues arising in African societies. Moreover, formal education has been enshrined in most international legal instruments as a fundamental right of children.

The African Charter on the Rights and Welfare of the Child, 1990

From a practical point of view, it could have been deemed unnecessary to add a child rights instrument to a well-designed international instrument such as the CRC. Indeed, the Convention on the Rights of the Child was already entered in force but only needed to be ratified by African countries to address the most challenging issue pertaining to children’s rights through domestic laws. The nature of the debate prompted Viljoen to clarify that the necessity of an adapted child rights instrument in Africa could be understood from a contextual perspective.⁵⁰⁷ Viljoen is of the view that the adoption of a child rights instrument in the regional context is driven by legal motives rather than political motives, therefore, “from a legal point of view, there was a need to adopt a regional human rights instrument dealing with the issues of particular interest and importance to children in Africa.”⁵⁰⁸

Although the CRC has elaborated on most crucial issues regarding children’s rights across the globe, omissions about specific issues relating to the conditions of children in most African societies are apparent. For instance, the CRC does not mention adverse practices such as female genital mutilation and customary fosterage, which indeed are often the sources of child rights violations. Hence, the African Charter is regarded as an adequate instrument that addresses points of concern that are not raised by the CRC. From that standpoint, Viljoen argues that the two instruments are not in an oppositional but rather a complementary relationship.⁵⁰⁹ The necessity of the Charter being demonstrated, its relevance in the analysis of legal instruments that potentially combat child trafficking and its attendant evils can be

⁵⁰⁶ African (Banjul) Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986.

⁵⁰⁷ *ibid.*

⁵⁰⁸ *ibid.*

⁵⁰⁹ *ibid.*

perceived through some of its Articles. Article 4 stipulates the inviolability of human beings and their entitlement to respect for their and the integrity of their person. Moreover, it is indicated that No one may be arbitrarily deprived of this right”, Article 11 deals with the question of education. It is evident that the concepts of respect and integrity in a person’s life would be better understood through education.

As indicated hereinbefore, practices such as customary child fostering, child trafficking and child labour are performed in a cultural environment where their negative aspects are never questioned within communities. Given that these practices are part of the tradition, nobody could regard them as prejudices. Nonetheless, frequent and serious child rights violations occur without any prospect of ending; therefore the framers of the Charter deemed it necessary to set a provision regarding cultural and social practices. In this respect Article 21(1) stipulates that:

State parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, the dignity, normal growth and development of the child and in particular:

- (a) those customs and practices prejudicial to the health or life of the child;
and
- (b) those customs and practices discriminatory to the child on the ground of sex and other status

An analysis of rights-based legal instruments shows that the promotion and protection of child rights, to some extent, have been underscored in all of them. It is also noticeable that most of the core human rights instruments were adopted and entered into force well before the African Charter on the Rights and Welfare of the Child and UN CRC 1989. This situation clearly indicates that the specific issue of child rights was immersed in the general human rights framework. More significantly States are required to submit a report of their human right outlook on a regular basis.

Nigeria submitted its fourth periodic country report on the implementation of the African Charter on Human and Peoples’ Rights in Nigeria to the African Commission on Human Rights.⁵¹⁰ The report indicated that Law Enforcement Agencies and Human Rights The

⁵¹⁰ The period covered is 2008-2010. The report produced by the Federal ministry of Justice in Abuja, was published on 11 August 2010.

obligation to respect human rights by all law enforcement agencies, including the police, prisons, security institutions, etc. is contained in Chapter 4 of the Constitution, the Police Act and other legislations or enabling national laws. In addition, all law enforcement agents have the obligation to respect the provisions of the various human rights and humanitarian laws to which Nigeria is a signatory. In pursuance of this, all law enforcement outfits have established human rights desks for the purpose of human rights training taught in the law enforcement agencies institutions as well as monitoring activities of the law enforcement agents to ensure that they comply with acceptable human rights standards.⁵¹¹

In regard to the specific issue of human trafficking, the report underscored the efforts made in the area of legislation at the national level by the Federal government and at State levels by most states governments. Indeed at the National level, under 30(2) (b) of the Child Rights Act it is prohibited to use a child as a slave, or for practices similar to slavery. The slavery-like practices enumerated are trafficking of the child, debt bondage and others.⁵¹² Trafficking in human person is prohibited by the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003.⁵¹³ It also provides for the rehabilitation of victims of trafficking. In line with this Act, in August 2003 Nigeria established NAPTIP which is the National Agency for Prohibition of Trafficking in Persons and Other Related Matters.⁵¹⁴

It could be noted in this 4th report to the African Commission on Human Rights; Nigeria had a significant progress to show with the enactment of CRA 2003 and subsequent setting of NAPTIP. This level of effort perfectly responds to the aim of the regular reporting system. As to the report covering the period 2011-2014, the Ministry of Justice has indicated major progress on the human rights situation in Nigeria. Among other major facts

⁵¹¹ See African Commission on Human and People's Rights, 'Nigeria's 4th periodic country report: - 2008-2010 on the implementation of the African charter on human and peoples' rights in Nigeria'. Available at http://www.achpr.org/files/sessions/50th/state-reports/4th-2008-2010/staterep4_nigeria_2011_eng.pdf, accessed 13 September 2016.

⁵¹² Sections 223-225 of the Criminal Code, applicable in Southern Nigeria, and Articles 278-280 of the Penal Code, applicable in Northern Nigeria provide for sanctions against human trafficking. Section 34 of the 1999 Constitution prohibits slavery and forced labour.

⁵¹³ See National Agency for the Prohibition of Trafficking in Persons (NAPTIP)' Our Laws and Mandate'. Available at <http://www.naptip.gov.ng/index.php/aboutus/our-law-and-our-mandate>, accessed 14 September 2016.

⁵¹⁴ See National Agency for the Prohibition of Trafficking in Persons (NAPTIP)' Our Laws and Mandate'. Available at <http://www.naptip.gov.ng/index.php/aboutus/our-law-and-our-mandate>, accessed 14 September 2016.

It is noted that with the amendment to the legislation in 2005, Section 54 of the NAPTIP Act established a Trafficked Victim's Fund into which all proceeds of the sale of assets and properties of traffickers are channelled for victim's rehabilitation. The fund will serve for to improve the social conditions of victim especially children who will have the opportunity to be sheltered and send to school. More significantly, the Legal Aid Council of Nigeria was established by Legal Aid Act No 56 of 1976 (now repealed and re-enacted as Legal Act 2011). The Council is under the supervision of the Federal Ministry of Justice. The Council is charged with the statutory responsibility of providing free Legal Representation, Legal Assistance, Legal Advice, to indigent Nigerians. The Council is engaged in frequent Human Rights Activities. The most remarkable of the Council's activities seems to be the support to the promotion of child rights within communities and schools. In that respect, the Council has produced an illustrative book on the Child Rights Act / Law, to educate children and parents alike, which is presently being distributed to schools across the nation.

On its 57th ordinary session in Banjul, Gambia, from 4 to 18 November 2015, the African Commission on Human and People's Rights provided its concluding observations and recommendations on the 5th Periodic Report..The observation and recommendations were concerned with to the Implementation of the African Charter on Human and Peoples' Rights (2011 – 2014). The commission appreciated Nigeria's endeavour to its Periodic Reports regularly in conformity with Article 62 of the African Charter, and which is up-to-date in respect of this reporting obligation. The Commission welcomed the efforts of the Government in promoting access to legal aid, and hence, access to justice, including through the commissioning of Legal Aid Centres. The Commission also appreciated the efforts of Nigeria in tackling the use of children as combatants by Boko Haram in the insurgency campaign by the group.

The Commission noted that it acknowledged the significant efforts made by the Government of Nigeria in promoting and protecting human rights, but there are still concerns about most of the areas addressed in the country's 5th report.⁵¹⁵ The Nigeria's 5th Periodic Country Report: on the Implementation of the African Charter on Human and Peoples' rights in Nigeria placed emphasis on Nigeria's progress in the implementation of international and regional human rights instruments. The Report also indicated the future action undertaken by

⁵¹⁵ See Nigeria's 5th Periodic Country Report: on the Implementation of the African Charter on Human and Peoples' rights in Nigeria. Document available at http://www.achpr.org/files/sessions/56th/state-reports/5th-2011-2014/staterep5_nigeria_2013_eng.pdf, accessed 30 October 2016.

Nigeria regarding improving the general situation of human rights with particular attention to child rights. The Report has essentially underscored the fact that Nigeria has domesticated the UN CRC and the Afric Union Charter on the Rights and Welfare of the Child by a consolidated legislation called the Child Rights Act, 2003 that was adopted by 22 States of the Federation.⁵¹⁶ The Report also indicated procedure rules were promulgated and publicly launched in Abuja.⁵¹⁷ Further, consolidated bill to domesticate both the UN CEDAW and the AU Protocol on the Rights of Women in Africa was before the National Assembly Law Makers, titled: - Gender and Equal Opportunities Bill 2010/13. Further, Nigeria was in the process of domesticating the Rome Statute of the ICC. Draft Bill Pending before the NASS since 2012.⁵¹⁸

In its response to the 5th Report, the Commission deplored the lack of actual statistics and disaggregated data in the Report on various areas of human rights (such as in the results of bodies or institutions with a human rights mandate, the figures of effective enrolment of girls in schools, the statistics on older persons, the statistics of school drop outs and the overall estimated number of extremely poor households in the country), which prevents the Commission from appropriately making an objective assessment of the challenges and achievements made in the promotion and protection of human rights in the affected areas.⁵¹⁹ Moreover, the Commission indicated that the existence of harmful traditional practices which affect the rights of most vulnerable persons like women and children. Consequently, the Commission made recommendations to the Federal Republic of Nigeria regarding the measures needed to strengthen the enjoyment of human rights guaranteed by the African Charter, as well as other relevant regional and international human rights instruments.⁵²⁰

From the general issue of human rights to highly pertinent rights violations, cases involving children are often dealt with in legal matters concerned with adults. Hence, in order to

⁵¹⁶ See Nigeria's 5th Periodic Country Report: on the Implementation of the African Charter on Human and Peoples' rights in Nigeria. Document available at http://www.achpr.org/files/sessions/56th/state-reports/5th-2011-2014/staterep5_nigeria_2013_eng.pdf, accessed 30 October 2016.

⁵¹⁷ *ibid.*

⁵¹⁸ *ibid.*

⁵¹⁹ See African Commission on Human and People's Rights, 'Concluding Observations and Recommendations on the 5th Periodic Report of the Federal Republic of Nigeria on the Implementation of the African Charter on Human and Peoples' Rights (2011 – 2014)'. Available at http://www.achpr.org/files/sessions/57th/conc-obs/5th-2011-2014/concluding_observations_nigeria_5th_sr_eng.pdf, accessed 14 September 2016.

⁵²⁰ *ibid.*

analyse and comprehend the issue of child trafficking, there is a need to assess current laws related to the general issue of human trafficking.

5.2.3 The Sub-regional System for Combatting Child Trafficking

Child Trafficking in the Context of ECOWAS as a Sub-regional Organisation

The Ecowas initiative, set up to address the recurring phenomenon of child trafficking in the sub-region, was set out in the 'Declaration and Plan of Action against Trafficking' (2002-2003), and it has been asserted that it had the potential to boost regional cooperation on trafficking at the highest political level. Before the r to the Declaration was adopted in Dakar, Senegal, in December 2001, a meeting of experts from member states was held. The meeting held in Accra, Ghana, in October 2001 was triggered by the worsening conditions of children in West Africa, through enduring child trafficking, child labour and other child rights abuses, shaping a common perception of trafficking in the sub-region.

The initiative embodied the creation of a promising legal environment in the sub-region for the welfare of the child, in that the Declaration and the Action Plan called for the swift signature and ratification of the United Nations Transnational Organised Crime and the Protocol to the United Nations Convention on the Rights of the Child. The ultimate goal of Ecowas through these initiatives was to commit member states to taking specific measures, including the criminalisation of trafficking, the raising of public awareness and the protection of victims.⁵²¹ More significantly, the establishment of cooperation between border agencies, and the sharing of data collection between Ecowas and the United Nations was regarded as an important shift in the West African organisation's approach to cooperating with other international organisations to combat challenging phenomena such as child trafficking and child labour.

The enduring problem of trafficking in persons and more importantly its expansion into countries neighbouring Ecowas states lead the leaders from Central and West African countries to initiated a multilateral form of cooperation in their efforts to combat the problem. The Multilateral Cooperation Agreement to Combat Trafficking, especially Women and

⁵²¹ See UNICEF, '*Child trafficking in West Africa: Policy Responses*' (UNICEF, Innocenti Research centre, Florence 2002) 3.

Children in West and Central Africa, was initiated to reaffirm African nations' commitment to existing international and regional legal instruments and to strengthen their capacity in combating the phenomenon across the regions.⁵²²

Legal and Institutional Approaches to Child Trafficking in the Ecowas Region

The phenomenon of trafficking, especially in women and children, is intense across West Africa. The majority of the countries –if not all –are member states of Ecowas. Hence, in the region, there are law and policy approaches either at a bilateral level or multilateral level to combat Child trafficking. Moreover, from a national perspective, child trafficking appears to be dealt with more rigorously. Individual member states' approaches can be tougher or simply supplement the Ecowas approach to child trafficking, but the aim for the intense legislative and institutional endeavours is to eradicate the phenomenon altogether in the region. In the context of bilateral cooperation, the Republic of Benin and the Federal Republic of Nigeria, two West African countries sharing the same borders, entered into an agreement fostering a comprehensive strategy in combating trafficking.

On 9 June the, Cooperation Agreement to Prevent Suppress and Punish Trafficking in Persons 2005 was signed by authorities of both countries, plagued by the issue especially in relation to women and children. Like most instruments related to trafficking, the Agreement emphasises trafficking in women and children, because they are the most vulnerable categories in society. The Agreement was peculiar, though, in that it aimed at developing a common front against trafficking and protecting, rehabilitating and reintegrating victims.

A previous cooperation agreement between the West African States was signed between Mali and Côte d'Ivoire in 2000. The Agreement aimed at enhancing the two countries' anti-trafficking efforts, both nationally and bilaterally, and set out a number of obligations attached to both the country of origin and the country of destination with respect to a child's repatriation and the sharing of relevant information in combating the problem.⁵²³

⁵²² Document of the Multilateral agreement Available at http://www.gobernacionsuchitepequez.gob.gt/cms/svet/CajadeHerramientasVET/Trata/Combater%20la%20Trata%20de%20NNA%20con%20fines%20de%20Explotaci%23U00f3n%20Laboural%20OIT/Cuaderno%203/3_24_WEST___CENTRAL_AFRICA_.PDF, accessed 24 February 2015.

⁵²³ See UNODC, 'Cooperation Agreement between Mali and Côte d'Ivoire on Combating the Transborder Trafficking of Children'. Available at https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_4-9.pdf, accessed 04 October 2016.

In their strategies to overcome the phenomenon in the region, activities outside the scope of Ecowas were considerable. The initiative was taken by a number of West African countries concerned the most by the phenomenon of child trafficking, child labour and other child abuses. A cooperative agreement regarding trafficking of children which set the protection of victims as its priority was signed in 2005, by the government's key West African States.⁵²⁴

Article 8 of the Agreement urges state parties to take the necessary measures for the protection of children and the prevention of child trafficking. It also urges governments to establish national agencies to implement action plans. Before that, they have to prepare adequate action plan regarding the issues. More importantly, They must exchange data on the identity of traffickers, child victims, places of repatriation and operations; to protect the identity of the child and the confidentiality of other information about the victims.⁵²⁵

As indicated already, child labourers are needed in the West African region and this appears to be the primary reason for child trafficking across the subregion's borders. In establishing in Chapter Three the nexus of child trafficking, it was noted that the country of destination for the majority of children trafficked in West Africa is Côte d'Ivoire. The intensive cocoa farming activities in the country require a massive labour force, and so farmers require the services of young children who cannot claim any labour rights. In such a context of persisting child labour and child rights violations, Côte d'Ivoire has faced growing criticism from chocolate consumers and international organisations.⁵²⁶

The subsequent action taken by the country resulted in improvements in the legal and institutional frameworks for child trafficking and child labour. For example, although there is no specific law related to child trafficking, the 'National Action Plan 2012-2014 For the Fight against Child Trafficking, Exploitation and Labour' was initiated to address the worsening issue in the country efficiently. Prior to the Action Plan, Ivory Coast's partaking in the Cooperation Agreement with Mali on Cross-border trafficking in Children in 2000, the establishment of the Committee on Trafficking and Exploitation of Children in 2001 and in

⁵²⁴ The Agreement was signed by the governments of Benin, Burkina Faso, Côte d'Ivoire, Guinea, Liberia, Mali, Niger, Nigeria and Togo.

⁵²⁵ See document at http://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_4-9.pdf, accessed 25 February 2015.

⁵²⁶ See for example 'The chocolate industry has a century-long history of forced and child labour in the production of cocoa' available at <http://www.laborrights.org/industries/cocoa>, accessed 27 May 2015.

the Multinational Cooperation Agreement on Trafficking in 2005 were significant efforts in addressing this enduring phenomenon.

However, three countries neighbouring Ivory Coast (Ghana, Burkina Faso and Mali), also seriously concerned by the problem of child trafficking, have also improved their legal and institutional frameworks in response to growing concerns in the region; for example, Ghana adopted the Child Labour and Trafficking Act in 2005. A much older initiative by Ghana and some neighbours was taken in 1984 through the Quadripartite Agreement on Information Sharing and Monitoring of Trafficking Routes.⁵²⁷ In furtherance of their actions against traffickers, the same countries adopted a quadripartite treaty on cross-border crime in 1996.

As for Burkina Faso, the bilateral ‘Agreement on Cross-border Trafficking in Children’ was signed with Mali in 2004, and the country also entered into the ‘Multilateral Cooperation Agreement on Trafficking’, signed in 2005. More significantly, the adoption of Act No.0292008 on Trafficking and Related Matters, the development of a national action plan, its validation in 2004 and its revision in 2009 can be regarded as the result of significant efforts by authorities to eradicate the problem in line with their obligation to previously ratified international and regional treaties.

In its fight against child trafficking within its borders and the West Africa region, Mali essentially relies on a series of cooperation agreements with its neighbours, as there is no specific law on the matter in the country. However, Article 224 of Act No.01-079 of August 20, 2001, in the penal code of Mali, criminalises this crime. Besides this legal provision, Mali relies essentially on cooperation agreements, for instance between the Republic of Mali and the Republic of Cote d’Ivoire, signed 2000, the cooperation agreement with the Republic of Guinea signed in 2005, and the bilateral agreement with Senegal, signed in 2002. Mali also participated in the ‘Multinational Cooperation Agreement on Trafficking’ signed in 2005; moreover, it set up a national action plan on trafficking in children in 2002.

5.3.5 Domestic Legal Response to Child Trafficking from the Human Rights Perspectives

In the early years of the United Nations Convention on the Rights of the Child 1989 (CRC), Nigeria endeavoured to comply with the requirement for all nations to domesticate the new

⁵²⁷ The Quadripartite Agreement reached in 1984 was between Benin, Ghana, Nigeria and Togo.

and promising legal instrument for children across the globe. At least for the purpose of compliance with the international order, the move has been made by Nigeria by enacting the Child Rights Act 2003.⁵²⁸ As the leading UN agency for the welfare of the child across the globe, UNICEF welcomed Nigeria's actions. Indeed UNICEF observed that the Child Rights Act represents a significant move for the protection of the child in Nigeria as it transposed into a single legislation the obligations of the CRC and consolidated all laws relating to children. The rights and responsibilities of children and the duties and obligations of government, parents and other authorities, organisations and bodies are clearly stipulated in the Child Rights Act.⁵²⁹

Regarding the domestication at the State level, it is understood that the provisions of the CRA 2003 supersede all other legislations that have a bearing on the rights of the child. Having been enacted at the National level, the States are expected to formally adopt and adapt the Act for domestication as State laws. This requirement is made because of issues of child rights protection is not paramount in the Nigerian Constitution. Hence States laws not in line with the rights of the child are must be amended or annulled should there be a need to do so, conform to the CRA 2003 and the CRC 1989.⁵³⁰

Consequently, the Act only becomes fully operational when a State adopts it. From the outlook of the promulgation of the CRA 2003, it emerges that only 16 States out the 36 States composing the Federal Republic of Nigeria have promulgated the Child Rights Act into Law. The States concerned are Abia, Anambra, Bayelsa, Eboniyi, Edo, Ekiti, Imo, Jigawa, Kwara, Lagos, Nassarawa, Ogun, Ondo, Plateau, Rivers and Taraba. It is obvious that a considerable number of States have yet to follow suit. In the light of the shortcomings, UNICEF asserted that it continues its efforts, in conjunction with the Federal and State Ministry of Women Affairs, to advocate for the enactment of the Child Rights Act by all States.⁵³¹

⁵²⁸ See Sonia Harris-Short, 'International Human Rights Law: Imperialist, Inept and Ineffective? Cultural Relativism and the UN Convention on the Rights of the Child' (2003) 25 Human Rights Quarterly 130, 181.

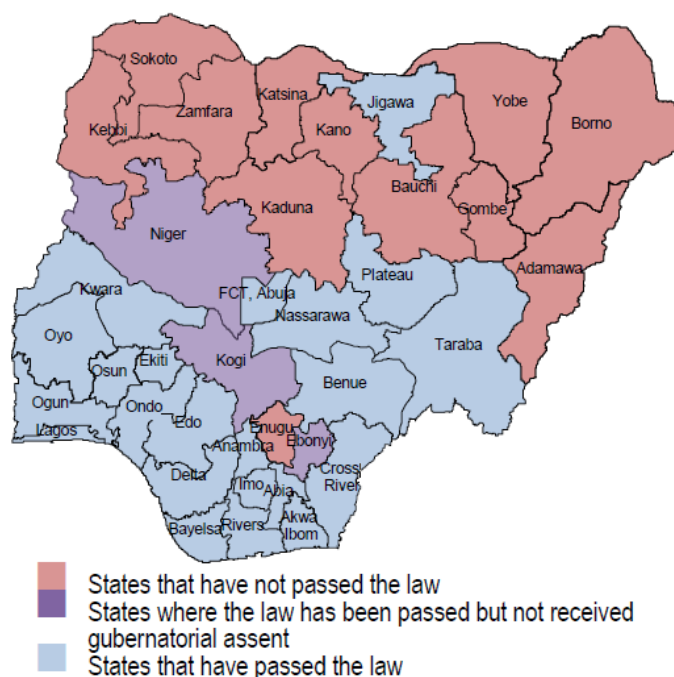
⁵²⁹ UNICEF Nigeria, Action'. Available at http://www.unicef.org/nigeria/protection_2169.html, accessed 26 July 2016.

⁵³⁰ See UNICEF, 'The Child Rights Act': Information Sheet 2007'. Available at http://www.unicef.org/wcaro/WCARO_Nigeria_Factsheets_CRA.pdf, accessed 12 September 2016.

⁵³¹ UNICEF Nigeria, Action'. Available at http://www.unicef.org/nigeria/protection_2169.html, accessed 26 July 2016.

More significantly, the CRA 2003 provides for the establishment of the Child Rights Implementation Committees at the National, State and Local Government levels. The Committees are to ensure that there is governmental commitment at all levels to fulfilling the implementation of the provisions of the CRA 2003, through research, investigation and jurisprudence.

Figure 5.1: Domestication of the Child Rights Act at State level



Source: UNICEF 2011

The Child Rights Act 2003 has provided four baskets of rights for Nigerian children. In the first basket, Articles 12 and 13 of the CRA 2003 cover the survival.⁵³² The second basket relates to the development topic which includes the development of the child, spirit, soul and body is set under Articles 15 and 29 of the CRA 2003. The third basket of rights provided under Sections 21 to 52 relates to protection which includes protection from child labour, child trafficking, ritual killing, sexual, physical, emotional abuses and neglect. Finally, the fourth basket of rights is asserted under Sections 3(1) (2), 6, 7, 8, 13, 19 and 20, is concerned with children's participation which includes the children's right to be involved in issues that affect them.

⁵³² The topic includes the rights of the child to life, good health, balanced nutrition and related matters.

The concordant view underpinning the CRA 2003 is that Nigerian child must enjoy the full protection of their fundamental rights as they are enumerated all child rights instruments.⁵³³ According to the contextual challenges to the protection of children in Nigeria, commercial activities on children as well as immoral practices towards them are made punishable by long terms of imprisonment by the CRA 2003. The other offences that considered serious by the CRA 2003 include sexual abuse, general exploitation which is detrimental to the welfare of the child, recruitment into the armed forces and the importation or exposure of children to harmful publications. The CRA 2003 further preserves the continued application of all criminal law provisions securing the protection of the child whether born or unborn.⁵³⁴

There are few exceptions provided by the CRA 2003 in the case of children's participation to work. For instance, it is provided that children employed by family members should not perform works that will damage their physical and mental health.⁵³⁵ The CRA 2003 also draws the attention of both government authorities and the guardian of the children on their responsibilities. The mandate given by the Child Rights Act 2003 to parents, guardians, institutions, and authorities who care for the children is very significant. Indeed they have to provide the necessary guidance, education and training.⁵³⁶ UNICEF in regard to the rights-responsibilities approach, observed that the CRA 2003 is culturally sensitive, compatible, relevant and above all in the best interest of the Nigerian child.⁵³⁷ Thus the stakeholders who have been instrumental in seeing that the CRA 2003 was passed at the National Level would work collectively to get the Act promulgated into Law in all the States of Nigeria.⁵³⁸

The response provided by CRA 2003 for the protection of the child in the context of human trafficking is significant. It should be noted that the Child Rights Act 2003 revolutionised the perception of children's rights in Nigerian society. Although the CRA 2003 will be thoroughly analysed in the subsequent chapter to emphasise the necessity of perceiving the human rights aspects of child trafficking, its pertinence to this chapter is notable. It is worth recalling that the CRA 2003 derived from the domestication of the Convention on the Rights of the Child 1998. However, it appears more adapted to the circumstances of the child in

⁵³³ Section 13 (1) CRA 2003.

⁵³⁴ See Section 17 (1) (2) (3) CRA 2003.

⁵³⁵ See Section 28 (1)(b) CRA 2003.

⁵³⁶ See Section 20 CRA 2003.

⁵³⁷ See UNICEF, The Child Rights Act': Information Sheet 2007. Available at http://www.unicef.org/wcaro/WCARO_Nigeria_Factsheets_CRA.pdf, accessed 04 October 2016.

⁵³⁸ See UNICEF, The Child Rights Act': Information Sheet 2007. Available at http://www.unicef.org/wcaro/WCARO_Nigeria_Factsheets_CRA.pdf, accessed 04 October 2016.

Nigeria. Hence, for the Nigerian child, the CRA 2003 provides an impressive list of rights that must strictly to be protected and promoted. Including They include the right to survival and development, the right to a name, to a private and family life, to health and health services. There are also parental care, the right to protection and maintenance, a free, compulsory and universal primary education, the right to freedom from discrimination, the right to dignity of the child, the right to leisure, recreation and cultural activities all of which are denied or violated in the process of trafficking.

It is recognised that the Child Rights Act 2003 restores children's confidence and self-esteem and improves their status. More importantly, it provides for children with disabilities, in that it specifies special measures for their care and protection. Firstly, Section 27(1) of the Act provides a clear definition of a child as a person below the age of 18 years old. Section 14(1) of the CRA provides the right of the child to parental care and the prohibition to separate them the child from hi/her, parent or guardian. From the letter of this provision, the child cannot be separated from his parent except where it is in his best interest. From this perspective, trafficking, regardless of whether it is with or without the consent of a parent, is a clear violation of the child's right to parental care, protection and maintenance. Additionally, Section 28 of the CRA provides that no child shall be subjected to exploitative and forced labour. However, children employed by a member of the family on light work of an agricultural, horticultural or domestic nature is not deemed to be being subjected to exploitative or forced labour. The exception set by Section 28 per se is understandable where abuses do not occur in the process of their employment in such circumstances.

Section 27 (1) of the CRA prohibits the removal a child from the custody of his/ her parents or guardian or a person having lawful care or charge of the child. Children are often trafficked with or without the consent of those family members in charge of their custody, and so the Child Rights Act 2003 covers all circumstances traffickers can exploit to achieve their goal. Hence a person cannot remove or take a child into the custody of a family member for the purpose of exploitative or forced labour.

ILO Convention No.138 sets the minimum age for employment at 14 or 15 years of age; consequently, children under 18 are prohibited from any form of work that is likely to harm their health, safety or morals as defined under ILO Convention 182. Comparing these ILO Conventions with the provisions of the Child Rights Act 2003, it is obvious that Section 30 of the Act, prohibits the all commercial activities on the child. The provision is in consonance

with ILO Convention 182. The section also covers the *almajiri* system of semi- formal Koranic education which has, in some cases, come to rely on forced begging by Koranic pupils to support their *mallams*, or Islamic teachers. This practice is becoming a dangerous trend in many cities in northern Nigeria. These children are migrant scholars from within and outside the country and can be seen in their hundreds around the cities begging and committing nefarious acts of stealing, violence and drug peddling.⁵³⁹

The promulgation of the Child Rights Act 2003 Nigeria relied primarily on the criminal code. However, provisions related to human trafficking and forced labour existed in the criminal code, the labour code and the penal codes. Whereas the criminal code is applied in the southern part of the country, the penal code is applied in the northern part of the country. For example, Section 223(2) of the criminal code states that:

Any person who:

Procures a woman or girl to become a common prostitute either in Nigeria or elsewhere, or procures a woman or girl to leave Nigeria with intent that she may become an inmate of a brothel elsewhere, or procures a woman or girl to leave her usual place of abode in Nigeria, with intent that she may for the purposes of prostitution become an inmate of a brothel either in Nigeria or elsewhere, is guilty of a misdemeanour and is liable to imprisonment for two years.

As for the penal code, Section 275, for example, provides that:

Whoever by any means whatsoever induces any girl under the age of 18 years to go from any place or to do any act with intent that such girl may be or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person shall be punished with imprisonment which may extend to 10 years and shall also be liable to a fine.

It is obvious that the United Nations Convention on the Rights of the Child 1989 has been systematically domesticated by Nigeria at the national level. However, the glitch emerged at State levels. It could be argued that some States are reluctant to domesticate the CRA 2003 which is originated from CRC 1989. As indicated hereinbefore, the questions of child rights protection are not paramount in the list of the Nigerian Constitution, as exclusive responsibility and jurisdiction is giving to states to make laws relevant to their specific

⁵³⁹ See Ojanuga Durrenda Nash, 'Kaduna beggar children: A Study of Child Abuse and Neglect in Northern Nigeria' (1990) 69 Child Welfare 371, 380.

situations. The rationale for this obviously is the need to take into account the legal pluralistic context of Nigeria in the domestication process. Given the fact that the CRA 2003 supersedes state laws, the state authorities have an obligation to make all necessary arrangements to domesticate it. States, where there was no child rights law prior to CRA 2003, would have to domesticate it in accordance with their specific situations. The states that already have child rights legislations will also have to make the necessary arrangements to domesticate CRA 2003.

In both cases, there is the possibility to make the laws in accordance with their specific situations. The specific situations often refer to the religious and cultural realities of each state. The problem that emerges here is that human rights issues are being dealt with in accordance with specific contextual realities yet human rights are universal. It is therefore not surprising that only a third of the state have promulgated the CRA 2003. It is a fact that given the pluralistic context of Nigeria some states will find the letter and the spirit of the CRA 2003 in sharp contradiction with their perception of rights for the child. Hence the likelihood that the Act is fully implemented in Nigeria remains hypothetical. In such context, while it is evident that CRA 2003 is an adequate legal instrument that promotes and protects the rights of the child in Nigeria its efficacy nationwide remains an equation to be solved. The idea that CRA 2003 is culturally sensitive is an implicit acceptance of its rejection or its substantial modification by some states.

The significant steps in the case of human rights laws in general and child rights laws, in particular, it should have been the setting of an exception whereby domestication is systematic across Nigeria. The law should be implemented in all its forms and be enforceable at all time. Noteworthy, this is not to argue that all other laws should be domesticated without adapting them to the contextual realities. In the case of International Labour Standards, some ILO Conventions can be adapted to the local realities of the member state without hampering the aims of the Convention.⁵⁴⁰ In the case of human rights, whenever the option is left to some authorities to adapt international instruments they often distort the original provisions thus deviating from the purpose of the instruments. Perceiving child trafficking in the human rights perspectives leads to the acknowledgement that the CRA 2003 is the appropriate legal response to the issue and other abuses the child suffer in Nigeria. However, the complex

⁵⁴⁰ Article 2 (2) of the Labour Inspection Convention, 1947 (No. 81) provides that 'National laws or regulations may exempt mining and transport undertakings or parts of such undertakings from the application of this Convention'. This ILO gives the option to member states to exclude certain types of employment in the application of this Convention which not the case for example in the application of the Worst Forms of Child Labour Convention, 1999 (No.182).

sociocultural environment places the Federal government and local governments in a situation of contradictions that cannot be dissipated if the specific case of human rights is not harmoniously dealt with. Noteworthy, the efficacy of human rights laws in general and child trafficking laws, in particular, depend upon the paradigm shift in approach to human rights protection across Nigeria.

5.3 Response of the International NGOs and National NGOs to Combatting Child Trafficking

As demonstrated, various human rights instruments have provisions that are violated by the act of child trafficking. Whether the provision relates to education, the right to family life, the right to birth registration, the instruments are clear on the necessity to respect the prescribed rights for the child. Also, as argued, the right-based approach to child trafficking permits to identified the wide range of international, regional, sub-regional, and national human rights instruments. Identifying all the existing instruments and highlighting the provisions relevant to child trafficking was intended to appeal to government authorities, law and policy makers, international institutions as well as NGOs involved in actions at international and national levels. The rationale is that the actors seem to pay less attention to what is required of them by those instruments. Indeed they seem to ignore the extent to which those instruments are violated across the world, and what they should do to trigger a paradigm shift in fighting the phenomenon of child trafficking. Arguably some actors seem to ignore what is the state of affairs in term of international human rights legal and institutional frameworks and emerging challenges to global stability and sustainable development.

Thus, until the full picture of the human rights aspects is grasped governments and other actors may have a flawed approach to the problem. Furthermore, as indicated hereinbefore, actions against child trafficking on the global stage participate in providing an answer to the issue at national levels. The problem has significant global ramifications not only because it constitutes a serious human rights challenge but also because it remains an impediment to development. Indeed like slavery, child trafficking drains the potential actors of the development of a country. Hence tagging human trafficking as a ‘slavery-like practice’ or ‘modern slavery’ not only implies that trafficking has all the characteristics of the 19th-century slavery but also it can devoid a country of its valuable human capital. Therefore the issue is deemed crucial for government authorities, international institutions as well as NGOs. In that respect, Wade observes that ‘trafficking in human beings and a suitable criminal

justice response to it is a topic of highest interest in many supranational contexts such as the United Nations and the European Union (EU). The decision of governments to raise efforts to combat this category of crimes to governance level above the national is indicative of its nature; these are crimes to which one nation alone cannot respond comprehensively. The can legitimately be viewed as one of the catalysts and facilitators of the supra nationalisation of criminal justice.’⁵⁴¹

5.3.1 International Actions

Global actions usually led by the international organisation and some NGOs against child abuses in general and child trafficking, in particular, are highly significant in the plan to eradicate the phenomenon. Noteworthy, actions may be directed to a specific country or directed to all countries in that they initiate the actions to appeal to all stakeholders across the globe. In the context of this thesis, actions should be distinguished from legislation. However, those actions are undertaken in line with the international, or national law they ought to be actions are to be seen outside law and policy making process. They are initiatives taken in parallel to legislation, but they play a significant complementary role in addressing the issue having in perspective, total eradication child trafficking. Whereas legislation leads to implementation and enforcement, actions are undertaken to appeal to all actors. The action could be executed through awareness –raising, initiation of the sociocultural programme, education programme. It could be asserted that those actions have no legal force instead they tend to make moral or psychological impacts.

The fact that child trafficking is only the process leading to various types of child abuses or child rights violations, it is important to recall that most actions directed at the eradication of the underlying issues to child trafficking are deemed to put an end to trafficking itself. For instance, all out war on child labour in the past decade is undoubtedly an action that will subsequently have an impact of trafficking activities in term of their reduction and their eventual cessation. Since users of child labourers will be unable to continue their practice, there will no more be a demand for child labourer. As a result, children usually trafficked for the purposes of labour will no more be needed. The prominent actors in the international

⁵⁴¹ Marianne Wade, ‘ Prosecution of Trafficking in Human Beings Cases’ In John Winterdyk, Benjamin Perrin and Philip Reichel, ‘Human Trafficking: Exploring the International Nature, Concerns , and Complexities’ (CRC Press, Boca Raton 2012)153.

arena are, the International Labour Organisation (ILO) UNICEF, and Save the Children. However these organisations play a noticeable role in combatting child trafficking, the ILO remain the most active organisation due to the magnitude of its actions and their far-reaching effect in countries across the globe.

On its course to combat the worst form of child labour, ILO's International Programme on the Elimination of Child Labour (IPEC) was established. IPEC also works on larger initiatives with governments, workers and employers' organisations and NGOs to fight child trafficking. When ILO's actions are initiated, within IPEC the structure works with the relevant bodies to offer greater protection to children at risk and victims, to prevent the crime of trafficking, to urge authorities to enforce laws and prosecute traffickers, and assist victims in need.⁵⁴²

As indicated hereinbefore actions are to be differentiated from legal responses. Legal responses are provided within legal frameworks international, regional, sub-regional or national; they are intended to be domesticated and enforced. In contrary, actions can be initiated in pursuance of legal responses or initiated on a humanitarian basis without legal force. Although some ILO Conventions address the issue of child trafficking in the human rights perspectives hence as international legal frameworks, the organisation itself has no implementation and enforcing power. As a result, in its actions framework, it generally initiates actions in accordance with the Conventions. Therefore, it is acknowledged that within the ILO, the International Programme on the Elimination of Child Labour (IPEC) takes the lead in promoting the ratification and implementation of its Conventions Nos. 138 (on the minimum age for employment) and 182 (on combating the worst forms of child labour). It is worth noting that the conventions have a particular importance in ensuring that national plans, policies and programmes put a halt to child labour and its worst forms, such as trafficking and hazardous forms of child labour, slave-like practices, forced and bonded labour, commercial sexual exploitation. In that perspectives, as indicated hereinbefore, IPEC focus on developing a programme for children in domestic work and in particular on finding ways to organise and represent child domestic labourers through workers' organisation, and

⁵⁴² See ILO, 'Trafficking in Children'. Available at <http://www.ilo.org/ipec/areas/Traffickingofchildren/lang--en/index.htm>, accessed 08 September 2016.

to involve employers' and workers' organisations in combatting discrimination and violence against children.⁵⁴³

More significantly, the ILO initiated the 2006 Global Action Plan which requires a greater commitment from the ILO Member States in the pursuit of the total abolition of child labour and the worst forms by 2016.⁵⁴⁴ As it appears is it a ten-year plan on how Member States can, with ILO support, realise the 2016 target. It is worth noting that the ILO's action towards child labour is also related to fighting against child trafficking. As indicated elsewhere most trafficked children are conveyed to places of exploitation. The ILO's holistic approach to combatting child labour places great emphasis on the issue of child trafficking in member states. In order to succeed in its fight against child labour and child trafficking, the ILO what is known as used the three-pillar to the approach of the Global Action Plan. The Plan is materialised in supporting national efforts, assisting with data collection, knowledge and capacity building, sharing and translating knowledge into policy advice. In practice, the ILO's support at national levels is varied and significant. Interestingly, the 2006 Global Action Plan is concerned with the development of policy, the development of knowledge tools and capacity building. The ILO played a significant role in strengthening national statistical and analytical capacity for data collection and improvement of the knowledge base on child labour. Through IPEC, knowledge has also been communicated Ressources such good practice digests were supports available for the training of national policy-makers in the areas of policy and legislative responses, education, agriculture, monitoring, children, in armed conflict, trafficking.⁵⁴⁵ It is worth noting that the ILO went further to provide other assistance to victims of child trafficking.⁵⁴⁶

⁵⁴³ See United Nations General Assembly Sixty-second session: Promotion and protection of the rights of children. Doc A/62/209. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N07/452/43/PDF/N0745243.pdf?OpenElement>, accessed 06 September 2016.

⁵⁴⁴ See ILO 'Global Action Plan to Eliminate Child Labour'. Available at http://www.ilo.org/ipec/programme/WCMS_113276/lang--en/index.htm, accessed 07 September 2016.

⁵⁴⁵ See ILO, 'ILO Action against Trafficking in Human Beings'. Available http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_090356.pdf, accessed 07 September 2016.

⁵⁴⁶ In 2008 alone there were 14 training activities at the international level using these IPEC tools and products, and over 400 high-level policy staff received training.⁵⁴⁶ It is noted that the ILO goes further to provide victims of trafficking with vocational training or advice concerning their reintegration into the labour market. It also works together with micro-credit institutions to support sustainable livelihoods. The ILO succeeds in this way by collaborating with public employment services in several member countries.

At regional level hence in specific contexts, ILO's often initiate actions against trafficking in general and child trafficking in particular. Among other regions, the ILO focused on two west African countries in its 2003 endeavour. Indeed the initiative was based on the need for a technical cooperation against human trafficking in West Africa. The two countries; Nigeria and Ghana were selected in response to growing regional and international concerns about the prevalence of human trafficking. Whereas Ghana's Trafficking in Person Action Plan calls for community watchdog committees'' that can be actively involved in the fight through monitoring and foiling attempts of human trafficking in their communities, Nigeria's Action calls for community awareness raising programme and the inclusion of traditional leaders in the national anti-trafficking strategy.⁵⁴⁷ It should be admitted that the consistency of ILO leading role in carrying actions against child trafficking is not only due to the act that it has a comprehensive approach to dealing the human rights aspect of the phenomenon but also to the fact that it is a resourceful organisation.

The United Nations International Children's Emergency Fund (UNICEF) is one of the UN agencies that play a considerable role in the global fight against child trafficking. As indicated elsewhere, UK is one of the main destinations for trafficked person including children from Nigeria. Hence UNICEF's campaigns have focused on ending violence, exploitation and abuse of children in the UK and around the world.⁵⁴⁸ In a UNICEF report, it is revealed that at least ten children are trafficked every week in the UK. Consequently, the are trapped in violence, exploitation and abuses. This situation has led UNICEF to initiate a campaign during the period 2014 – 2015 where more than 65,000 campaigners supported the call for children to be better protected and prioritised in the UK Modern Slavery Bill.⁵⁴⁹ Indeed UNICEF promised to continue the campaign until every child is safe. The best approach adopted by UNICEF to succeed in the fight against child trafficking and child abuses in every country it works with development partners, governments and NGOs on all aspects of anti-trafficking responses, prevention, protection and prosecution, and supports evidence-based research to strengthen interventions. In the same vein, to minimise factors making children prone to trafficking, UNICEF helps Member Staes in law and policy making

⁵⁴⁷ See ILO, 'Enhancing communities' capacity in Nigeria and Ghana to combat human trafficking'. Available at http://www.ilo.org/global/topics/forced-labour/WCMS_097005/lang--en/index.htm, accessed 08 September 2016.

⁵⁴⁸ See UNICEF, 'Fast Campaign Success: Stop Child Trafficking Campaign'. Available at <http://www.unicef.org.uk/UNICEFs-Work/Our-campaigns/Stop-child-trafficking/>, accessed 08 September 2016.

⁵⁴⁹ *ibid.*

processes with the view to set workable legal and institutional frameworks for combating child trafficking in person in general and child trafficking in particular.⁵⁵⁰

Non-Governmental Organisations (NGOs) often used different strategies, but they all aim to achieve the same goal which is the total eradication of the practice of child trafficking in the world. Save the Children, is of the view that the lack of strong policies against child trafficking and exploitation makes the practice more flourishing.⁵⁵¹ Hence advocacy campaign is one of its main mean of action across the globe. Save the Children indicates that ‘Positive Deviance’ is an approach to change behaviours of families and communities. The Children NGO used this approach in two child protection programmes in Indonesia and Uganda. The first programme was to prevent trafficking in girls for commercial sex work in Indonesia and the second programme was the reintegration of girls rescued from the grip of Lord's Resistance Army (LRA) in Uganda.⁵⁵² Moreover, In El Salvador for instance, Save the Children targeted Mejicanos know as one of the most frequent areas for trafficking of children. In that locality, the NGO helped the municipal council to draft an ordinance to prevent trafficking. Moreover, there has ben public awareness training to make school children aware of potential traffickers and where to report if they notice suspicious activity.⁵⁵³ Save the Children provided material to school girls, and boys in El Salvador to learn how to protect themselves against trafficking.⁵⁵⁴

5.3.2 Response of the National NGOs

The Women’s Consortium of Nigeria after that known as WOCON is an NGO that plays a very active role in the combat against child trafficking in the country. It is one of the oldest NGOs in Nigeria that are involved in the combat against women trafficking in general and

⁵⁵⁰ UNICEF, ‘Child Protection from Violence,, Exploitation and Abuse: Child Trafficking’. Available at http://www.unicef.org/protection/57929_58005.html, accessed 08 September 2016.

⁵⁵¹ Save the Children, ‘Protecting Children from Exploitation’. Available at http://www.savethechildren.org/site/c.8rKLIXMGIpI4E/b.6192517/k.9ECD/Protecting_Children_from_Exploitation.htm, accessed 08 September 2016.

⁵⁵² *ibid.*

⁵⁵³ See Save the Children, ‘Save the Children Cross-border Project against Trafficking and Exploitation of Migrant and Vulnerable Children’. Available at https://www.savethechildren.org.uk/sites/default/files/docs/sea_antihumantrafficking_apr07_1.pdf, accessed 08 September 2016.

⁵⁵⁴ *ibid* 114.

child trafficking in particular. There were challenges of the gap created between laws and policy implementation regarding the rights of women. The state of affairs prompted the establishment of WOCON in 1995. Indeed the advent of WOCON in Nigeria was a significant addition to the existing organisation engaged in addressing the challenges of trafficking in persons.⁵⁵⁵ WOCON is committed to the promotion of the rights of women and children and its determination has been paramount the battle against the trafficking of women and children in Nigeria.⁵⁵⁶ For nearly two decades WOCON has been active in the national campaign against trafficking of women, especially young girls.⁵⁵⁷ To end child trafficking and other types of abuses, WOCON focuses on sensitisation campaigns to prevent child labour and child trafficking. It provides food and relief materials for trafficked children rescued from slave camps and facilitate their repatriation to their home country. WOCON also helps with capacity-building projects for children in domestic work and prostitution, including the provision of sex education and measures for the prevention and spread of HIV/AIDS. WOCON places great emphasis on media and education campaigns on child trafficking.⁵⁵⁸

Amongst other organisations the Women Trafficking and Child Labour Eradication Foundation (WOTCLEF) plays an important role in the combat against child trafficking in Nigeria. The Organisation was able to prove its efficiency when in it dealt with the **case** of a girl who was trafficked in Gabon at the age of 8. The girl called Jane was trafficked to Gabon to be engaged in domestic work in the most inhuman conditions. Eventually, Jane was rescued and flown back to Nigeria where she was sheltered by WOTCLEF which went further in supporting her education.⁵⁵⁹ To strengthen and increase its actions across Nigeria, WOTCLEF has joined a Network of NGOs to fight against child abuses, child trafficking, and child labour in the country. Their actions conducted together with the National Agency for the Prohibition of Trafficking in Persons were intended to raise public awareness and

⁵⁵⁵ See WOCON, 'Human Trafficking. Available at <http://www.womenconsortiumofnigeria.org/node/index.php?q=node/51>, accessed 31 October 2016.

⁵⁵⁶ *ibid.*

⁵⁵⁷ Victoria Ijeoma Nwogu, 'Anti-Trafficking Interventions in Nigeria and the Principal-Agent Aid Model' (2014) 3 Anti-Trafficking Review 1.

⁵⁵⁸ See ECEPAT Directory: Africa, Nigeria. Available at http://resources.ecpat.net/EI/Ecpat_directory.asp?id=86&groupID=1, accessed 31 October 2016.

⁵⁵⁹ See UNICEF, 'A New Life for Jane'. Available at http://www.unicef.org/nigeria/media_2270.html, accessed 08 September 2016.

intensify campaigns against human trafficking in Nigeria. They also act as a surveillance system to report cases of trafficking and to identify and prosecute traffickers.⁵⁶⁰

A practical approach adopted at the community level was the empowerment of members of target communities to prevent them from hiring out and exploiting children. The main goal was, therefore, to address poverty, which has been the major inspiration for child trafficking and child labour engagement in Nigeria and Africa. Hence Empowerment of children has also been a major action by ECOWAS. The regional organisation initiated the empowerment action in order to help rescued victims of trafficking by protecting them and preventing them from relapsing into child labour. Two types of empowerment were implemented: empowerment through formal education and empowerment through vocational training.⁵⁶¹

Conclusion

This chapter is crucial to this research in that it has evaluated the existing human rights instruments and underscored the provisions that should be taken into in addressing trafficking and the need to eradicate the phenomenon. The chapter showed that the eradication of child trafficking needs a holistic approach. Not only should there be a perfect understanding of the laws but also a clear idea that the central consideration should be the very fact that child rights are at issue. The ideal approach to trigger a paradigm shift at both domestic and global levels is to place child rights at the highest standard possible and perceive its universal characteristic. More significantly, acknowledge that overlegislation might not be the panacea to defeat the phenomenon. Indeed in addition to intensive legislative activities in regard to the issue, concrete actions are to be undertaken in order to put a halt to the practice. The dynamic and pragmatic approach to the issue in recent years is an indication that law and policy responses obviously have not proven effective. Indeed, the nature of the problem raises concerns among government authorities, international institutions as well as NGOs. Child trafficking to a great extent can thwart the development strategies and perspectives of a nation.

⁵⁶⁰ *ibid.*

⁵⁶¹ See ILO, 'Good practices and lessons learned on the elimination of child labour in Nigeria: ECOWAS projects' experiences'. Available at http://www.ilo.org/ipecc/Informationresources/WCMS_IPEC_PUB_26975/lang--en/index.htm, accessed 25 August 2016.

Trafficking has to be addressed in a way that it does not remain the problem of one nation. Although the nations most affected by trafficking will have more responsibilities in the fight but inter-state cooperation will strengthen the global action. Active participation in international, regional and sub-regional organisations has proven an efficient way of combatting issues of human rights violation in general and child rights in particular. Indeed the obligation created as a result of the participation as member state involves regular reporting to a supervisory body hence the opportunity to be alerted in case of failure to comply with treaty obligations.

This chapter showed that International organisations and NGOs usually undertake actions against child trafficking through advocacy, preventive measures, rescue actions or reintegration actions. Their actions are not intended to punish offenders. They do not have the power to enforce laws their action are specific. In this sense, they differ from government's actions which are essentially related to law and policymaking, implementation, and enforcement thus punishment of the offender. The key element in both types of actions is the ostensible will to eradicate child trafficking. However, the question often raised is related to their efficacy.

Chapter 6

New perspectives in Combatting Child Trafficking and the Shift to an Effective Child Protection in Nigeria

6.1 Introduction

Reports about child trafficking in the global context often conclude that the phenomenon is in decline.⁵⁶² However, all actors involved in combatting the phenomenon must make more efforts at national levels. Paradoxically, most developing countries especially those in the sub-Saharan region appear to fail to adopt new strategies in accordance with the requirements imposed by globalisation. In such state of quagmire, it was obvious that ambitious projects such as the Millennium Development Goals (MDGs) could not be completely achieved globally by 2015.⁵⁶³ Equally, there is no guarantee that future projects despite their sublime nature may be completed. Indeed as long as the real issues remain unaddressed, it is unlikely that permanent solutions are found to the issue of child trafficking and child protection in Nigeria.

Perceiving Child Trafficking from the human rights perspective was an endeavour to emphasise the critical nature of the issue not only in Nigerian society but also the around the world. Hence the fight against child trafficking in Nigeria requires a paradigm shift in approach which should rest upon a thorough analysis of the contributing factors. The new approaches constitute the way forward for Nigeria in regard to the lingering issue of child trafficking and child protection. Undoubtedly, the issue of child protection which embodies the child trafficking narrative will also be addressed once for all.

This chapter shows that the contributing factors in the Nigerian context are multiple and complex. Therefore, they need particular attention from authorities and all stakeholders. Because the lack of focus on the contributing factors *per se* contributes to the perpetuation of the phenomenon, the need for their identification and focus on them become a matter of

⁵⁶² See US Department of State, 'Trafficking in Person Report July 2015'. Documents available at <https://www.state.gov/documents/organization/245365.pdf>, accessed 01 September 2016.

⁵⁶³ See United Nations, 'The Millennium Development Goals Report 2015'. documents available at [http://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20\(July%201\).pdf](http://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20(July%201).pdf), accessed 01 September 2016.

urgency. The chapter shows that increasing legislation has not been the adequate response to combatting child trafficking in Nigeria hence a holistic approach to combatting the enduring phenomenon is more than necessary.

6.1 New Approach to Addressing the Contributing Factors

6.1.1 New Approach to Child Fostering

Child fostering has been presented as one of the major contributing factors to the thriving of child trafficking in Nigeria.⁵⁶⁴ As indicated in the previous chapter, child fostering in West Africa *per se* is practice followed in conformity with the cultural and traditional perception of solidarity and community support. Indeed in Nigerian communities as well as in most Sub-Saharan African countries ‘family’ is conceptualised as more than the biological mother, father and children. It is natural for children to grow up with many relatives, ‘mothers’, ‘fathers’, ‘brothers’ and ‘sisters’ – who share responsibility for their care and to whom they are obligated throughout life.⁵⁶⁵ To some extent the support of the child is provided by the community when necessary. Hence, the practice of child fostering has existed in West Africa for centuries.

Child fostering as an alternative to the biological family environment and the condition has functioned in harmony and decency and help West African communities to remain stable despites problem-related to the orphanage, or disintegration of the child biological family for any reason. However, the new context or modern Nigeria the increasing economic and financial need of the population which is often characterised by greed have distorted the then moral value of the practice. In such context, the lack of legal framework to organise the practice has worsened the situation thereby leading to all type of abuses towards children. As emphasised hereinbefore, the practice has always well functioned even without the Nigerian legal system which was later set by the colonial administration, but the debate arose when in modern day Nigeria various issues have led to the abuse of the practice once regarded as the characteristic of solidarity and cement to social stability. Indeed cupidity, greed and growing

⁵⁶⁴ Adepoju Aderanti, ‘Fostering Free Movement of Persons in West Africa: Achievements, Constraints, and Prospects for Intraregional Migration’ (2002) 40 International Migration 3, 28.

⁵⁶⁵ Oni Bamidele Jacob, ‘Fostered Children’s Perception of Their Health Care and Illness Treatment in Ekiti Yoruba Households, Nigeria’ (1995) 5 Health Transition Review 21, 34.

disregard for basic human rights have set the ground for abuses and the criminal activity of child trafficking. Hence the current state of affairs appeals to the authorities, law and policy maker as well as the wide community of scholars. As child fostering is a breeding ground for child trafficking efforts are to made to regulate child fostering in Nigeria. Regulating adoption in Nigeria is regarded as a significant move in the area of child welfare. The regime for adoption has been clarified under the provision Section 125(1) of the Child Rights Act 2003.⁵⁶⁶ Even though adoption has been regulated in Nigeria there are still shortcomings in the implementation. The issue of implementation and enforcement are recurring problems in Nigerian legal environment. Although the Child Rights Act has sufficiently elaborated on the requirements for an effective child rights protection in Nigeria, the fact that its full implantation and to some extent the enforcement of some provisions remain a far-fetched, the prospect of succeeding in the creation of a workable legal framework for child fostering is meagre. The crucial nature of the question led Chukwu to writes that:

“However, the prescribed adoption services and indeed the entire institutional framework for adoption under the Act are yet to be put in place. In the States that already have adoption legislation, it is the ministry responsible for social welfare and youth development that is in charge of adoption. There is no parallel provision in any of the pre-existing state legislation requiring the ministry or government agency to provide such facilities and services as are prescribed in section 125 of the Act. Moreover, no Nigerian statute (whether federal or state) has ever provided for the setting up of approved adoption services and, as far as official records can support, none is in place anywhere in this country. The absence of such approved adoption services in Nigeria has created a yawning gap which private maternities and orphanages exploit by indulging in the illicit acts of child trafficking and facilitating unauthorized adoption.”⁵⁶⁷

The lack of implementation or the difficulties of an effective enforcement raise not only the question efficacy of the law but also the creation of condition for effective implementation

⁵⁶⁶ See Child right Act 2003 Section 125(1) Every State Government shall, for the purpose of adoption, establish and maintain within the State and, in the case of the Federal Government, within the Federal Capital Territory, Abuja a service designed to meet the needs of- (a) a child who has been or may be adopted; (b) parents and guardians of the child specified in paragraph (a) of this subsection; and (c) persons who have adopted or who may adopt a child, and for this purpose, every Government shall provide me requisite facilities or ensure that me facilities are provided by approved adoption services as may be prescribed by the appropriate authority. (2) The facilities to be provided as part of the services maintained under subsection (1) of this section include- (a) temporary board and lodging, where needed by a child and, in exceptional circumstances the mother of a child; (b) arrangements for assessing a child and prospective adopters and placing of the child for adoption; and (c) counselling for persons with problems relating to adoption.

⁵⁶⁷ Chukwu Larry, ‘adoption of children in Nigeria under the Child’s Rights Act 2003’. (2012). Documents available at <http://www.law2.byu.edu/isfl/saltlakeconference/papers/isflpdfs/Chukwu.pdf>, accessed 30 August 2016.

and enforcement. From the above observation, it could be asserted that the lack of implementation or enforcement is not always due to cultural and traditional factors but the inaction of the authorities.

6.1.2 New approach to Children's Participation in Society

Children's involvement in work is a complex issue. In certain context⁵⁶⁸ children's participation to work is not regarded as a wrong approach. Therefore it cannot be seen as a despicable practice. It does not have negative impacts on the child's condition or his/her future life. Instead, it contributes to the child's development and serves as training for future experiences or adult life. For instance, Section 49 (1) of the Nigeria Labour Act 1990 requires the parents or guardians of the young person aged between twelve and sixteen years to testify with the consent of that young person in the execution of a written contract of apprenticeship.⁵⁶⁹ In this case, the young person enters into an employment contract for the purpose of training.

More significantly, for the purpose the child's welfare and safety, section 18 (1) of the Act provides that 'Every worker shall be entitled after twelve months continuous service to a holiday with full pay. The worker is entitled to (a) at least six working days; or (b) when the person under sixteen (including apprentices), at least twelve working days.' It emerges from this provision that the welfare of the child is taken into consideration in allocation holiday durations. Furthermore, the Labour Act provides an answer in the case where the child has no known parent or guardian to act on his /her behalf the state acts as a legal representative for the child.⁵⁷⁰ The debate on children's participation in work is significant in that it intends to shed light on the flawed interpretation of the act. Indeed children's participation to work as perceived by Nigerian law, as well as the laws of most countries, is deemed to be conducted in observance of the children's rights. Thus, in a condition where the child works as an apprentice as long as the employer abides by the relevant regulation, the child's welfare and safety are guaranteed. The likelihood of his/her basic rights being violated is meagre.

⁵⁶⁸ Activities such as children helping their parent to rear the cattle or some types of farms works to produce foods for the family's own consumption are not often regarded as child labour.

⁵⁶⁹ See Labour Act, Chapter 198, Law of the Federal Republic of Nigeria. Available at <http://www.nigeria-law.org/LabourAct.htm>, accessed 19 August 2016.

⁵⁷⁰ Labour Act 1990 Section 49(2) Where a young person above the age of twelve years and under the age of sixteen years is without known parents or a guardian, an authorized labour officer may authorize the apprenticeship of that person and appoint some fit and proper person to execute the written contract of apprenticeship and act generally as guardian of that young person.

However, there are situations where the child's welfare is threatened or his/her future is jeopardised.

Historically, children's participation in work has been determinant to the development of most of the current industrialised nations. For instance, children's participation to work has been one of the pillars of the industrial revolution in England.⁵⁷¹ Equally children's involvement in work has been crucial to the subsistence of traditional communities around the globe. Children in traditional African societies were central to the life of the community. Traditional African communities were essentially reliant on farming and cattle rearing. Hence, according to their age, children had to play a specific role in the process.⁵⁷² Comparatively, children's participation in the industrial revolution and children's participation to farming and cattle rearing in traditional African communities were both conducted with the same aim: massive gain. This aim for massive gain could be translated into increased productivity, food security, and development. From a theoretical approach, the whole idea could be encapsulated in the functionalist perspectives. Indeed on the assumption that institutions are put in place for the better running of the community and society. The evidence functionalist perspectives in the institutionalisation of children's participation are the sustainability of the community.⁵⁷³ However, children's participation in work took the form of systematic and despicable exploitation.

Because children's participation in work was conducted in total denial of their basic human rights, voices were raised to advocate for a paradigm shift in approach to the child's welfare.⁵⁷⁴ Eventually, the move was followed by other western countries.⁵⁷⁵ The paradigm shift in approach is indeed materialised by the enactment of laws that are effectively implemented and enforced to eradicate the phenomenon. Moreover, the exploitation of

⁵⁷¹ Williamson Jeffrey G, 'Child labor and Industrial Revolution' (1991) 17 Population and Development Review 534, 536. See also Thompson E. P. 'The making of the English working class, (New York Vintage Books, New York 1966) 307.

⁵⁷² Ekpere Johnson A , Oyedipe F P A and Adegboye R O 'Family, Role Differentiation within the Kwara Nomadic Fulani' in Opong C et al. (eds) *Changing African Family Part1, Marriage, Fertility and parenthood in West Africa* (The Australian National University, Canberra 1978) 60, 61

⁵⁷³ See Whitney Pope, 'Durkheim as a Functionalist' (1975) 16 The Sociological Quarterly 361, 379.

⁵⁷⁴ See Rudi Roose and Maria Bouverne-De Bie, 'Do children have rights or do their rights have to be realised? The United Nations convention on the Rights of the Child as a frame of reference for pedagogical action' (2007) 41 Journal of Philosophy of Education 431, 443.

⁵⁷⁵ Marshall T H, 'Citizenship and social class'. In T H Marshall and Tom Bottomore (eds) '*Citizenship and Social class*' (London: Pluto Press, London 1992) 8.

children is made to be perceived as immoral by society. Although the conditions of children in regard to exploitation have progressively improved over several decades, there are still cases of exploitations. A Report published by the United States Department of Labor in 2015 evidenced the practice of child labour in its worst forms in Nigeria despite the adoption of a legal framework to combat the problem.⁵⁷⁶

Overall, the conditions of children are much better in western societies today compare to the era of industrial revolution and epoch before that revolution. It is evident that developing countries have followed the path of the law and policy response in regard to the issue of children's participation to work and their systematic exploitation, but there are shortcomings in the implementation and enforcement aspects. Indeed apart from the contextual realities that often render enforcement almost impossible the enforcement, Bradford and Ben-Sahar observe that sanctions are costly to impose, difficult to coordinate, and often international laws \re ineffective at accomplishing their goals.⁵⁷⁷

Therefore the discourse about children's participation and the need for new approach to the issue in society appeal more to developing countries where communities upholding traditional values still exist.

On the basis of traditional perceptions or customary settings, the children's participation in work is not seen as something wrong whatsoever. As long as the child can work, no question is raised about the detrimental aspect of such work on the child's welfare or future. The community will rather focus on the benefits of the child participation to the good functioning of the community, as it is viewed by the theory of functionalist perspectives.⁵⁷⁸ The experience of law implementation and enforcement for the betterment of children's conditions in industrialised nations has been enjoyed for decades, and it endures.

The challenges to law implementation and enforcement in regard to children's exploitation through their participation in work are real, and they derive from traditional and customary

⁵⁷⁶ United States Department of Labor, '2015 Findings on the Worst Forms of Child Labor'. Available at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/nigeria>, accessed 19 October 2016.

⁵⁷⁷ Anu Bradford, and Omri Ben-Shahar, 'Efficient enforcement in international law' (2012) 12 *Chicago Journal of International Law* 375, 431.

⁵⁷⁸ The functionalist theory postulates that institutions come about and persist because they play a function in society, promoting stability and integration. It presents social institutions as collective means to meet individual and social needs. In applying this to child trafficking, it could be asserted that those who engage in the activity perceive the participation of children in various works after being trafficked is important for the sustainability of their communities.

perceptions of communities in Africa in general and Nigeria in particular. The idea that children should contribute to the functioning of the community remains unchanged. The understanding has existed in both pre-colonial and colonial Nigeria, and it still exists more than 50 years after Nigeria became a modern society through its independence from Great Britain. Ostensibly, the pattern of society's perception about children's participation in work has not changed from its historical form. Hence the fate of thousands of Nigerian children is engulfed in the conflict between modern views expressed by the setting of law and policies and the lingering traditional views. As a result, phenomena such as child trafficking and its corollary child labour are perpetuated.

As elaborated on elsewhere, child trafficking itself is not the end goal in the process. Although it is a despicable practice in that it put victims through serious distress and sufferings during the process, it is carried out for the purpose of sending children to various works. Trafficked children are used as labourers in some West African countries mainly in the ECOWAS region. The ILO estimated that 2.2 million of them are used as cocoa farm workers, prostitutes, domestic workers or child soldiers in regional armed conflicts.⁵⁷⁹ The pattern of children's participation in work being present in the mind of communities and also the fact that various participants to child trafficking resort to the practice for financial gain makes the issue much complex. The traffickers believe that children can work without restrictions. They often ignore that children also have rights. Equally, the users have no idea of their wrong doing when they employ the children as domestic, farm labourers or child soldiers because they have always lived in an environment where children can work without creating any public outrage no matter how dangerous and destructive the work can be. Therefore, a discourse on the adoption of a new approach to children's participation to work in Nigeria has to place great emphasis on important underlying issues.

From the spirit and the letter of Section 49 of the Nigerian Constitution, it is evident that the State does not require a ban on children's participation to work rather there is an imperative to regulate such participation according to the age and condition of the young person. The demand for a paradigm shift in approach to children's participation in work is focused on acting in the strict respect of the laws and regulations in order to guarantee the child's basic

⁵⁷⁹ See ILO, 'The twin challenges of child labour and educational marginalisation in the ECOWAS region'. Available at [file:///C:/Users/leadership/Downloads/ECOWAS_child_labour_educational_marginalisation2014%20\(1\).pdf](file:///C:/Users/leadership/Downloads/ECOWAS_child_labour_educational_marginalisation2014%20(1).pdf). Accessed 19 October 2016.

human rights. The relevant laws and policies already exist hence a paradigm shift in approach to the issue can be triggered not only by an effective implementation and enforcement of these laws and policies but also by curbing traditional and customary understandings that favour uncontrolled child participation to work.

It is also a question of national interest and respect for basic human rights to promote the participation children in issues affecting their lives. However, children should have their participation to work regulated by Nigerian laws there is also need to allow children to participate in the decision-making process over issues concerned with their lives. The UNICEF found that the participation of children in matters affecting their lives can have far-reaching and positive effects on their health and socio-economic conditions. Indeed children's participate in decision making, tend to lead them to become more creative, positive and energetic hence offering ideas devoid of prejudices and stereotypes⁵⁸⁰. It is based on this perception that the Federal Government of Nigeria inaugurated the Children's Parliament in 2003. The Children's Parliament has the purpose of enhancing children's participation in society in a more compromised way. Authorities also encourage more participation of children in the media and their opinion at the public domain is now necessary and publicised to give them some measure of involvement and responsibility.⁵⁸¹

6.1.3 New Approach to the Elements of Culture and Tradition

The lack of implementation or enforcement of international legal instruments has often been blamed on the adverse nature of local cultures.⁵⁸² As indicated hereinbefore, traditional views often conflict with modern imperatives.⁵⁸³ Hence in a wider ambit, the complex cultural context of Nigeria does not often permit the straightforward implementation or enforcement of international legal instruments especially those related to human rights.

Oyowe writes that the belief that human rights are culturally relative has been reinforced by recent attempts to develop more plausible conceptions of human rights whose philosophical foundations are closely aligned with culture-specific ideas about human nature and/or

⁵⁸⁰ See UNICEF 'Children Rights and Participation'. Available at http://www.unicef.org/nigeria/children_1938.html, access 26 July 2016.

⁵⁸¹ *ibid.*

⁵⁸² Zwari Tom, 'Using Local Culture to Further the Implementation of International Human Rights: The Receptor Approach' (2012) 34 Human Rights Quarterly 546, 569.

⁵⁸³ Patrick O'Brien, 'Historiographical traditions and modern imperatives for the restoration of global history' (2006) 1 Journal of Global History, 3, 39.

dignity.⁵⁸⁴ It derives from this analysis that approaches to human rights vary according to the cultural context. Nigeria is a country where over 300 tribes live.⁵⁸⁵ From the north to the south, from the east to the west there are various communities with various religions, custom and traditions. In such context, the cultural relativist discourse becomes significant.

The perception of human rights in general and child rights, in particular, will not be the same in the north where Islamic values will prevail in dealing with the child's upbringing. For instance, the *Almajiri* system established in the north has been possible because the authorities of independent Nigeria allowed the legal pluralist context that permits the sharia system in the Islamised northern Nigeria. Although the word *almajiri* originated from Arabic, it has been adapted in Hausa society in northern Nigeria. Thus, Magashi writes that 'in a Nigerian context, it could mean a boarding student of Islamic studies; a student learning the science of the Qur'an, believed to be the revealed book of Almighty God, while committing the text to memory; a small child sent to an itinerant teacher to learn not just the Islamic religion, but also how to pursue a means of livelihood for himself, his teacher, and his family, or even, to many uninformed Nigerians, a beggar.'⁵⁸⁶

As indicated, cultural relativism has been the rationale behind the maintaining of a legal pluralistic environment in Nigeria. The Colonial Administration has taken the approach, and it has been maintained by the Nigerian authorities after independence was granted to the country by Great Britain in 1960. It is evident that Nigerian authorities have allowed this system to carry to avoid recurring conflicts based on cultural perceptions in a country where communities remained deeply attached to their religion, customs and tradition. Hence system such as *Almajiri* and other cultural violence⁵⁸⁷ have prevailed alongside the modern systems fostered and promoted by the Federal and local governments. This approach is evidence in the Federal government's domestication procedure of international legal instruments. The Nigerian Constitution places the issues of child rights are under States' responsibility and

⁵⁸⁴ Oritsegbubemi Anthony Oyowe, 'An African Conception of Human Rights? Comments on the Challenges of Relativism' (2014) 15 Human Rights Review 329, 347.

⁵⁸⁵ See Answer Africa, 'Nigerian Tribes: List of Major Tribes in Nigeria.' Available at <http://answersafrica.com/nigerian-tribes.html>, accessed 01 September 2016.

⁵⁸⁶ Salim Bashir Magashi, 'Education and the Right to Development of the Child in Northern Nigeria: A Proposal for Reforming the *Almajiri* Institution' (2015) 61 Africa Today 65, 83.

⁵⁸⁷ In Nigeria, there are many cultural practices that are acts of violence on the child. These include female genital mutilation (otherwise called female circumcision), tribal marking and scarring, rites of passage (for instance from childhood to adulthood), initiations, marriage ceremonies, etc. In different parts of Africa, these cultural practices are carried out on children with or without their consent. Physical and psychological damage often results and some children may even die from such practices.

jurisdiction. As such, States are expected to formally adopt and adapt the Child Rights Act for domestication as State laws. Hence The Act becomes fully operational only when a State adopts it. As a result, only 16 States have promulgated the Act into Law.⁵⁸⁸ Obviously, most States in Northern Nigeria have not promulgated the Act. Hence the Federal and State Ministry of Women Affairs was urged by UNICEF, to make sure that all States adopt the Child Rights Act.⁵⁸⁹

In a context where for such an important issue concerning the basic human rights of the child, States have no immediate obligation to promulgate the law, several challenges including blatant human rights violations can occur. On the basis of respect for people's religious beliefs, traditional or customary values, the government who is the custodian of the modern legal system remain powerless.

Magashi pertinently observes that an otherwise good practice of *almajiri* in Nigeria is the subject of criticism both in Nigerian and the global community.⁵⁹⁰ The practice which hitherto promoted the child's right to education now promoted denial of other rights, like care and love shelter, food, health, as well as the right, tends to promote.⁵⁹¹ While such practice was initially deemed a suitable alternative to formal education in an agreed legal pluralistic context, it has become the mean for the violation children's basic human rights. Likewise, practices such as customary child fostering that have had its golden days in most traditional West African communities is now exploited in favour of child trafficking and various child abuses.

Moreover, the predominance of religious systems in the northern Nigeria has in some ways favoured extremism materialised by Boko Haram, whose name in Hausa, the dominant language in northern Nigeria, means "Western education is forbidden". On the basis of religious beliefs, Boko Haram has students kidnapped 250 school girls most of whom are still unaccounted for. Also, the group targeted and killed students, teachers, and education workers mostly in northern Nigeria.

⁵⁸⁸ The States are as follows: Abia, Anambra, Bayelsa, Eboniyi, Edo, Ekiti, Imo, Jigawa, Kwara, Lagos, Nassarawa, Ogun, Ondo, Plateau, Rivers and Taraba.

⁵⁸⁹ UNICEF Nigeria, Action'. Available at http://www.unicef.org/nigeria/protection_2169.html, accessed 26 July 2016

⁵⁹⁰ Salim Bashir Magashi, 'Education and the Right to Development of the Child in Northern Nigeria: A Proposal for Reforming the Almajiri Institution' (n 24).

⁵⁹¹ UNICEF (n 26).

As reported by Human Rights Watch, Borno, one of the most affected states in northern Nigeria, the school closure at all levels affected 22 out of 27 local areas for at least two years. However, the reopening of public secondary schools in the state capital, Maiduguri, was possible only in February 2016. The reopening has been possible when internally displaced people who occupied most of the schools, were relocated elsewhere.⁵⁹²

In other part of Nigeria, traditional beliefs have constituted serious challenges to the implementation of laws hence child rights violations were systematic and frequent. For instance, Liepe observes that ‘beliefs in the existence and powers of witches have a long and diverse history and span a large range of cultures and traditions.’⁵⁹³ Indeed the dominance of traditional and cultural beliefs in most Nigerian communities has been somehow tolerated on the same ground that every community has the rights to express their beliefs and maintain their traditional values and customary practices. On the issue of witchcraft, children are often the most vulnerable when it comes to accusations. Hence Secker writes that:

“Witchcraft stigmatization is increasingly identified as a growing human rights concern. The stigmatization of children as witches and resultant child rights abuse is particularly prevalent in Nigeria, and has been recognized as a major barrier to the effective implementation of child rights in this state. Witchcraft-related abuse entails significant violations of a range of children’s rights, and is yet to receive adequate or effective policy responses from government. Whilst Civil Society Organizations have attempted to address this issue, significant practical and conceptual challenges to their work remain.”⁵⁹⁴

Secker’s observation is significant in that it underscores one of the key factors of the rejection of children in Nigeria. A child accused of witchcraft is usually killed or abandoned by his /her biological parents and other members of the extended family.⁵⁹⁵ The abandoned children are often exposed to all sorts of abuses by strangers. Some of them fall prey to traffickers. In such cases of extreme child rights violations should the cultural relativist argument prevail in

⁵⁹² See Human Rights Watch, ‘They Set the Classroom on Fire’ Attacks on Education in Northeast Nigeria <https://www.hrw.org/report/2016/04/11/they-set-classrooms-fire/attacks-education-northeast-nigeria>, accessed 24 August 2016.

⁵⁹³ Brian Liepe, ‘Examining the Growth of Witchcraft Accusations in Sub-Saharan Africa’ (2016) 4 Grand Valley Journal of History.

⁵⁹⁴ Emile Secker, ‘Witchcraft stigmatization in Nigeria: Challenges and successes in the implementation of child rights’ (2013) 56 International Social Work 22, 36.

⁵⁹⁵ See Adam Withnall ‘Aid worker who rescued a boy from starvation reveals how she is working to save Nigeria’s ‘witch children’ Independent (18 February 2016) < <http://www.independent.co.uk/news/world/africa/aid-worker-who-rescued-a-boy-from-starvation-reveals-how-she-is-working-to-save-nigerias-witch-a6881101.html> > accessed 24 August 2016

all area of life in Nigerian society, there would have been serious damages to social stability and development. It is to be acknowledged that the central issue in the debate on cultural relativism is the protection of human rights as a value. On that issue, Donnelly writes that:

“A cultural relativist account of human rights, however, seems to be guilty of logical contradiction. If human rights are based in human nature, on the simple fact that one is a human being, and if human nature is universal, then how can human rights be relative in any fundamental way?”⁵⁹⁶

There cannot be a valid answer to that question in that child rights in Nigeria equates to child rights in any other country of the world. There may be a problem of culture but the paradigm shift in approach to human rights in general and child rights in particular need to be outside the discourse on cultural relativism. The discourse shall not hamper the establishment the manifestation of law and order. Hence the Nigerian authorities have the duty to address the adverse effects of culture in assessing the effectiveness of human trafficking laws in general. The pluralistic environment of the Nigerian legal system appears to be a plausible answer to the question of relativism.

It should be recalled that legal pluralism is regarded as a trade-off between the legal system established by the colonial administration and local traditional and customary settings in Africa. Ige observes that legal Pluralism in Africa came into being as a result of colonialism, which has impacted all areas of human endeavour. However, the amalgamation of foreign laws with indigenous laws often elicits opportunities for challenges and conflicts in interpretation and enforcement of the laws in many African societies.⁵⁹⁷ As a trade-off, the legal pluralistic context has not solved the problem of cultural relativism. It has instead allowed the accommodation of indigenous customs and traditions in a new and modern context in Nigeria. Indeed by taking into account the relativist approach, there will be a tolerance towards the non-application of certain laws that are however important. While legal pluralism may be the answer to the shortcomings of cultural relativism some legal system in Nigeria instead of bringing the solution to issues that threat national cohesion and human rights values, constitute themselves a permanent threat to the manifestation and promotion of human rights, social justice and national development.

Ige writes that ‘a legal pluralist analysis tends to emphasise the changes that occur through interactions between law and social life. The analysis opens up questions of resistance that

⁵⁹⁶ Jack Donnelly, ‘Cultural Relativism and Universal Human Rights’ (1984) *Human Rights Quarterly* 400, 419.

⁵⁹⁷ Rhoda Asikia Ige, ‘Legal Pluralism in Africa: Challenges, Conflicts and Adaptation in a Global Village’ (2015)34 *Journal of Law, Policy and Globalization*

builds on the theoretical traditions and rich ethnography of culture that challenges law in the very society.⁵⁹⁸ It is obvious that the acceptance of cultural relativism has favoured the establishment of legal pluralism, to allow various legal systems and cultures to function in harmony. The complex natures of the current pluralistic context in Nigeria appeal to government authorities, law and policy makers. More significantly, the current complex situation has made phenomenon like child trafficking and child labour serious challenges for Nigerian authorities whose willingness to eradicate the problem cannot be otherwise doubted. It should be emphasised that cultural norms, practices, and traditions are crucial in every society. Indeed they play an important role in defining a country or society.

Meanwhile, some traditional rules are abusively used or distorted to justify bad practices or crimes, including child trafficking and child labour, that exploit and jeopardise the child's future. The observance of cultural practices creates an environment in which the crime either remains hidden or is socially accepted or even facilitated. Moreover, cultural norms can hinder or thwart a government's endeavour to prevent child trafficking, law enforcement, prosecution, and child protection.⁵⁹⁹ Hence, the new approach to the cultural element in the discourse about child trafficking and various abuses of children's rights in Nigeria encompass the whole narrative of rethinking cultural relativism and legal pluralism which to a great extent allow maintaining of such environment. It has become a matter of urgency to create a new legal environment that is fit for purpose.

6.1.4 New Approach to Eradicating Poverty

The poverty headcount ratio at national poverty line which is defined by the World Bank as the percentage of the population living below the poverty lines was estimated in 2009 at 46.0% in Nigeria.⁶⁰⁰ The alarming level of abject poverty in the Nigerian population has led the World Bank to strengthen its partnership with the country by setting a poverty reduction strategy called 'New Country Partnership Strategy in Nigeria Set to Spur Growth, Less

⁵⁹⁸ Rhoda Asikia Ige, 'Legal Pluralism in Africa: Challenges, Conflicts and Adaptation in a Global Village' (2015) 34 *Journal of Law, Policy and Globalization*.

⁵⁹⁹ See US Department of State 'Trafficking in Person Report July 2015'. Available at <https://www.state.gov/documents/organization/245365.pdf>, accessed 28 July 2016.

⁶⁰⁰ See The World Bank, 'Saving One Million Lives Initiatives Programme –for-Result (PforR)'. Available at <http://www.worldbank.org/projects/P146583?lang=en>, accessed 29 August 2016

Poverty’.⁶⁰¹ Under the paternity, the World Bank initiated ‘Saving One Million Lives for Result’. The purpose of the project is the increase of the utilisation and quality of high-impact reproductive child health, and nutrition interventions. The World Bank indicated that the first indicator there is a need to determine whether there has been significant progress among the poorest 40 percent of the population.⁶⁰²

It is evident that Nigeria has engaged in a partnership that could lead to significant poverty reduction. Such an approach, however, is deemed honourable has to take several contextual realities into account. Poverty reduction is also base on good governance, transparency, accountability, and fair and equal redistribution of wealth essentially created by oil production. Nigeria is the first oil producer and the second with the largest oil reserves in Africa. It is admitted that the oil and gas sector account for about 35 percent of the GDP and oil export revenue represents more than 90 percent of the export revenue. Apart from petroleum Nigeria’s other natural resources, iron ore, coal, limestone, niobium, lead, zinc and arable land are important sources of revenues the country relies upon in initiating effective wealth redistribution for the purpose of poverty reduction.⁶⁰³

The redistribution of wealth could be translated to the development of infrastructures. Indeed resources well redistributed and well spend in education and training, public health and the delivery of public service will impact the living standard of the population positively. Also, well-funded border services, custom services and police forces could solve the problem of unequipped staffs and officials involved in fighting crimes such as human trafficking and smugglings. A successful public management underpinned by good governance create the environment for foreign investment hence the creation of more employment for the population. The government’s investment policies for both foreign and national investors play a major role in poverty reduction. More significantly the strict compliance with public procurement law which is very detailed and promote fairness in the bidding process will create investment opportunities for all.⁶⁰⁴ In a context of good governance, and flourishing foreign and national investments it becomes easier for the government to make corporations

⁶⁰¹ *ibid.*

⁶⁰² *ibid.*

⁶⁰³ See OPEC, ‘Nigeria Fact and Figures’. Available at http://www.opec.org/opec_web/en/about_us/167.htm, accessed 31 August 2016.

⁶⁰⁴ See Nigerian Public Procurement Act, 2007. Document Available at http://goprs.unodc.org/documents/Public_Procurement_Act_2007.pdf

to comply with the principles of Corporate Social Responsibility (CSR). Indeed CSR can play a significant role in tackling a problem like child trafficking and child labour. When companies adopt codes of conduct that established broad principles and guidelines, this governs the behaviour of firms in relation to a combination of corporate governance and labour, social, economic, human rights, and environmental aspects.⁶⁰⁵ Government and corporations in Nigeria will work hand in hand to improve not only the condition of their employee but also assume their various responsibilities towards communities. As a result problem such as child trafficking and child labour can be tackled because employees who are also parents, will have the minimum to care for their families and thereby keep their children off the path to child trafficking and other abuses.

6.2 The Need for an Effective Cooperation

6.2.1 New Approach to Addressing Child trafficking in the Ecowas Area

Effective cooperation within the Economic Community of West African States' (ECOWAS) is vital in addressing child trafficking and its underlying problems. Ecowas established as a sub-regional organisation chose for its effective operation to apply the principle of free movement of a person between states members. However, the adequate accompanying measures to make the principle viable have not yet been devised. Effective Cooperation in the context of regional integration stands as the central pillar of the real success. The ECOWAS Protocol⁶⁰⁶ is a significant instrument in the organisation's desire to succeed in its regional economic integration perspective.⁶⁰⁷ The Protocol Recalling, the sub-paragraph (d) of paragraph 2 of Article 2 of the Treaty of ECOWAS, calls on the Member States to ensure by stages the abolition of the obstacles to free movement of persons. However, the principle of free movement does not provide that people can travel without a passport or other form of

⁶⁰⁵ Jennifer Clapp and Peter Utting, 'Corporate Responsibility, Accountability, and Law: An introduction' in Peter Utting and Jennifer Clapp (eds) *'Corporate accountability and sustainable development'* (Oxford University Press, Oxford 2008) 5.

⁶⁰⁶ The ECOWAS Protocol on Free Movement of Persons, Residence, and Establishment adopted on 29 May 1979.

⁶⁰⁷ See ECOWAS protocol. Document available at <http://www.cfr.org/world/economic-community-west-african-states-ecowas-protocol-free-movement-persons-residence-establishment/p28124>, accessed 26 August 2016.

identification, a report published by ECOWAS estimated that about 70% of border residents cross the border frequently without any form of documentation/identification.⁶⁰⁸ Hence the ECOWAS free movement programme involving visa abolition for travel by citizens within the Community is seriously exploited by all sorts of cross-border criminals including human traffickers.

Millions of people including children to move between States without being properly identified by border agency staffs. As a result, human trafficking in general and child trafficking, in particular, thrive across Nigerian borders. Although traffickers send victims to countries outside the ECOEWAS zone, it should be understood that the majority of the trafficked persons including children are disseminated across Members States of the organisation for various types of exploitations. Therefore, the organisation took various actions to address the issue. The major steps taken so far by ECOWAS are the initiation of two projects.

The projects, ECOWAS I & II, designated as “Eliminating the Worst Forms of Child Labour in West Africa and Strengthening Sub-Regional Cooperation through ECOWAS” were initiated in line with ILO/IPEC intervention programmes. The programmes essentially motivated by the high incidence of the worst forms of child labour in some member states, especially in Benin and Nigeria. The two projects contextualised in the hazardous labour frame of the ILO-IPEC initiative had the vision of not only addressing the problems of children at risk but also ensuring that some of the root causes of the issues such as abject poverty, social challenges and ignorance are dealt with in a practical and sustainable manner. It acknowledged that the Nigerian government’s full involvement in the project accounted in large for its success in that the Ministries of Labour and Education, as well as NAPTIP and the police, have played their role in facilitating the process and enforcing the law.⁶⁰⁹ However, the projects are deemed a success in the ECOWAS there are still significant progress to be made

⁶⁰⁸ See ECOWAS, ‘Empowering women, the youth and economic operators on the regional integration of ECOWAS. Available at http://www.fsdaghana.org/reports/FSDA_GHANA%20NSA_ACTIVITY%20REPORT_Free%20Movement_Baseline%20Study_Ketus%20South_April%202011.pdf, accessed 26 August 2016.

⁶⁰⁹ See ILO, ‘Good practices and lessons learned on the elimination of child labour in Nigeria: ECOWAS projects’ experiences’. Available at http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_26975/lang--en/index.htm, accessed 25 August 2016.

Among other problems created by the ineffective management of the principle of free movement of persons, child trafficking should be addressed with a particular attention. Indeed legislation does not constitute the problem in the discourse about child trafficking in ECOWAS area because most of the member states have enacted the necessary laws for that purpose. Instead, there is a need to adopt a new approach to addressing the issue not only at the law and policy structure of the organisation but also an effective response from states members towards the issue. This approach implies that Ecowas officials must take into account all the strategies and mechanisms employed by criminals. Some countries in addition to the measure adopted by the organisation, have signed bilateral treaties to address the issue in accordance with their contextual realities. Child labour in West Africa is one of the thriving practices that have favoured the increase of child trafficking in the region. It is understood that children are trafficked for various activities in the countries of destination. They are sent to countries where there is high demand for labourers. Children are used as child labourers on cocoa farms, quarries, construction and domestic works as well as others hazardous works. However, such practice is despicable it remain a fact in West Africa.

In the light of the seriousness of the problem, in addition to existing measure at the community level, some member states have signed bilateral treaties to address the issue of worst forms of child labour.⁶¹⁰ Likewise, at the state level, some members have increased their legislative activities to overcome the phenomenon locally. In terms of legislation and actions undertaken at both community and national levels, it could be asserted that efforts have been real. However, there seem to be less satisfactory results on the ground. Lawrence in his assessment of the Ghanaian law about trafficking and labour issues observed that ‘the Ghanaian law is of limited effectiveness: Rather than engaging with autochthonous causes, including complex social practices with historically rich traditions (like child fosterage, rearing, and labor), it enjoined a narrow, economic model for the proliferation of trafficking.’⁶¹¹ Lawrence’s observation is pertinent in that it describes a stereotype in the

⁶¹⁰ A bilateral agreement between Mali and Cote d’Ivoire in September 2000 to combat the transborder phenomenon of child trafficking.

⁶¹¹ Benjamin N. Lawrance, ‘From Child Labor "Problem" to Human Trafficking "Crisis": Child Advocacy and Anti-Trafficking Legislation in Ghana’ (2010) 78 *International Labor and Working-Class History* 63, 88.

whole ECOWAS area.⁶¹² All Member States appear to adopt the same attitude towards the issue. They rarely address the root cause referred to hereinbefore.

6.2.2 New Approach to Cooperation with Countries of Destination outside ECOWAS

The new approach to cooperation with countries of destination for victims of trafficking is to be taken for more efficiency in the combat against child trafficking. Although efforts are evident within Nigeria and the ECOWAS area, actions need to be taken beyond the borders of Nigeria and ECOWAS. The approach is to be adopted in cooperation with countries in Central Africa, North Africa, Middle East and Europe. In a report from the U.S. Department of State, it is noted that:

“Nigerian women and children are recruited and transported to destinations in North Africa, the Middle East, and Central Asia, where they are held captive in the sex trade or in forced labor. Nigerian gangs subject large numbers of Nigerian women to forced prostitution in the Czech Republic and Italy. Moreover, West African women transit Nigeria to destinations in Europe and the Middle East, where they are subsequently subjected to forced prostitution. Children from West African countries are subjected to forced labor in Nigeria, including in Nigeria’s granite mines. Nigeria is a transit point for West African children subjected to forced labor in Cameroon and Gabon.”⁶¹³

Obviously, Nigeria is a significant platform for human trafficking in general and child trafficking in particular. There are several countries of destination in relation to the trafficking issue in Nigeria. An effective cooperation implies that Nigeria’s foreign policy should place greater emphasis on bilateral cooperation with each one of the countries identified as the most preferred destinations for Trafficked persons from Nigeria. Whereas most countries of destination have the infrastructures and resources to combat trafficking within their borders Nigeria is often incapable to face some challenges related to the issue. To a great extent child trafficking is detrimental to Nigeria socioeconomic stability and development goals. Although human trafficking is an underground industry, it does not impoact negatively the socio-economic development of the countries of destination. They rather benefit from it in that it provides cheap labour. However, the main challenge facing these countries of destination remains the usual issues of human rights violations. In the absence of an effective cooperation sustained by an adequate foreign policy from Nigeria, it

⁶¹² *ibid.*

⁶¹³ See U.S Department of State, ‘2015 Trafficking in Person Report: Nigeria. Available at <http://www.state.gov/j/tip/rls/tiprpt/countries/2015/243505.htm>, accessed 27 August 2016.

becomes more challenging for the authorities to engage their counterparts in the fight against child trafficking.

In its bilateral cooperation with each one of the countries identified as a preferred destination for person trafficked from Nigeria. They should be focused on bilateral law enforcement cooperation including training programmes for law enforcement officers to tackle human trafficking and deal with the victims of trafficking where necessary, mutual assistance and extradition Targeting people smugglers and traffickers in a well-organised intelligence sharing data system. A BBC report unveiled that girls are given forged documents and passports from Nigeria to fly into places like Gatwick. These documents are often obtained with the complicity of people working in the government.⁶¹⁴In such circumstances, a close and effective cooperation between Nigerian immigration officials and the UK Border Agency is necessary to prevent fraudsters from worsening the situation of human trafficking and child trafficking.

6.2.3 The Prospects of International Cooperation to Combat Child Trafficking

Efforts at international level are important in the combat against trafficking in person in general and in child trafficking in particular. Although there are efforts at regional and sub-regional levels, more actions are needed among countries around the globe. The existence of international legal instruments to combat trafficking in persons or to protect human rights is not enough to assume that international cooperation is effective. Similarly the existence of bilateral agreements does not suffice to overcome the global phenomenon. Indeed international cooperation in the area of trafficking in persons is non-existent and the prospects of creating a context of an effective international cooperation is not ostensible in the international arena. The particular issue of child trafficking involves many pertinent questions such as the welfare of the child, the protection of the next generation, sustainable development. Hence, the prospects of an effective international cooperation should be a matter of urgency.

6.3 The Shift to an Effective Child Protection

Approaches to be taken in the child protection discourse are the needs-based approach and the rights-based approach. The basic needs of the child are to be seen in five categories. The

⁶¹⁴ BBC Magazine, 'The world of Nigeria's sex-trafficking 'Air Lords' *BBC NEWS* (27 January 2016) <available at <http://www.bbc.co.uk/news/magazine-35244148>> accessed 31 August 2016.

child needs someone to believe, someone who will be regarded as role model; every child needs to believe in something: values; every child needs to belong somewhere: a family and community; every child needs something to becoming: aspiration to significance and pursuit of inner potential; every child need the affirmation of his freedom and responsibility: a sense of dignity and self-worth.

There are four structures of protection for the child is the family, the community, the state and international community. In this circle, the family constitutes the primary caregiver whereas the community, the state and the international community remain the secondary caregivers. The Community, the State and the International Communities exist to strengthen the family institution and not to take over its inevitable roles. Indeed it should be acknowledged that we work with and for children because it is their rights to be protected. Hence it could not be said that we are doing them a favour. Protecting children is a matter of necessity that we protect them, and that must be our attitude.

The idea of child protection has been widely spread among law and policy makers at both national and international levels. Meanwhile, child protection is still regarded as a thorn in most governments' flesh in developing countries. The paradigm shift in perception about the issue has yet to be made in order to bring about the effective child protection. It appears that despite the ratification of most international instruments about the welfare of the child and its adherence to human rights values; Nigeria has not seen the change expected in the area of child protection in general. According to UNICEF, society condones most of the violence against children tacitly or explicitly.⁶¹⁵ Indeed several practices existing in communities endure because of the attitude of the community towards them.⁶¹⁶ The community usually tolerate it or simply fail to report it to the authorities because it profits them.

⁶¹⁵ See UNICEF, 'Progress for Children: A Report Card on Child Protection'. Available at [http://www.unicef.org/protection/files/Progress_for_Children-No.8_EN_081309\(1\).pdf](http://www.unicef.org/protection/files/Progress_for_Children-No.8_EN_081309(1).pdf), accessed 29 July 2016.

⁶¹⁶ The practices are child marriage, female genital mutilation/cutting, corporal punishment and domestic violence. Effective child protection depends on to a large extent on changing the mindsets of families and communities so that attitudes, beliefs and practices that harm children will no longer be tolerated. Positive social consensus reinforces the most effective child protection. Attempts to impose change from outside often lead to resistance. Initiatives to improve child protection are more effective when they are based on partnerships and coalitions, and when open discussion of the issues can take place. Change that is effective and sustained will be rooted in shared social norms and effective, accessible systems.

UNICEF's observations about the issue of mindsets are so pertinent that its subsequent report on the determining factors for non-registration of children at birth are essentially based on cultural or religious views. Indeed mindsets usually derive from cultural perception, traditional settings or long-standing practices within communities.⁶¹⁷ It is noted that the unregistered children are from a different ethnic group, nationalities, religion, children born out of wedlock or children whose parent fled wars from localities where there is low birth registration.⁶¹⁸

Because mindsets are designated as the main factors for the plight of children in most Nigerian communities, UNICEF underscores that effective child protection depends on to a large extent on changing mindsets. Indeed this equates to the need for a paradigm shift in perception referred to hereinbefore. The change of mindsets does not concern families and communities alone. It also concerns government authorities and law enforcement agencies. Without being a welfare state, Nigeria as a nation aspiring to become an important member of the international community should promote values that perpetuate the welfare of the child in general.

The change of mindsets alluded to by the UNICEF can happen if Nigerian authorities create the necessary conditions for its materialisation. While all traditional perceptions cannot be viewed as a hindrance to the manifestation of effective child protection, those considered to have such impact should become properties on the government's agenda for addressing social issues that hamper the development of Nigeria. The change to be instigated by Nigerian authorities will require their real political will, their capacity of persuasion within traditional communities, and their ability to materialise the implementation and enforcement of relevant laws and policies.

⁶¹⁷ Daphna, Oyserman, 'Culture as situated cognition: Cultural Mindsets, cultural fluency and meaning making'(2011) 22 *European Review of Social Psychology* 164, 214.

⁶¹⁸ See UNICEF, Fact Sheet: Birth Registration in Nigeria. Document available at http://www.unicef.org/nigeria/ng_media_birth_registration_fact_sheet_July_2010.pdf, accessed 16 August 2016.

6.3.1 Education

Formal education is crucial to the development perspectives of Nigeria. In the case of child trafficking, for instance, the knowledge about the phenomenon and its negative impacts in society can easily be perceived through the level education and information of the community and other structures. Indeed it necessary for all institutions and stakeholders involved in combatting child trafficking, and child protection to be enlightened. Because when Enlightenment occurs, every primary and secondary custodian within the four institutions that are responsible for the welfare of the child in general.⁶¹⁹ Indeed They know what to do when a situation occurs; they know how to go about issues. Indeed formal education of the population will improve certain conception in the modern environment of Nigeria. Formal Education will lay the foundation to face challenging issues in the building of the nation. Education can help to tackle bad traditional and customary practice. Moreover, actions towards awareness raising can have a far-reaching effect on the population because they understand concepts, issues and their potential impacts on the community and the nation.

In the light of the importance of the question, a reform in education the Nigerian education system is urgent. Several issues are to addressed regarding the need for a substantial reform of the education system in Nigeria. It could be argued that the pattern of the Nigerian education system facilitate the perpetuation of phenomena such as child trafficking and child labour. The first step which appears to be crucial in the process of involvement in formal education is the child's legal recognition. Indeed birth registration is the first step towards recognising a child's inalienable right as a human being. According to UNICEF, the lack or birth registration in Nigeria alarming in that it affect over about 70 percent of the 5 million children born in the country.⁶²⁰ In such context, the rights of the children an identity, name and nationality not guaranteed as well as their access to basic services is threatened.⁶²¹

In other words, the child must be recognised in the administrative apparatus before standing the chance of accessing formal schooling. It becomes evident that a child born without being

⁶¹⁹ The four institutions that are the family, the community, the state and international community are responsible for the protection of the child must be equipped with Knowledge, skills, and attitude.

⁶²⁰ See UNICEF, Fact Sheet: Birth Registration in Nigeria. Document available at http://www.unicef.org/nigeria/ng_media_birth_registration_fact_sheet_July_2010.pdf, accessed 16 August 2016.

⁶²¹ *ibid.*

formally registered at birth is highly likely to be lost in the population hence unknown to the authorities. Among other issues underpinning the discourse on child trafficking, the non-identification of the child remains crucial. A child without a birth certificate is less likely to be sent to school or even if he or she is, there is a high probability that she or he is refused admission for the lack of official documents. As a result, such child is exposed to phenomena like child trafficking and child labour.

The Nigerian Constitution does not have a specific provision about registration at birth. However, after almost over two decades of independence, the authorities resolved to address the issue at least from a legislative perspective. It is acknowledged that the first conscious effort to have a universal system of registration of births and deaths was made in 1988 when the government promulgated the Births and Deaths Compulsory Registry Decree 39 of 1979. Indeed the decree was aimed at establishing a uniform national and State-level registration. The conditions for birth registration were made less stringent on some occasion to allow parents to register their children.⁶²² Moreover, the right for every child to be registered at birth, to acquire a name and nationality, and the responsibilities of the States in this area are provided by other international legal instruments that Nigeria has ratified. The relevant provisions are Article 15 of the Universal Declaration of Human Rights 1948⁶²³, article 24 of International Covenant on Civil and Political Rights⁶²⁴, Article 7 of the UN CRC 1989⁶²⁵, and Article 6 of the African Charter on the Rights and Welfare of the Child 1990.⁶²⁶

⁶²² Federal Government's Decree No. 69 of 1992 on vital registration provided that registration shall be free of charge, within a period of 60 days from the date of birth, the Child Rights Act 2003 provides in its Section 5 that: 'Every child has the right to a name, and the birth of every child shall be registered.'

⁶²³ The Universal Declaration of Human rights Article (15) 1, everyone has the right to a nationality; 2, No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

⁶²⁴ See International Covenant on Civil and Political Rights, Article (24) 1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State; 2. Every child shall be registered immediately after birth and shall have a name; 3. Every child has the right to acquire a nationality.

⁶²⁵ See United Nations Convention on Rights of the Child, Article (7) 1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents. 2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

⁶²⁶ See The African Charter on the Rights and Welfare of the Child, Article (6) 1. Every child shall have the right from his birth to a name; 2. Every child shall be registered immediately after birth; 3. Every child has the right to acquire a nationality.

In its report on a country study about Nigeria, UNICEF has observed that there has been remarkable efforts to reform the sector of Education in the country. The report indicates that however, some positive gains have been recorded in some aspects as a result of these interventions and reform initiatives more efforts have to be made.⁶²⁷ These facts come as a concern for authorities efforts to improve the sector hence eliminate all the surrounding social predicament of a child due to the lack of schooling. Children could be best protected if they attend school on a regular basis and therefore they accounted for by the system. Education will develop the child's skills to face social issues during the process of his/her growth and adult life.

Investing in education and training can play a paramount role in helping to break the cycle of poverty and should be emphasised in all development plans and programs. Research has shown that educating girls, especially through secondary and higher levels, can serve as a protective factor for girls against gender-based violence and has been identified as an important preventive intervention for children at risk of trafficking (United Nations Development Fund for Women).⁶²⁸ In addition, governments should ensure that the necessary policies are in place to remove all barriers to girls' participation in education and schooling, such as cultural norms and safety concerns.

Human rights issues being one of the key factors participating to the democratising and good citizenship if the child missed the opportunity for education, at least at the primary level, they might be unfit development process when they reach adulthood. It should also be admitted that a certain level of literacy is necessary for all types of trades it is necessary for the daily life of each people. Hence UNICEF endeavours to achieve global literacy. Government's increasing efforts to achieve universal education can certainly help the country to deal with complex issues.⁶²⁹ The difficulties to have access to even primary education and the lack of employment for parent remain serious challenges that need to be addressed. The problem is so real that the World Bank in its 2015 report on Nigeria acknowledged that the major

⁶²⁷ibid.

⁶²⁸ See UNICEF, 'Child protection from violence, exploitation and abuse: Birth Registration'. Available at http://www.unicef.org/protection/57929_58010.html, accessed 29 July 2016

⁶²⁹ The level of literacy and education can help the citizen to have a better understanding of issues pertaining to the common interest of the pollution as well as question related to national interest. Issues such as religious values, traditional and customary practices are sensitive and complex in Nigeria. The level of conservatism is considerable among religious and traditional communities. The high level of illiteracy and the lack of educated people in rural areas and to some extent in urban areas, remain a real challenge for the government.

medium-term initiative for the growth of private sector and the improvement of education and the creation of productive jobs.⁶³⁰ It is observed that the pace of job creation has been inadequate which leads, leading to increasing frustration among the unemployed, underemployed young Nigerian.⁶³¹

6.3.2 Public Awareness

The idea of public awareness is central to all debates about child protection in general and child trafficking and its attendant child labour in particular. Awareness raising also known as consciousness raising is a form of activism that is often conducted by a group of people who endeavour to focus the attention of a wider group of people on some cause or condition. Public awareness must be seen as an important element or mean of overcoming child trafficking. Making the communities aware of the negative impacts and consequences of child trafficking on their development and the future of the entire community is paramount. Public awareness involves important stages of educational strategies and empowerment for the communities. Indeed they are given the opportunity to understand facts about child trafficking. More significantly, they are trained to play an active role in combatting the phenomenon. In the light of its far reaching effect and its efficacy in practice, public awareness plays a significant role in achieving the ultimate goal of elimination child trafficking or child labour.

Due to the significant role of raising public awareness in combatting trafficking in persons in general and child trafficking in particular, government authorities can take the lead in raising awareness not only for the benefit of the population but also for the interest of the country. Thus in the case of child trafficking and child abuses, the authorities have the duty to take the leading role by sending the necessary messages to stakeholders and the general public alike. To some extent the support of the ECOWAS to its member state in fighting child trafficking and child, abuses is necessary. Considering the issues of child trafficking and other child abuses in Nigeria the narrative about their justification or legitimacy should not create any confusion. Whether the issue that imposes the need to raise awareness is motivated by traditional perception or socio-economic perspectives, it remains an adverse practice against

⁶³⁰ See The World Bank 'Nigeria: Overview'. Available at <http://www.worldbank.org/en/country/nigeria/overview>, accessed 29August 2016.

⁶³¹ *ibid.*

the welfare of the child hence a child rights violation issue. Therefore the public should be increasingly aware of the dangers and negative impacts of such practices on children.

In the case of Nigeria, raising awareness must be initiated by the federal government then cascaded at states levels because more consideration will be given to the move by doing so. However raising awareness cannot be considered as a viable alternative to education but it plays an import role in drawing people's attention to critical issues facing the nation. Awareness raising is to be conducted within every community. This approach does not necessarily require that the group of individuals concerned should be literate or have had a sort of formal education. Although the ideal position would have been that the general public had the necessary level of formal education, the authorities should rely on the realities on the ground. Hence Nigerian authorities should devise strategies that will have a far-reaching effect on the whole population in order to draw their attention to the destructive effect of child trafficking in their communities and the nation. Public awareness is conducted through various means depending on the targeted group of the population. It is conducted through campaigns in rural and urban areas. It is important that the population is aware that the trafficking network has a preference for a specific group in the community.

According to the ILO, traffickers target the most vulnerable group in Nigeria such as women and children from poor rural communities and with little or no education who often constitute the larger percentage of trafficked persons in Nigeria. Traffickers exploit the vulnerability of the people in places where there is general poverty, lack of income generating opportunities and pervading ignorance, to source the victims of trafficking. Indeed the vulnerability of rural dwellers becomes more visible in cases where the children and young people are not only from poor rural communities but are orphans or come from disadvantaged or dysfunctional households. In some cases, human trafficking is facilitated or carried out with the active connivance of members of the victims' families.⁶³² Hence raising awareness with those communities could play a significant role because the members of the community will be well equipped to discover subterfuges used by traffickers and their middlemen and also to identify potential traffickers. In the context where child trafficking has become a lucrative trade, it is no more family members only who propose to be guardians or custodians of the child. Other members of the community are now involved in promising better live to the

⁶³² See ILO, Review of Legislation and policies in Nigeria on Human Trafficking and Child Labour'. Available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_083149.pdf, access 26 July 2016.

children and their families. Therefore, traffickers use subterfuges to persuade guardians of even parents to give away their children. They often promise to send the child to school with the guarantee of a better life in future. Indeed they promise the best conditions which current guardians or parents themselves cannot create for the upbringing of the child.⁶³³ The socio-economic element of the problem has made it more complex than before. Therefore is an imperative for government authorities to raise awareness on the whole issue of child trafficking and child protection.

Nigeria as a prominent member state of ECOWAS has been the focus of the organisation in raising awareness about child trafficking and its underlying issues. In two major projects initiated by ECOWAS to address the issue of child trafficking and child labour in the region, it is acknowledged that the creation and entrenchment of awareness are central to making headway in the fight against the menace of the two phenomena. It is noted that the use of publicity mechanisms such as awareness among school pupils and organisation of rallies, was a major step taken during the implementation of the projects. Strategies included wearing child-labour branded T-shirts, carrying and displaying banners and posters on which were embossed the purpose of the rallies: “eliminating the worst forms of child labour”, singing child rights-related songs and addressing members of the public they encountered. The press has also been consistently observed to be a major mouthpiece of the society in raising awareness about child trafficking and child labour. Indeed its unquantifiable influence in drawing the attention of the public to issues and helping the audience in constructing clear images of such issues was crucial.⁶³⁴ The importance of raising awareness among the population was highly praised as it was deemed to enhance the skills of the personnel or individuals engaged the execution of the projects, and thus facilitated the coordination and implementation of these projects. With the skills, the individuals were able to impact the beneficiaries positively, thus helping to raise awareness on child trafficking and child labour issues and contribute to the empowerment of the communities.⁶³⁵

⁶³³ See Meier, Patricia J, ‘Small Commodities: How Child Traffickers Exploit Children and Families in Intercountry Adoption and What the United States Must Do to Stop Them’(2008) 12 *The journal of gender, race, and justice* 185.

⁶³⁴ See ILO, ‘Good practices and lessons learned on the elimination of child labour in Nigeria: ECOWAS projects’ experiences’. Available at http://www.ilo.org/ipec/Informationresources/WCMS_IPEC_PUB_26975/lang--en/index.htm, accessed 25 August 2016.

⁶³⁵ Ibid.

6.3.3 Perceiving Societal Interests

For its interest, Nigeria as a great African nation should uphold social values. Indeed the social values underpin the flourishing of human rights in general and child rights in particular. Every issue that matters socially to the people of Nigeria, not necessarily political issues, must be prioritised by the authorities and the population. For instance investing in the future generation through education and vocational training is beneficial to the country in maintaining its social and political stability.

Although the idea of welfare states might seem a far-fetched in an emerging economy like Nigeria, it could not be unrealistic to safeguard the welfare of orphan children or the most deprived in the society. It was argued in In the previous chapter that the practice of child fostering in West African societies in general and in Nigeria, in particular, has proven a strong moral and psychological element in maintaining solidarity and kinship values within communities. However, new socio-economic realities have led to the nullification of those core traditional settings. In a modern Nigeria adhering to international standards, there should be an efficient legal and institutional environment to attend to the plight hundreds of thousands of children trapped in abuses due to the corrosion of traditional settings. Therefore, the discourse about child fostering should entail the need to revisit the idea of the welfare of orphan children.

Notwithstanding that child fostering happen when the biological parents are unable to care for their child due to poverty and various social impediments, in most cases, it occurs when one or both parents are deceased. In any of the cases, the core topic in the discourse on perceiving societal interest, the welfare of the child should be the core topic. Hence it is the responsibility of Nigerian authorities at both federal and local levels to devise the suitable alternative to the failing traditional settings. It appears that this is not the case. Hence, from a holistic approach, the authorities and the population alike should perceive the welfare of the child as an urgent matter of societal interest.

The Institute for Public Policy Research in the United Kingdom published a report to highlight the plight of children trafficked from Nigeria to the UK.⁶³⁶ However, the report identifies gaps in understanding, policy, support and response in both countries it places emphasis on the particular tragedy of 12 years old girls who lost both her parents was caught

⁶³⁶ See the Institute for Public Policy Research, 'beyond borders: Human trafficking from Nigeria to the UK'. Available at <http://www.ippr.org/publications/beyond-borders-human-trafficking-from-nigeria-to-the-uk>, accessed 25 July 2016

up in a situation of modern slavery after been trafficked out of her country.⁶³⁷ Obviously, the lack of an alternative system to such a tragic situation in Nigeria has allowed unscrupulous people to exploit the traditional practice of child fostering. From the fact of the research carried out by the Institute, it emerges that the girl after becoming an orphan due to the loss of her two biological parents, a stranger claiming to be her relative has succeeded in convincing her and other people to have her custody.⁶³⁸

The lack of structure, as well as the lack of ostensible societal interest in addressing the issue of vulnerable children in Nigeria the girl referred in the Institute's report, has suffered what could be regarded as the worst form of child labour when she was moved to the UK by the woman who claimed to be her aunt. Indeed the Institute's report reveals that:

“Though sudden, the move abroad was in many ways a continuation of her situation in Nigeria. Having relocated to London with her exploiter to join the rest of the family, the workload became even worse, and her isolation more complete. 'I was kept locked in the house for approximately six years. I never left the house from 2003 until 2009. I had to look after the children all day and also at night. I had to prepare their food every two hours and make sure that their nappies were dry. I had to sleep on the floor in the children's room. I hardly slept and was never given enough food.' Physical and psychological abuse from her trafficker was a daily reality. 'Aunty used to beat me regularly. She would use different things: her hand, a belt, wooden cooking spoon, the pipe of the Hoover. I had to kneel down in front of her and she would often slap me and beat me on my back.'”⁶³⁹

Child fostering has been analysed from the angle of contributing factors to child trafficking. In the context of perceiving societal interests, the current mechanism of child fostering appeals to Nigerian authorities and population to deem it a central issue. It is only by doing so; the whole idea of children's welfare can become paramount, not only in law and policy perspectives but also in the pragmatic perspective.

The discourse on perceiving societal interests goes beyond the mere revisiting of children's welfare in modern Nigeria. More significantly, the dynamic approach to societal interests in a country where several tribes and religions are bound to live together is vital in bringing about the appropriate environment for the thriving of social welfare in general and children's welfare in particular. Perceiving and addressing societal interest such as human trafficking, corruption, democratic deficit, and sustainable development are discourses that must concern both the authorities and the population of Nigeria. Hence, political divergence, religious views and tribal identity should contravene the discourse on societal interests. It is obvious

⁶³⁷ *ibid.*

⁶³⁸ *ibid.*

⁶³⁹ *ibid.*

that where the nation has the same vision about societal interests, unity is more likely. In this regards, Paden writes that:

“Oral tradition has it that in the 1960s, Dr Azikiwe met with Ahmadu Bello and said, ‘let us forget our differences...’ To which Ahmadu Bello replied, ‘No, let us understand our differences. I am a Muslim and a northerner. You are a Christian and an easterner. By understanding our differences, we can build unity in our country.’”⁶⁴⁰

From the extract of an exchange between two former Nigerian political leaders, Dr Azikiwe and Ahmadu Bello, it appears that religious beliefs or the difference of political views can exist, but this does not affect the mandate to create national unity in Nigeria. Smock and Smock rightly put that some attitudes, values, beliefs, and norms foster the development of the political system more than others.⁶⁴¹ However, the political elite and the people have the mandate to achieve national unity. Arifalo observes that after the Biafra war (civil war) General Yakubu Gowon was committed to the task of keeping Nigeria one nation and united. He quickly created twelve states out of the former four regions in the country. Then at the end of the civil war, he implemented his humane ‘three Rs’-reconstruction, rehabilitation and reintegration. To this end, he sued nine-point programmes.⁶⁴² The points include the implementation of the Second Development Plan, the eradication of corruption in the country, the reorganisation of the armed forces. Moreover, there is a plan for the adoption of a new constitution the creation of more states,⁶⁴³

In the wake of the Biafra war, challenging issues faced Nigeria, and they were to be swiftly addressed by the authorities.⁶⁴⁴ The scar of the war was ostensible among the population. Several issues raised by General Gowon were indeed the most discussed topics in Nigerian society. For instance keeping Nigeria as one nation was the crucial topic after the Biafra war

⁶⁴⁰ John N Paden , ‘ *Ahmadu Bello Sardauna of Sokoto: Values and Leadership in Nigeria*’ (Hodder and Stoughton , London 1986) 3

⁶⁴¹ David R Smock and Audrey C Smock, ‘*Cultural and Political Aspects of Rural Transformation: A Case Study of Eastern Nigeria*’ (Praeger Publishers, New York 1972) 132.

⁶⁴² S O Arifalo, ‘The military in contemporary African politics’ in Richard Olaniyan (ed) ‘ *African History and Culture*’ (Longman Nigeria, Lagos 1982) 166, 167.

⁶⁴³ Ibid..

⁶⁴⁴ See Udogu E. Ike, ‘The Politics of Post-War Demobilization and Reintegration in Nigeria (2011) 57 Africa Today 20.

that was, in fact, a war of secession engaged by the population in the eastern region of the country.⁶⁴⁵

In the discourse about the perception of societal interest, the best interest of the child must be paramount in Nigeria. The authorities should place the best interest of the child as a priority in all endeavours concerning children in the country. The United Nations Convention on the Rights in its Article 3 stipulates the best interest of the child.⁶⁴⁶ Similarly, the CRA in its Section 1 states the necessity to put the best interest of the child forward in all situation. s.’ Nigeria signed the Convention on 26 June 1990 and subsequently ratified it on 19 April 1991. Although the concept of the best interest of the child is often used when the courts is dealing with the care of the child, it should also be perceived by all member of the society when they deal with children. Hence the concept should not be ambiguous.⁶⁴⁷

Boko Haram abducted over two hundred school children in Northern Nigeria in April 2014. Their action reignites the debate about the consideration of the best interest of the child by government officials in Nigeria. As it is clearly indicated, these girls are school girls hence in the process of receiving the necessary education for their effective participation in society in future. Some adults chose to cut this dream short. Moreover, the authorities have been unable to rescue the children as swiftly as possible. A BBC report indicates that ‘the army has been trying o overcome the insurgent and free.’⁶⁴⁸ Although Boko Haram’s approach has rested upon a religious principle, they did not consider the principle of best interest of the child which *per se* is universal hence to be taken into account by all religions. In an attempt to understand Boko Haram’s approach Watts writes that:

‘Boko Haram can only be understood within the circumference of the larger movement of the adoption of sharia law in the twelve northern states of Nigeria, a trend in which Katsina State played a leading role. But the complex social and political fragmentation of Islam in northern Nigeria, the weakening of the Sufi brotherhoods, and the rise of neo-Salafist reform movements are closely bound to the corrupt oil oligarchies and the moral decay of the state from which the deep and longstanding strains of Muslim populism drew strength. The more militant Shite and radical groups like Boko Haram opposed partial restoration at the state level and

⁶⁴⁵ See Barnaby Phillips, ‘Biafra violence fear’ *BBC NEWS* (26 May 2000) <available at <http://news.bbc.co.uk/1/hi/world/africa/765944.stm>> accessed 01 September 2016.

⁶⁴⁶ Article 3 United Nations Convention on the Rights of the Child 1989.

⁶⁴⁷ See Judge Carl Funderburk, ‘Best Interest of the Child Should Not Be an Ambiguous Term’ (2013) 33 *Children's Legal Rights Journal* 229.

⁶⁴⁸ BBC Africa, ‘Boko Haram abductees freed in Nigeria’ *BBC NEWS* (20 May 2016) < available at <http://www.bbc.co.uk/news/world-africa-36338989>> accessed 01 September 2016.

insisted that Nigeria should be transformed into a true Islamic state with full adoption and implementation of sharia.’⁶⁴⁹

Although the action of Boko Haram is considered as a crime, the inaction of the authorities for almost two years is deemed worst. The school girls have gone through the most terrible aggression to their human dignity. Their best interest has never been considered during the debate on the adduction.

The new approach to social interest is also understood in the good angle governance, social justice and promotion of human rights. As discussed in other elsewhere rampant corruption in Nigerian society should be the subject of real attention for every actor in the socioeconomic development of the country. The nature of the problem is so alarming that United Nations agencies such as the UNODC rightly puts that:

“Corruption is a complex social, political and economic phenomenon that affects all countries. Corruption undermines democratic institutions, slows economic development and contributes to governmental instability. Corruption attacks the foundation of democratic institutions by distorting electoral processes, perverting the rule of law and creating bureaucratic quagmires whose only reason for existing is the soliciting of bribes. Economic development is stunted because foreign direct investment is discouraged and small businesses within the country often find it impossible to overcome the "start-up costs" required because of corruption.”⁶⁵⁰

In the interest of the Nigerian society and the endeavour to pursue sustainable development, social justice and democratic values have to prevail. In other words social inequalities, corruption and reluctance to democratic values must be effectively addressed. Perceiving social justice as a societal interest in the discourse about child trafficking entails the betterment of the social condition of parents, carers, and guardians. Hence, sound employment environments and regular incomes for parents and guardians can effectively improve the social condition of the family. As a result of poverty level and generalised human rights neglect decrease among communities.

⁶⁴⁹ Michael J Watts, *'Silent Violence: Food, Famine, and Peasantry in Northern Nigeria'* (The University of Georgia Press, Athens 2013) Ixxiv, Ixxv.

⁶⁵⁰ See UNODC, 'UNODC's Action against Corruption and Economic Crime'. Available at <https://www.unodc.org/unodc/en/corruption/index.html?ref=menusidel>, accessed 22 July 2016

The International Labour Organisation devises a pragmatic approach to the issue. Indeed the ILO has developed a comprehensive Decent Work Agenda⁶⁵¹ which takes up many of the current challenges.⁶⁵² Nigeria as a fast growing economy and a member state of the ILO has to seize the opportunity offered by the organisation. Nigerian authorities at both federal and local levels have to pursue social justice by fully adhering ILO Standards. ILO standards are a comprehensive system of instruments on work and social policy that are supported by a system of supervision designed to address different types of problems in their application at the national level. The Standards embody its strategy for governing globalisation, promoting sustainable development, eradicating poverty, and ensuring that people can work in dignity and safety.⁶⁵³ The concept of Social Justice central to ILO's approach to creating a better world where its states members evolve has been elaborated extensively in previous chapters. Indeed social justice in its full perception should be central to the debate about child trafficking in Nigeria. In finding the best approach to eradicating child trafficking and child labour in Nigeria, it appears necessary to explore various routes that can lead to the expected results.

6.3.4 Building Capacity

According to the United Nations Development Programme, capacity building is a long-term, continuing process, in which all stakeholders participate. The stakeholders include government agencies, non-governmental organisations, professional associations, academics and others. The essential element of capacity building in combatting child trafficking in Nigeria and the Ecowas regions will focus on human resource development which is the process of equipping individuals all the resources and tools that will make the participate in the development process more effectively. The institutional and legal frameworks development to make legal and regulatory changes is, therefore, necessary.⁶⁵⁴ Building capacity is a form of empowerment to allow all stakeholders to deal with the issue Trafficking in person with particular attention to child trafficking They are a complex issue that requires immediate attention. In that respect The complexity of the problem led Kigbu to write that:

⁶⁵¹ The Decent Work Agenda aims to achieve decent work for all by promoting social dialogue, social protection and employment creation, as well as respect for international labour standards.

⁶⁵² See ILO, 'The Need for Social Justice'. Available at http://www.ilo.org/global/standards/introduction-to-international-labour-standards/need-for-social-justice/lang--en/index.htm#P9_3830, accessed 27 July 2016.

⁶⁵³ *ibid.*

⁶⁵⁴ Capacity Building-Agenda 21's definition (Chapter 37, UNCED, 1992).

“The war against trafficking in persons in Nigeria is by no means an easy one. Several measures have been employed in ensuring that trafficking is brought to a halt in Nigeria. The efficacy of these measures, this work contends, extends to effective investigation and prosecution of trafficking in person’s cases. Regrettably, investigation and prosecution of trafficking in persons’ cases in Nigeria have faced a plethora of challenges, thereby making realization of the objectives of the consciously institutionalized mechanisms for combating trafficking in person in Nigeria, far from being wholly realized.”⁶⁵⁵

Building capacity will require reforms in many agencies concerned with children and also the elites need training. The paradigm shift in perception can be triggered when there are proper actions towards the training of agents and all those involved in making it happen. The Police trained to deal with the issue of human trafficking in general and child trafficking in particular. The border forces need appropriate training and the resources to carry out a proper border check given that most children are trafficked outside Nigerian borders. Moreover, community leaders and the vast population can have regular workshops. This endeavour could be combined with the campaigns undertaken in the context of awareness raising programmes. Traffickers will use various strategies to thwart efforts made by the authorities to deter them. In a scenario where the authorities do not have the appropriate response to those strategies, it is evident that the criminals will remain unchallenged. Building capacity is to be directed toward every stakeholder in the fight against child trafficking in Nigeria. In the era of new technologies building capacities within border, agencies imply that the agents receive the adequate training to carry out check with equipment adapted to biometric travel documents. An official in the judiciary should get the appropriate training to deal with cases of organised crimes.

The sheer seriousness of the lack of competency and professionalism within Nigerian Police Force has led the authorities to undertake reforms. The reform was part of the President’s Transformation Agenda. In the framework of the Agenda, the Ministry of Police Affairs has initiated the transformation of the Nigerian Police Force through the implementation of a six-year Police Reform Programme. The programme lasted from 2010 to 2015. One of the key points on the Reform Agenda was training and capacity building. However this programme has brought some qualitative changes in the Nigerian policing system, there is still some

⁶⁵⁵ S.K KIGBU, ‘Challenges in Investigating and Prosecuting Trafficking In Persons’ Cases in Nigeria’ (2015) 38 Journal of Law, Policy and Globalization

progress to be made to set a force that will play its role.⁶⁵⁶ At least the endeavour towards the human capacity building is a good step towards the modernisation process. Building capacity for all law enforcement agencies is vital to the effective running of the system. The police and the border control officers like are to be well trained and well equipped be efficient in combating child trafficking.

The United Nations Office on Drugs and Crimes (UNODC) asserts that criminal intelligence is the lifeblood of the fight against transnational organised crime.⁶⁵⁷ It is crucial to investigations.⁶⁵⁸ Hence Training must be offered to police investigators, prosecutors and judges, criminal intelligence analysts, and organised crime investigators and customs officials.⁶⁵⁹ In previous years efforts were made to address the issue of trafficking through outreaches in communities. It is worth noting that in a workshop held in 2012. There have been interactive workshops to raise awareness on child trafficking.⁶⁶⁰ Indeed the various workshops directed to the general public and stakeholders in enforcement and eradication of child trafficking and its underlying issue will be dealt with in a better way. Participants will not only be empowered, but the will also be aware of the problem related to trafficking, forced labour, and job placement systems and the inter-relationships between them. Participants would know how to monitor recruitment of migrant workers in Nigeria. Participants will clearly understand the relationship between trafficking, smuggling in persons and forced labour. Participants will be adequately informed about global and domestic policy responses to trafficking and forced labour.

⁶⁵⁶ See the Nigerian Ministry of Police Affairs ‘Police Reform’. Available at <http://www.policeaffairs.gov.ng/the-police/police-reform>, accessed 22 July 2016.

⁶⁵⁷ See UNODC, ‘Law Enforcement’. Available at <https://www.unodc.org/unodc/en/organized-crime/law-enforcement.html>, accessed 22 July 2016.

⁶⁵⁸ *ibid.*

⁶⁵⁹ See UNODC, ‘Law Enforcement’. Available at <https://www.unodc.org/unodc/en/organized-crime/law-enforcement.html>, accessed 22 July 2016.

⁶⁶⁰ See ILO, ‘Trainings/Workshops on Human Trafficking and Forced Labour for Labour Officers in Nigeria’. Available at http://www.ilo.org/addisababa/countries-covered/nigeria/WCMS_303630/lang-en/index.htm, accessed 26 July 2016.

6.4 Revisiting the Legal and Political Approaches to the Phenomenon

6.4.1 Accountability and the Rule of Law

As indicated in the previous chapter, the lack of accountability in the failure to deliver public administration has worsened the state of affair regarding the protection of human rights in general and child rights in particular. The state of mismanagement of public funds, corruption and dysfunction of the judiciary and law enforcement agencies are issues hindering sustainable development. Since its independence in 1960 Nigeria went through various phases of government. From Civil Governments to military dictatorship for nearly three decades the culture of impunity has been fostered at the top of the state. Unfortunately, the judiciary and the law enforcement agencies alike were embarked on the anti-developmental practices. The lack of accountability in the context of child trafficking seen as a serious child rights violation, both the federal authorities and local authorities appears to have turned a blind eye to a phenomenon that ought to become a matter great concern for them. It is well acknowledged that the law enforcement system is marred by corruption. However, enforcement authorities and government officials alike its scarce to held anybody accountable for the glitch in the system.

For instance, the 2015 United States Department of Sates report places great emphasis on the inefficacy of law enforcement system.⁶⁶¹ Although the report points at the slow or non-response of the Nigerian Police Forces in violent crimes such as arm robbery and kidnapping, the emphasis unveils the key characteristic of ineffective law enforcement system in Nigeria. It should be noted that the report indicates that:

“Law enforcement authorities usually respond slowly or not at all and provide little/no investigative support to victims. A serious lack of resources (communications equipment, vehicles, skilled leadership, training) continues to undermine the effectiveness of the NPF. Usually, victims must maintain close contact to move an investigation forward. Crime laboratories and facilities to process evidence do not exist. As such, most Nigerians do not perceive the NPF as an effective law enforcement body and have little faith in the criminal justice system. A call to police for assistance may result in solicitation of bribes. As a result, criminal groups do not fear arrest or prosecution for their crimes.”⁶⁶²

Considering the key characteristic as ta pattern in general policing in Nigeria, it could be asserted that the predicament exists in the management of criminal activities such as Child trafficking. Indeed child trafficking ranked among the recurring criminal activities in Nigeria.

⁶⁶¹ See OSAC, ‘Nigeria 2015 Crime and Safety Report: Lagos. Available at file:///C:/Users/leadership/Downloads/Nigeria%202015%20CSR%20Lagos.pdf, accessed 10 July 2016.

⁶⁶² *ibid.*

It is argued that a society in which good governance is absent, accountability of governmental agencies and development in such society is likely to be affected negatively.⁶⁶³ Kifordu pertinently observes that the core political executive elite limit political accountability as various changes occur in the political regime and economic sources of government revenue in post-colonial Nigeria. The urgency of the matter led Human Rights Watch to urged Nigerian government officials to endeavour to improve transparency in budgets in the police and to investigate and bring to justice police officers at all levels implicated in corrupts practices.⁶⁶⁴

According to Danjuma, the constant interactions between the rulers and the ruled are central to the achievement of an atmosphere of transparency in governance processes.⁶⁶⁵ Therefore, the argument is transparency and accountability in government enhanced public confidence in the policies of the government. Also, transparency helps to eliminate corruption and mismanagement of public funds meant for development by officials.⁶⁶⁶ Noteworthy, the whole process must be executed in observance of the rule of law. The rule of law in a country constitutes the core element in holding authorities accountable in the excise of their official duties. Hence the idea of the rule of law and legal awareness cannot be dissociated in that the sole existence of the rule of law does not suffice to achieve the purposes for which the rule of law must be manifest; there must also be legal awareness. The rule of law is characterised by the fact the authority of government is exercised legitimately in accordance with written laws and established procedures. The principle is intended to be a safeguard against arbitrary governance. Therefore, the rule of law can be perceived as a concept meaning the predominance of legal standards in the life of civil society. Hence, the lack of the rule of law is lawlessness and social chaos.⁶⁶⁷

On the importance of the issue, Weingast argues that the emergence of the rule of law coincide with the transition from the natural state to the open access order.⁶⁶⁸ He rests his

⁶⁶³ See Daniel Gbervbie et al., 'The Challenges of Good Governance, Accountability of Governmental Agencies and Development in Nigeria' (2014) 6 Acta Universitatis Danubius: Administratio 80, 97.

⁶⁶⁴ See Human Rights Watch's Report: 'Everyone's in on the Game': Corruption and Human Rights Abuses By the Nigeria Police Force '. Available at <https://www.hrw.org/report/2010/08/17/everyones-game/corruption-and-human-rights-abuses-nigeria-police-force>, accessed 21 July 2016.

⁶⁶⁵ Ismaila A Danjuma, 'The Role of Transparency and Accountability in the Guest for Development in Nigeria' (2014) 17 African Journal of International Affairs and Development 49.

⁶⁶⁶ *ibid.*

⁶⁶⁷ Francis Neate' The Rule of Law: Perspectives frpm Around the Globe' (Lexix Nexis, London 2009) 43.

⁶⁶⁸ Barry R Weingast, 'Why Developing Countries Prove so Resistant to the Rule of Law' in James J Heckman, ' et al.,' Global Perspectives on the Rule of Law' (Routledge, London 2010) 40.

postulate upon the idea that natural states have only a limited ability to provide the rule of law, they cannot make either extensive credible commitment to institutions and rules that provided for certainty, expectation or impersonal rules that treat a wide class of citizens equally.⁶⁶⁹ Whereas the state treats citizen impersonally, natural state people personally and hence differently.⁶⁷⁰

6.4.2 The Issue of Ineffective Law enforcement and Inadequate Legislations

The issue of law enforcement has been emphasised in previous chapters, but there is a need to understand the underlying problems to such a state of affairs. Law enforcement could be defined as the implementation of national legislation, usually criminal laws by agencies such as the police. Law and policy enforcement in all legal system come to the final stage of the process in delivering the desire of the authorities to achieve specific goals in the interest of communities and the nation as a whole. Law enforcement, therefore, ought to hit the target aimed at. It is observed that despite the fact that the contribution of legislations in enhancing the legitimacy of a particular decision or project is usually recognised, they face difficulties at the enforcement stage.⁶⁷¹

More significantly in the context international legal frameworks, authorities should perceive the need for an effective domestication and the subsequent enforcement. Waal and Argenti write that ‘it is notable that CRC is unique among international conventions in that it not only specifies the obligations of the national government but also lays down international responsibilities for acting in solidarity to promote child rights.’⁶⁷² These solidarity obligations may be vaguer and less easily enforceable, but they exist’.⁶⁷³ In the case of such important legal instruments, Nigerian authorities have an obligation to ensure that not only the laws are implemented but also enforced where necessary because this will demonstrate their commitment to serving the population. Hence Waal and Argenti further argue that: ‘the fact that government bodies are widely perceived to exist for the benefit of their functionaries

⁶⁶⁹ *ibid*

⁶⁷⁰ *ibid*.

⁶⁷¹ See Juan-Carlos Molleda, D. Alhassan Abubakar, ‘Professional views on the Nigeria Institute of Public Relations’ law and enforcement’ (2006) 32 Public Relation Review 68, 69.

⁶⁷² Alex de Waal and Nicolas Argenti ‘*Young Africa: Realising the Rights of Children and Youth*’ (Africa World Press, Inc, 2002) 25.

⁶⁷³ *ibid*.

rather than the people they are meant to serve seriously affects their ability to function effectively.⁶⁷⁴ As a result, there are major problems with the implementation of public policy in Africa. Since colonial days, the lack of consultation and insensitivity to local realities has routinely undermined trust in public policy.⁶⁷⁵ The challenges to an effective enforcement are as multiple as complex.⁶⁷⁶ They are also created by the state of governance and the collusion between the elite and enforcement agencies. On that issue Klantschnig writes that:

“In Nigeria, police commissioners have been part of political patron– client networks and have consequently always depended on the president who appointed them. In return for presidential support, commissioners serve presidents and ruling elites by enforcing the order. Generally, police action is an expression of presidential preference.”⁶⁷⁷

International legal instruments including bilateral treaties can certainly be implemented in every country of the world. However, there are contextual challenges especially the lack of adequate structures or infrastructures that can facilitate the success of the implementation and enforcement processes. Paradoxically the authorities seldom look at the necessary conditions for an effective implementation and enforcement. It appears that most governments, especially in the developing countries, tend to domesticate international legal instruments just to comply with their obligations under international law. As a result, the domesticated law is never enforced. The paradox in the implementation of international legal instruments is also evident in a context where developing countries and industrialised country are required to implement the same instruments. Obviously, industrialised countries usually have the necessary resources and infrastructures to domesticate and enforce the law in integrally. Even when e challenges arise in the process, industrialised countries would have the means to overcome them in as swiftly as possible. In adopting a new approach to domestication and implementation of international legal instruments, there is an imperative to assess the condition for an effective implementation and enforcement. Where the situation for ineffective implementation and enforcement become a recurring scenario authorities should endeavour to create the required conditions.

⁶⁷⁴ Alex de Waal and Nicolas Argenti ‘Young Africa: Realising the Rights of Children and Youth’ (n 109) 131.

⁶⁷⁵ *ibid.*

⁶⁷⁶ Akinwumi O Silas, ‘Legal Impediments on the Practical Implementation of the Child Right Act 2003’ (2009) 37 *International Journal of Legal Information* 385.

⁶⁷⁷ Gernot Klantschnig, ‘The politics of law enforcement in Nigeria: lessons from the war on Drugs’ (2009) 47 *The Journal of Modern African Studies* 529, 549.

In the case of respecting children's rights across the globe, the United Nations, UNICEF, and various NGOs increasingly support least advantaged countries to fulfil their obligation in term of implementing and enforcing child rights instruments. Hence Nigerian authorities in adopting a new approach to enforcement of laws related to children's rights in general and child trafficking, in particular, should focus on creating the adequate conditions for effective enforcement.

The discourse on the efficacy of child trafficking laws in Nigeria rests upon the inadequate conditions for effective enforcement. The inadequacy of the conditions does not imply that efforts have not been made by the Federal and local authorities. Instead, they seem not to make the creation of effective law implementation enforcement a priority. In such context, it is important to place an emphasis on the fact that the relevant domestic legislation against prevention and prohibition of child trafficking must be effectively enforced in Nigeria. To achieve that goal, there must be a real political will to adhere to all the conditions required for the establishment and maintaining of an environment of good governance. Indeed, the environment of good governance will facilitate the creation of good working conditions for law enforcement authorities such as the police, the immigration authorities, the custom authorities as well as relevant government agencies. However, the purpose of enforcing relevant domestic legislations must be well understood by all authorities involved in the enforcement process. Moreover, the relevant domestic legislations must be known by the enforcement authorities and all individuals concerned by the question of child trafficking.

Conclusion

The discourse on eliminating child trafficking in Nigeria is more or less a discourse on the creation of adequate conditions for an effective child protection. Indeed where the conditions of an effective child protection are in place, and all the protection apparatus⁶⁷⁸ are active, it is almost impossible to encounter the typology and the magnitude of child abuses currently seen in Nigeria. The observation is significant in that child trafficking regarded as one of the worst practice not only the children's rights are violated during the process of trafficking but they also, at the end of the process, find themselves trapped in conditions where their future is put

⁶⁷⁸ The apparatus in this context refers to the relevant laws, policies, structures and mechanism in place to achieve the goals set for the specific purpose.

in jeopardy. As analysed in this thesis, trafficking children may be a short process as it is a way of transporting children from their usual environment to a given destination, but the worst happen to them when various exploitations start.

So far the Nigerian authorities have not delivered in term of child protection. From a holistic approach, child protection remains non-existent in Nigeria. This thesis aimed at examining the efficacy of the legal framework on child trafficking in Nigeria. Grasping the whole context of child trafficking in Nigeria required an analysis of the cultural and traditional perspectives regarding the status of the child in West Africa in general and in Nigerian society in particular. However, Nigeria has ratified most of the international legal instruments related to children rights; it appears that more work needs to be done. This thesis highlights the fact that the child trafficking elimination narrative has always evolved around legislation. Hence there is a situation of overlegislation which has not triggered the paradigm shift in the conditions of millions of Nigerian children. In the light of a total inefficacy of the legal system, it is imperative that Nigerian authorities, law and policy makers, scholars as well as stakeholders adopt a new approach to the concept of child protection and the challenges that constitute child protection issue in Nigeria, thus focusing on the way forward. The child trafficking issue which is an integral part of child abuses in society will be efficiently addressed.

Conclusion

This research showed that trafficking in children is, without doubt, a despicable practice. It is a dehumanising practice for millions of children trapped in it because their fundamental rights are violated, and their future is jeopardised. In the light of the lack of result in the combat waged against human trafficking in general and child trafficking, in particular, this thesis sought to examine the contributing factors to the status quo. This endeavour was purposed to fill the existing gap in the literature and propose the way forward in regard the total eradication of child trafficking. Hence the thesis enquired about the efficacy of the legal frameworks for child protection in Nigeria with a focus on child trafficking in the legal pluralistic context of the country. This line of inquiry implies that there was a problem of efficacy in implementing and enforcing the relevant legal frameworks. This is not to purport that the legal frameworks are ill-conceived or poorly drafted. It should be recognised that the most enlightened lawmakers drafted them, and also the laws appear fit for purpose. The key historic event in legislation about human trafficking is recorded with the advent the United Nations Convention against Transnational Organized Crime⁶⁷⁹ which encompassed the Trafficking in Person Protocol.⁶⁸⁰ It is in response to this Protocol Nigeria enacted the Trafficking (Prohibition) Law Enforcement Administration Act 2003. The law Known as the NAPTIP Act set up at the same time special agency in 2004, called the National Agency for the Prohibition of Trafficking after that referred as NAPTIP to oversee matters relating to human trafficking and related issues. It is understood that under its obligations as a member of the United Nations and through the domestication process Nigeria enacted the trafficking law. Notably, the trafficking law could be regarded as the Magna Carta of the human rights of the victims of trafficking in person in Nigeria. Yet the problem of child trafficking is far from being overcome in Nigeria. The critical analysis of the efficacy of the legal frameworks in Nigeria gave an insight of the contextual realities underpinning the perpetuation of child trafficking and how to go about the various problems. The analysis included the positions of both traditional societies and urban communities in Nigeria. The gap in perceptions between traditional communities and urban communities in Nigeria was underscored for the purpose of addressing them.

⁶⁷⁹ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing United Nations Convention against Transnational Organised Crime. See United Nations *Treaty Series*, Vol. 2237, p.319: Doc, A/55/383

⁶⁸⁰ *ibid.*

This thesis has demonstrated that the world community has well acknowledged the threat posed by the practice. Child trafficking is a fact in developing countries and industrialised nations alike. Child trafficking does not dignify a country experiencing it on its soil. The recognition of the fact, taking into account the nature and magnitude of the problem, has triggered legislative revival at international and national levels. Indeed the research demonstrated that the eradication of child trafficking and related matters is an imperative. Therefore, the nature and the magnitude of the phenomenon must be accurately known to international organisations as well as the Nigerian authorities. Attempts were made in that respect, but the phenomenon endures and remains a serious challenge for international, regional, sub-regional, and national actors engaged in combating it. The thesis showed that in the face of the challenges child trafficking creates for international and national law and policy makers there seemed to be an inadequate approach to dealing with the problem. Having sought to examine the issue of child trafficking in Nigeria, the thesis attempted to identify the issues that need to be addressed. This research relied upon selected and relevant concepts and theories that served as a direction to the research. This choice helped to build the thesis at its different stages. In the specific case of child trafficking in Nigeria, concepts such as child abuses, child exploitation, and child protection were key concepts that had to be defined and understood. Equally, the analysis of theories such as cultural relativism, social constructionism, and legal pluralism has proven essential to the building of this thesis. Given the fact that the thesis appeals to law and policy makers as well as all observers of the Nigerian legal and socio-economic environment it was imperative to critically analyse and expose hindering factors so as to find a definite solution to the problem. The research demonstrated that single-minded approach to the problem is characterised by the fact that law and policy response are the unique solution. The research showed that the problem of child trafficking in Nigeria must not only be addressed through legislation but also through a paradigm shift in perception about the cultural, traditional and religious settings in the legal pluralistic context of Nigeria. This argument sustains the idea that a holistic approach to the problem is to be adopted. As well as identifying the hindering factors to the implementation of laws and policies, the determination of the impacts of child trafficking on the socio-economic development of Nigeria was crucial to this thesis. The impacts referred to in this thesis are negative impacts that not only hinder the socio-economic development of Nigeria but also display a negative image of the country in its relations with its counterparts around the globe. Overall the emerging thesis is that the child trafficking laws in Nigeria are inefficient in the light of the contributing factors to child trafficking in the country.

Consequently, the problem of implementation and enforcement will remain. More significantly child trafficking in such context cannot be eradicated in Nigeria in the foreseeable future. Although the problem is a serious challenge for Nigeria, there is a historical and legal mandate for Nigeria to overcome the phenomena. Hence thesis proposed the way forward for Nigeria amid the current discourses on the various aspects of child abuses occurring in the country. Traditional approaches to child abuses, child protection, and the pressure of economic realities require an immediate response. Hence the thesis postulates that the way forward for Nigeria can be found in new legal paradigms, political paradigms, and socio-economic paradigms. Issues such as children's participation to work, public awareness, the institutionalisation of child fostering, and effective cooperation between states are fundamental in providing a definite response to the problem of child abuse in general and child trafficking in particular.

Recommendations

1- Building Capacities at various levels

It is high time Nigeria opted for the intensive capacity building. Indeed there is a need to build the capacity of existing structures, which are both under-resourced and under-funded, to improve the system of combatting human trafficking in general and child trafficking in particular. Capacity-building should also occur for personnel in the immigration service, the police, the customs and National Agency for the Prohibition of Trafficking In Persons (NAPTIP).

2- Adopting legislation, policies and strategies

Nigeria needs to put in place workable Legislation, policies and strategies. Nigeria should ensure that social protection legislation, policies and strategies are devised to tackle all forms of child abuses no matter the cultural and religious influences on Nigerian society.

3- Putting infrastructures in place for laws implementation and enforcement

The lacks of infrastructure often contribute to the difficulties to implement or enforce laws. The combat against human trafficking is a very recent move in Nigeria. The lack of technology and resources often hinder the work of all actors engaged in combatting human trafficking including child trafficking. Improvement is still needed to facilitate law and policy implementation.

4- Create strict regulations for employment in domestic works and farm works

Most children trafficked either internally or externally are often employed in domestic work or farm works. Nigeria should make the employment of domestic or agricultural workers compulsory through recruitment agencies across the country.

5- Improve institutional coordination and implementation

Nigeria must build on, programmes that promote cross-sectoral and multi-activity coordination and implementation. The improved coordination will facilitate linkages between communities practising child trafficking and NAPTIP. Therefore, Nigeria should allocate enough financial and human resources for an effective institutional coordination.

6- Collaboration with human rights committees

The government officials should publish detailed regular reports on the human rights situation in the country as well as the status of human trafficking especially child trafficking. The Government should also improve its collaboration with Human Rights Committees regarding its treaty obligations to provide regular reports. Nigeria should maintain a close and effective cooperation with the United Nations Special Rapporteur, Independent Experts, and Working Group Members. For instance, because Special Rapporteurs will be put in charge of investigating violations and also intervene on specific issues or urgent situations Nigeria should participate in making their work easy within its territory.

7- Promote and protect the rights to primary education

The Federal government should commit to the compulsory primary education agenda. There should be funding and the necessary resources to allow every Nigerian child at the age of schooling must be enrolled and account for until he/she reaches 16 years of age. This should entail the compulsory registration of every child born on Nigerian territory.

8- Denounce bad cultural and customary and religious practices

Nigerian government should collaborate with traditional and religious leaders to find the way forward for the country in terms abandoning bad cultural and religious practices that often put children's life at risk or jeopardise their adult life. Long-standing practices such as Female Genital Mutilation (FGM), as well as the religious tendency to portray children as witches, are abuses the children go through in Nigeria.

9- Improving governance in Nigeria

Improving governance and public administration in Nigeria will incidentally improve human rights observance in the country. It will also trigger poverty reduction. The fair redistribution of wealth can become effective. Employment could be created offering thereby the opportunity to parents to support their families' needs. This can also reduce child trafficking

10- Strengthen international cooperation with receiving countries in the process of human trafficking

Nigeria should not only improve its relations with the countries of destination for victims of child trafficking, but it also has to strengthen the cooperation by enhancing its human capital and technological infrastructures. The Nigerian

biometric passport should not be falsifiable as it currently is the case. The passport service and the immigration staff should be trained to prevent or foil attempts to forge travel documents and identity theft. The biometric system for travel document should be centralised and placed under the strict control of trustworthy employees. Also, Nigeria has to cooperate in cases of extradition of criminals involved in human trafficking.

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Appendix

Appendix 1: Acceptance of the inquiry procedure for Nigeria

Treaty	Acceptance of inquiry procedure	Date of acceptance/non acceptance
CAT, Art.20 - Inquiry procedure under the Convention against Torture	YES	28 Jun 2001
CED, Art.33 - Inquiry procedure under the International Convention for the Protection of All Persons from Enforced Disappearance	YES	27 Jul2009
CEDAW-OP, Art. 8-9 - Inquiry procedure under the Optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women	YES	22 Nov 2004
CESCR-OP, Art.11 - Inquiry procedure under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights	-	
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CRC-OP-IC, Art.13 - Inquiry procedure under the Optional Protocol to the Convention on the Rights of the Child		
CRPD-OP, Art.6-7 - Inquiry procedure under the Convention on the Rights of Persons with Disabilities	YES	24 Sep 2010

Source: United Nations Human Rights, Office of the High Commissioner

Appendix 2: Acceptance of individual complaints procedures for Nigeria

Treaty	Acceptance of individual complaints procedures	Date of acceptance/non acceptance
CAT, Art.22 - Individual complaints procedure under the Convention against Torture	N/A	
CCPR-OP1 - Optional Protocol to the International Covenant on Civil and Political Rights	NO	
CED, Art.31 - Individual complaints procedure under the International Convention for the Protection of All Persons from Enforced Disappearance	N/A	
CEDAW-OP - Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	YES	22 Nov 2004
CERD, Art.14 - Individual complaints procedure under the International Convention on the Elimination of All Forms of Racial Discrimination	N/A	
CESCR-OP - Optional protocol to the International Covenant on Economic, Social and Cultural Rights	NO	
CMW, Art.77 - Individual complaints procedure under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	N/A	
CRC-OP-IC - Optional Protocol to the Convention on the Rights of the Child	NO	
CRPD-OP - Optional protocol to the Convention on the Rights of Persons with Disabilities	YES	24 Sep 2010

Source: United Nations Human Rights, Office of the High Commissioner

Appendix 3: Ratification Status for Nigeria

Treaty	Signature Date	Ratification Date, Accession(a), Succession(d) Date
CAT - Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	28 Jul 1998	28 June 2001
CAT-OP – Optional Protocol of the Convention against Torture		27 July 2009 (a)
CCPR – International Covenant on Civil and Political Rights		29 July 1993 (a)
CCPR-OP2-DP – Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty		27 July 2009 (a)
CED - Convention for the Protection of All Persons from Enforced Disappearance		27 July 2009
CEDAW - Convention on the Elimination of All Forms of Discrimination against Women	23Apr 1984	13 June 1985
CERD - International Convention on the Elimination of All Forms of Racial Discrimination		16 October 1967(a)
CESCR - International Covenant on Economic, Social and Cultural Rights		29 July 1993 (a)
CMW – International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families		27 Jul 2009
CRC - Convention on the Rights of the Child	26 Jan 1990	19 Apr 1991
CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed Conflict	08 Sep 2000	25 Sep 2012
CRC-OP-SC - Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography	08 Sep 2000	27 Sep 2010
CRPD - Convention on the Rights of Persons with Disabilities	30 Mar 2007	24 September 2010

Source: United Nations Human Rights, Office of the High Commissioner

Appendix 4: NAPTIP Victims Information Pack (2016)

Question	Answer
What is NAPTIP?	NAPTIP is the National Agency for the Prohibition of Trafficking in Persons. It was created in 2003 to prevent human trafficking, investigate and prosecute human traffickers and protect all victims of the crime.
What is human Trafficking?	When any one deceives you by making a promise to give you a job or admission or anything of that sort and then transports you to another place or abroad and makes money from your work, he is said to have trafficked you.
How do you know that you have been trafficked?	<p>If you were deceived. For example, you were promised a job in the city or in a foreign country but on arrival it turned out to be a lie.</p> <p>If you were kidnapped, abducted or forced and moved from one place to another to be exploited</p> <p>If you were taken to a shrine to swear an oath of secrecy and allegiance to somebody and made to work and pay certain expenses</p> <p>Once at the destination, you were controlled in many ways, like your passport seized, not permitted to freely call your parents or loved ones, intimidated, beaten, raped, stripped naked etc</p> <p>If you were not allowed to move freely or were escorted to work and back</p> <p>If someone else took away the payments for your work</p>
Can you be punished as a victim of trafficking	You are not considered a criminal. You are protected from prosecution with regards to the things that a trafficker forced you to do.
Protections available for you	<p>Your trafficker can be identified, arrested and prosecuted</p> <p>You will be protected from your traffickers</p> <p>You will be provided with temporary shelter, food, medical help and other necessities</p> <p>The proceeds of your work can be seized from persons who deceived and exploited</p>

	<p>you and returned to you</p> <p>You can be assisted to reunite with your family</p> <p>If traffickers harm or threaten you or your families and friends, you can make a report and they will be arrested and prosecuted. You can be assisted to voluntarily return to your country of origin</p>
Opportunities to start a business	<p>You can be assisted to begin a business</p> <p>You can be assisted to access business capital at low or zero interest</p> <p>You can be assisted to receive training in a vocation of your choice</p>
Opportunities to restart or continue your education	<p>If you are of school age, you can be assisted to restart or continue your education</p>
Opportunity to sue the person who trafficked you	<p>You can be assisted to make a civil case against the person who trafficked you or benefitted from the proceeds of your work</p> <p>If you are successful, the money and assets made by the trafficker as a result of your exploitation can be seized and given back to you</p> <p>You can claim many other damages and compensation</p>
Do you know anybody who has gone/is going through similar experience?	<p>If you know about any of your friends who went through the same experience as you, you can provide information that can lead to their rescue</p>

Source: National Agency for the Prohibition of Trafficking In Persons (NAPTIP 2016)

