

Trafficking in Persons (Prohibition) Law Enforcement and Administration Act, 2015: An Old Wine in a New Bottle?

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Abstract

One of the biggest challenges of the 21st Century is human trafficking. Nigeria has been bedeviled by this menace as she is a source, shipment and terminus point for global trafficking in persons. Human trafficking was combatted basically through reliance on the provisions of the Criminal Code Act and the Penal Code Act in Southern and Northern Nigeria respectively, until the year 2003 when a comprehensive legislation on human trafficking prohibition was enacted in Nigeria, and the same was amended in the year 2005. Despite the enactment of this Anti-human trafficking legislation in 2003, the menace of human trafficking has persisted as the law is honoured more in breach than in adherence because of the incoherent nature of the definitions of some offences and the paltry punishments provided therein. The Act did not also capture the offence of organ harvesting and ritual killings that are now prevalent in Nigeria. Because of the above lapses, many good cases could not be established in court. The National Assembly in 2015 repealed the 2003 Act and its Amendment, and in their stead enacted the Trafficking In Persons (Prohibition) Law Enforcement And Administration Act, 2015. This paper seeks to appraise the 2015 Act in a bid to ascertain whether it has covered the lapses of the 2003 Act. This paper finds that the 2015 Act expanded the definition of trafficking in person to include trafficking for organ harvesting or ritual killing that are common in Nigeria today. It also blazed the trail in victim welfare by creating the Victim Trust Fund and Victim Shelter Centre for the rehabilitation, restitution, and reintegration of victims of trafficking into the society. It also afforded immunity from prosecution to victims of trafficking for any offence committed because of being trafficked. However, the 2015 Act like its predecessor (the 2003 Act) is narrow in scope, being that it limited the victims of most of the offences created therein to persons (victims) below the age of 18 years, and as such it failed to capture young adults (like secondary school leavers and tertiary institutions students and unemployed or underemployed graduates) and the aged who are also highly vulnerable to traffickers due to current harsh economic state of the country. The phraseology of the 2015 Act in the definition of some key offences like trafficking for use in armed conflicts, movement of persons in and out of Nigeria for trafficking purposes and others are also inchoate and can be evaded by a smart defence lawyer. We, therefore, conclude by saying that although the 2015 Act is innovative, however, it is still bedeviled by similar challenges faced by its predecessor. We, therefore, call for the immediate amendment of the 2015 to cure these anomalies so that the Act can fulfill its purpose.

Keywords: Human trafficking, Trafficking in persons, Nigeria, Organ Harvesting.

1.0 Introduction

Human trafficking is about the greatest challenge of the 21st Century. Nigeria is currently the centre point of global human trafficking. Before the year 2003, trafficking in person was addressed in Nigeria through the instrumentality of the Criminal Code Act and the Penal Code Act in Southern and Northern Nigeria respectively. □

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This Act was first enacted in July, 2003³, and was amended in December 2005.⁴ However, in 2015, the 2005 was repealed and a new Act enacted.⁵ The Act applies to all parts of Nigeria. This new Act has 83 sections and 2 schedules. The Act created the National Agency for the Prohibition of Traffic in Person (NAPTIP).⁶ This agency 'took over the functions of the special taskforce in human trafficking and was vested with the responsibilities to enforce laws against traffic in persons, and to take charge and coordinate the rehabilitation and counseling of trafficked persons; and other related matters.'⁷ The functions⁸ and powers of the agency are created under sections 5 and 6 of the Act respectively. The Agency is under the supervision of the Attorney General of the Federation (hereafter referred to as AGF),⁹ who has the power to make guidelines and directives to the Agency which the Agency shall abide by.¹⁰ The AGF also recommends to the President persons to be appointed as members of the Board of the Agency¹¹ and the Director-General of the Agency, who must a personnel in the directorate cadre of the public service of the Federation or its equivalent in the law enforcement service.¹² The AGF has the power to make rules and regulations for the forfeiture of assets under Act to the Victims of Trafficking Trust Fund,¹³ and for the administration of such funds.¹⁴

The Act also created six special departments for the Agency,¹⁵ to wit: Investigation and monitoring department;¹⁶ Legal and prosecution department;¹⁷ public enlightenment department;¹⁸ Counseling and rehabilitation department;¹⁹ research and programme development department;²⁰ and Training and Manpower development.²¹

³Act No. 24 of 14 July 2003.

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

⁵ Trafficking in Persons (Prohibition) Enforcement and Administration Act. No. 4 2015.

⁶ Section 2

⁷ Section 10. See also Kigbu S.K and Hassan Y.B. (2015) 'Legal Framework for Combating Human Trafficking In Nigeria: The Journey So Far' Journal of Law, Policy and Globalization. Vol. 38. 2015. Pp 205-220.

⁸(a) enforce and administer the provisions of this Act ; (b) co-ordinate and enforce all other Laws on Trafficking in Persons and related offences; (c) adopt effective measures for the prevention and eradication of trafficking in persons and related offences ; (d) establish co-ordinated preventive, regulatory and investigatory machinery geared towards the eradication of trafficking in persons ; (e) investigate all cases of trafficking in persons including forced labour, child labour, forced prostitution, exploitative labour and other forms of exploitation, slavery and slavery-like activities, bonded labour, removal of organs, illegal smuggling of migrants, sale and purchase of persons ; (f) encourage and facilitate the availability and participation of persons who voluntarily, consent to assist in investigations or proceedings relating to trafficking in persons and related offences ; (g) enhance the effectiveness of Law Enforcement agents and other partners in the suppression of trafficking in persons ; (h) create public enlightenment and awareness through seminars, workshops, publications, radio and television programmes and other means aimed at educating the public on the dangers of trafficking in persons ; (i) establish and maintain communications to facilitate rapid exchange of information concerning offences under this Act; (j) conduct research and strengthen effective legal means of international co-operation in suppressing trafficking in persons; etc

⁹*Serab Ekeundayo Ezekeiel V. Attorney General of the Federation* (2017) LPELR-41908(SC)

¹⁰ Sections 75 and 76.

¹¹ Section 3(3)

¹² Section 8(1)

¹³ Section 57(4)

¹⁴ Section 67(3)

¹⁵ Section 11. It also made provision under section 11(1)(g) for the creation of more departments and the need may arise. Under the power vested in the agency by the above section, the Agency created and Finance and Account department which handles the finance of the Agency; and Administration Department which coordinates the activities of all the departments. Retrieved online on April 21, 2019, from https://www.naptip.gov.ng/?page_id=140

¹⁶ Section 11(1)(a). This department has the responsibility of detection and prevention of offences created under the Act. It also has the responsibility of collaborating with other governmental agencies like the Nigerian immigration service for investigation, tracing and tracking suspected offenders under the Act and proceeds of offences created under the Act for forfeiture and confiscation; and also collaborate with the legal and prosecution department for such forfeiture and confiscation. See Section 12(1).

¹⁷ Section 11(1)(b). This department is charged with the responsibility of prosecuting suspected offenders under the Act, extradition of suspects, provision of legal advice to other departments, and other incidental legal matters. See Section 12(2).□

The paper shall examine the various offences created under the Act.

2.0 Offences Created by the Act

The new Act retained all the offences created by the original and amended Act and went further to create additional offences like child labour and running of brothels.²²Section 82 of TIPLEA 2015 defines trafficking or traffic in-person to mean:□

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

We agree with Kigbu and Hassan²³that the Article 3 of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons with special regards to Women and Children (Palermo Protocol) which Nigeria is a party to is more encompassing than the TIPLEA 2005²⁴, and TIPLEA 2015. Secondly, TIPLEA 2015 like its predecessor failed to apportion responsibility to the trafficker in its definition like the Protocol did in situations where a person is trafficked by a means other than recruitment, transportation, purchase, receipt, or harbouring.²⁵ However, section 13(6) of the Act provides that ‘the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered trafficking in persons even if this does not involve any of the means set forth in the definition of trafficking in persons in this Act.’ We submit that this proviso does not cure the above deficiency, being that it only protected children²⁶ but failed to capture young adults (like secondary school leavers and tertiary institutions students and unemployed or underemployed graduates) who are highly vulnerable also. □

TIPLEA 2015 definition is also mute on the irrelevance of the victims' consent in circumstances where the identified means of trafficking have been established to be used in the process, a situation that the Article 3(a) of the Protocol provided for.²⁷TIPLEA's definition of trafficking takes cognizance of the fact that the victim was recruited, transported, purchased, sold, received, harboured, deceived, coerced, debt bonded and defrauded, unlike the predecessor that ‘failed to take into account that these actions may be achieved not only by means of deception, coercion or debt bondage, but also by means of fraud and more importantly by means of the abuse of one's power over someone else or of a victim's position of vulnerability commonly found among poverty stricken families, and those caught in the cross-fire of armed conflict.’²⁸The definition captured the fact that a person may be trafficked partly or solely for organ(s) harvesting and ritual killings that are very common in Nigeria.²⁹

¹⁸ Section 11(1)(c). This department has the responsibility of carrying out public awareness and sensitization of human trafficking and the dangers attendant to the same. It also partners with Non-governmental organization and civil societies in carrying out the above responsibility. It also addresses the root causes of human trafficking in society in a bid to eradicate same. See Section 12(3).

¹⁹ Section 11(1)(d). This department is responsible for the counselling, aftercare treating, and reintegration of victims of trafficking in persons. See section 12(4). □

²⁰ Section 11(1)(e). The department is charged with the responsibility of researching the various factors both internal and external that cause trafficking and working out a solution to the problem. See Section 12(5). □

²¹ Section 11(1)(f). This department is responsible for the training and continuous updating of the Agency's staff. See section 12(6). □ □

²² Ibid. See section 2 of TIPLEA Act 2015

²³Kigbu S.K and Hassan Y.B. (2015) ‘Legal Framework for Combating Human Trafficking In Nigeria: The Journey So Far’ *Journal of Law, Policy and Globalization*. Vol. 38. 2015. Pp 205-220.

²⁴Idehen, S.O., Edeko, M.O., Obasohan, O.J. (2013) ‘Child and Human Trafficking in Nigeria’ *International Journal of Gender and Development Issues* 1(1): 119-133.

²⁵ Ibid

²⁶ The Act defined a child to be a person below the age of 18. See section 82

²⁷ Ibid

²⁸Kigbu S.K and Hassan Y.B. (2015) op. cit.

²⁹Igwe, L., “Ritual Killing and Pseudoscience in Nigeria” available at: <http://www.sicop.org/sb/2004-06/nigeria.html>. (accessed 3rd October 2018).

This definition also took cognizance of the fact that ‘the giving or receiving of payments of benefits to achieve the consent of a person having control over another person, for the purpose of exploration which is the most common method of recruitment of children for exploitation in Nigeria.’³⁰

Section 13(1) generally prohibited all forms of human trafficking in Nigeria. Any person who recruits, transports, transfers, harbours or receives another person using fraud, force, abuse of authority, deception, payment or receiving of money for the exploitation of that person commits an offence is liable on conviction to a term of not less than 2 years imprisonment and a fine not less than #250,000. It appears that this offence is limited to the trafficking of persons within Nigeria.³¹ In the case of *AGF VS. Affiong Okon*³² the abused procured 7 children for street begging and forced labored. He pleaded guilty to the charge was convicted and sentenced to 2 years imprisonment. Section 13(4) makes culpable any person whether within or outside Nigeria that does or omit to do; threaten; induce by fraud; act by proxy; aide or abet, assist or facilitate the commission of any offence under Act, and such a person upon conviction shall be liable to a term of imprisonment for not less than 5 years and a fine not less than #1million. Section 13(5) makes the consent of the victim of trafficking as defined under Act immaterial in the determination of the guilt of a suspected offender under the Act.□

The other offences include:

Exportation of Persons out of Nigeria and Importation of Persons into Nigeria.³³ This offence is to the effect that a person who imports into Nigeria³⁴ or exports out of Nigeria to any other country³⁵ another person knowing or having reason to know, that the person will be forced or induced into prostitution or other forms of sexual exploitation in Nigeria or the country he/she is exported to respectively commits an offence punishable upon conviction with a term of 5 years imprisonment and a fine not less than #1million. We submit that the use of the importation and exportation of the word of persons in section 14 of TIPLEA is derogating. It reduces human beings to the level of commodities that can be imported and exported. This section is commendable for not being limited in age or sex of the victim. It is observed that a similar provision under the repealed 2005 amendment Act agreed on the punishment of life imprisonment,³⁶ one wonders why the punishment was returned in the new Act even in the face of a high level of human trafficking in Nigeria. In the case of *AGF VS. Sarah Okoya*³⁷ the victims were transported from Uromi in Edo State to Spain on the promise that they will be engaged in a salon business, only to be introduced to prostitution. They complained to the manager of the hotel where they were lodged and the manager reported to the Nigerian embassy. The accused person pleaded guilty to the charge and was convicted and sentenced to 12 months imprisonment without an option of fine.□

Procurement of any person for sexual exploitation.³⁸ Section 15(a) is to the effect that any person ‘by the use of deception, coercion, debt bondage or any means’ induces any person under the age of 18 years to go from one place to another to do any act with the intent that such person may be, or knowing that it is likely that the person will be forced or seduced into illicit intercourse with another person’ commits an offence is liable upon conviction to imprisonment for 5 years and a fine of N500,000.00.³⁹ The ingredients of the offence as set out in Section 15(a) as held the trial court and confirmed by the Court of Appeal in the case of *Bassey v. AGF*⁴⁰are as follows:

- (a) the person induced must be under the age of 18 years
- (b) what is used for the inducement must be deception, debt bondage or any means whatsoever

³⁰ Ibid.

³¹ See section 13(1)

³² Unreported. Charge No. 0/26c/2005 (High Court of Anambra State, Onitsha judicial Division). Judgment was delivered on 13/02/2006).

³³ Section 14.

³⁴ Section 14(a)

³⁵ Section 14(b)

³⁶ Section 11 of TIPLEA 2005.

³⁷ Unreported. Charge No: B/15c/2004 (High Court of Edo State, Benin Judicial Division). Judgment was delivered on 19/11/2004).

³⁸ The punishment upon conviction is imprisonment for a term of 10 years without an option of fine. See Section 15

³⁹ Section 15(b)

⁴⁰ (2015) LPELR-40425(CA). See also *Raji v. FRN* (2019) LPELR-47182(CA)

- (c) the inducement must be for the person to go from one place to another
- (d) the purpose of going from one place to another must be for the person induced to be forced or seduced into illicit intercourse with another person.
- (e) The illicit intercourse may take place between the person induced and the person making the inducement or between the person induced and another person.

We submit that this provision is laudable, however, it is narrow in scope, being that it is limited to persons (victims) below the age of 18 years and as such it failed to capture young adults (like secondary school leavers and tertiary institutions students and unemployed or underemployed graduates) and the aged who are also highly vulnerable due to current harsh economic state of the country. Secondly, it limited the culprits of the illicit intercourse to 'another person' which is ambiguous. This is because one can hardly decipher whether 'another person' is limited to a person's order than the culprit or if the culprit is inclusive. We further submit that the culprit could be human, animal, or machine, hence, limiting it to a person is also narrow. Section 15(b) of the Act created the offence of harbouring, keeping or detaining for the offence created under Section 15(a), however, section 15(b) is broader than section(a) in the description of the offence as it did not mention any age bracket for the victim, and it also included animals in the list of the culprits, but failed to add sex machines and dolls. □

In the case of *Bassey v. AGF*,⁴¹ the accused (Appellant) a 62 years old man met the victim (a 15-year-old girl) along Urua Akan Ndem Market and induced her with ₦50 to come to his house at No. 30 Port Harcourt Street, Uyo. The victim went to visit him and he prepared indomie noodles for her, and after eating, he had sexual intercourse with her. This continued to happen until the appellant was arrested, tried, and convicted. On appeal, the appellant's ground was narrowed to ingredient (e) above, in which he has argued that there was a need for the victim under Section 12(a) of TIPLEA 2003 (which is *pari materia* to section 15(a) of TIPLEA) to have been induced and then forced or seduced into illicit intercourse with another person, aside from the inducer. But, that there was no third party named in the instant case. The Court of Appeal in dismissing the appeal held that the contention of the Appellant is a narrow and simplistic interpretation of the section in question. □

However, *Omadiare & Anor v. AGF*,⁴² was decided based on Section 19 (1) (b) of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 that provided as follows:

- (1) Any person who—
- (b) by force compels or by 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, 000.000 or both."

In this case, the victim was unequivocally informed by the 2nd accused that she would work initially as a hairdresser in Belgium, then later as a prostitute. She was given ₦10,000 by the 2nd accused as pocket money as she journeys from Benin to Akwa Ibom, then to Cameroun en route Belgium and she collected same. This means that she knew, even before she left her home base, that she would ultimately be enmeshed into prostitution. The court of Appeal held that there was no deception or inducement evident in this case, hence, the prosecution has failed to establish a vital ingredient of the offence charged. The court overturned the judgment of the High court and discharged and acquitted the appellants. □

Abuse Procurement or recruitment of person under 18 years for prostitution or other forms of sexual exploitation.⁴³ Section 16(1) provides that 'any person who procures or recruits any person under the age of 18 years to be subjected to prostitution or other forms of sexual exploitation with himself, any person or persons, either in Nigeria or anywhere else, commits an offence and is liable on conviction to imprisonment for a term of not less than 7 years and a fine of not less than N1, 000,000.00.' This offence is aimed at clacking down the procurement or recruitment of persons below the age of 18 for prostitution or other forms of sexual exploitation both within and outside Nigeria. We submit that limiting of the scope of victims under this section to persons below the age of 18 years is very narrow so economic realities on the ground have shown that persons above 18 years who cannot adequately fend for themselves (like secondary school leavers and tertiary institutions students and unemployed or underemployed graduates) are also vulnerable for this kind of procurement and recruitment. □

⁴¹ (2015) LPELR-40425(CA)

⁴² (2013) LPELR-20061(CA)

⁴³ Section 16. See also *Oloye V. A-G Federation* (2019) LPELR-46738(CA)

It seems that this section limited the procurer or recruiter to males.⁴⁴ It, therefore, connotes that a woman that indulges in this act of procurement and recruitment may escape liability. We submit that this assumption is grossly erroneous as must people that indulge in this unholy procurement and recruitment are women, that use the victims to satisfy their clients, that are mostly male. In the case of *AGF VS. Hussaina Ibrahim*⁴⁵, the court convicted and sentenced the 1st and 2nd accused persons to 3 and 2 years imprisonment for procuring and taking the victim to the kingdom of Saudi Arabia for prostitution.⁴⁶

Section 16(2) provides that 'any person who procures or recruits any person under the age of 18 years to be conveyed from his usual place of abode, knowing or having reasons to know that such a person may be subjected or induced into prostitution or other forms of sexual exploitation in any place outside Nigeria, commits an offence and is liable on conviction to imprisonment for a term of not less than 7 years and a fine of not less than N 1,000,000.00.' We adopt our submission above on the age limit for a similar provision under this sub-section. However, it seems that the victim under this subsection is supposed to be a male, being that the subsection used the masculine pronoun. This may pose a challenge in the interpretation of this section shortly. The similar provision under section 14-15 of the repeal TIPLEA 2003 is more explicit and precise. □

In the case of *Folorunso v. FRN*⁴⁷, the victim (Abidemi Opeyemi Adesina) was procured by the appellant and her husband Idowu Folorunsho (the other accused), to proceed to Libya on the pretext that Odunayo Fashola (the appellant's sister) would secure a teaching job for her in Libya. Armed with her NCE Certificate, the victim proceeded on a horrendous and hazardous journey from Ibadan, Kano to Agadez in the Niger Republic, and through the Sahara desert to Tripoli in Libya. Odunayo Fashola sold the victim to a brothel owner in Libya known as Mama Muliati, where she was subjected to excruciating sexual abuses such as sleeping with 5 men daily to 15 and more. She got pregnant on several occasions and all were aborted. A Ghanaian called Joseph helped the victim to escape and return to Nigeria. It was later discovered that she was pregnant again and also infected with the dreaded HIV disease. The High Court convicted the appellant under section 15(a) of TIPLEA 2003 (which is pari material with section 16 of extant TIPLEA), and she filed this appeal. The court of appeal dismissed this appeal. □

Procurement or recruitment of persons under the age of 18 years for pornography or brothel.⁴⁸Section 17(1)(a) prohibits the procurement, use or offer of any person below the age of 18 years for the production of pornography or pornographic performances; whereas section 17(1)(b) prohibits the harbouring of any person below the age of 18 years in a brothel. For the two offences, the punishment on conviction is imprisonment for a term of not less than 7 years and a fine of not less than N1,000,000.00. Where an offender under subsection 1 above also administered or stupefied his/her victim with drugs, then, he/she will earn additional 1-year1-year imprisonment.⁴⁹ In *AGF Vs. Esther Asuquo & 2 others*,⁵⁰ the accused persons procured and offered their three under-aged victims for prostitution and being harboured in a brothel. The accused were convicted and sentenced to five years imprisonment without an option of fine. □

Foreign travel which promotes prostitution or sexual exploitation.⁵¹Section 18 provides that 'any person, who organizes, facilitates or promotes foreign travels which promote prostitution or other forms of exploitation of any person or encourages such activity, commits an offence and is liable on conviction to imprisonment for a term of not less than 7 years and a fine of not less than N1,000,000.00.'

⁴⁴ One may also argue that the reason may be that most draftsmen draft with masculine pronouns. On this, we submit that it may not be the case for this Act being that this Act generally used 'person' except where it is directed to a particular gender.

⁴⁵Unreported. Charge No: .K/1/Tpp/04 (High Court of Kano State, Kano Judicial Division). Judgment was delivered on 27/7/2007)

⁴⁶ See also *AGF Vs. Toyin Ogbebor*. Unreported. Charge No: .HCT/14C/06 (High Court of Ogun State, Ota Judicial Division). Judgment was delivered on 7/7/2006) □ □

⁴⁷ (2019) LPELR-46463(CA)

⁴⁸ Section 17

⁴⁹ Section 17(2)

⁵⁰ Reported in Ladan M.T. 2011 'Combating Trafficking Of Children And Women Under International And Nigerian Legal Regimes' A Paper Presented At A Training Workshop On United Nations System And Programme Organised By The Nigerian Institute Of Advanced Legal Studies, Lagos, between 5-8 of December 2011. □

⁵¹ Section 18. See also *Oloye V. A-G Federation* (2019) LPELR-46738(CA)

It is germane to note that the age, sex or consent of the victim in this offence is immaterial. The important thing is that the accused organizes, facilitates, or promotes foreign travels 'which promote prostitution or other forms of exploitation of any person or encourages such activity'. In the case of *Folorunso v. FRN*,⁵² the appellant was also charged with the promotion of foreign travel for prostitution under section 16 of TIPLEA 2003 (which is similar to this section 18) and was also convicted on the strength of the facts reported above. □

In the case of *AGF Vs. Constance Omoruyi*,⁵³ two victims were procured by the accused person who organised foreign travel for them for prostitution. The accused person was convicted and sentenced to 1-year imprisonment with a fine of #50,000. In *AGF VS. Felicia Okafor*,⁵⁴ foreign travel for prostitution was organized for 3 victims by the accused person. The Accused person was convicted for attempting to organize foreign travels for prostitution for the victims and sentenced to 1-year imprisonment with an option of fine of #50,000.⁵⁵

Procurement or recruitment of persons for use in armed conflicts.⁵⁶ Section 19 provides that 'any person who trafficks any person for the purpose of forced or compulsory recruitment for use in armed conflict, commits an offence and is liable on conviction to imprisonment for a term of not less than 7 years and a fine of not less than N1,000,000.00.' In establishing this offence, the age and sex of the victim of this offence are immaterial. However, we submit that a vital ingredient of this offence is 'the purpose of *forced or compulsory* recruitment for use in armed conflict'; this may make it very difficult for the prosecution to prove. People may volunteer to join a militia group for a personal grudge against the state system, individual, or group. Should a person who specializes in recruiting such disenfranchised fellows go scot-free simply because the victim was not forced or compelled to join the militia group? This will certainly defeat the purpose of the legislature for creating this offence. □

Bye and large, we submit that this section is commendable because, there has been a rise in the activities of insurgents, terrorists, and militia groups around the world especially in the Middle East and Sub Saharan Africa.⁵⁷ In Africa presently, *Alshabaab* and *Boko Haram* has been ravaging the continent with terror. Whereas *Alshabaab* has been operating with the East and Central Africa regions, *Boko Haram* has carved its niche in West Africa. *Boko Haram* is an Islamic sect that was founded by one Mallam Mohammed Yusuf in 2002 in Yobe State, northeastern Nigeria. "The official name of the *Boko Haram* group is *Jama'atu Allis SunnaLidda'awitwal-jihad*' which in the Arabic language means 'People of the way of Prophet Muhammed (Peace be on to him) and community (of Muslims) in line with the earlier generation of Muslims' and not *Boko Haram* which simply means 'Western secular education is Islamically prohibited'.⁵⁸ *Boko Haram* has also been defined to mean that evangelism deceptively camouflage as western education is Islamically unacceptable.⁵⁹ *Boko Haram* has claimed responsibility for various atrocities meted out by man to man in Nigeria, Chad, Cameroon, and Niger Republic, in their killings, abductions, rape, bombings, arsons, and a whole lot of unspeakable evils. The effect of the activities of *Boko Haram* and some militia groups in Nigeria (like Niger Delta Militants, Movement for the Actualisation of the Sovereign State of Biafra (MASSOB), Indigenous People of Biafra (IPOB) *Odua* Progressive Congress (OPC) and other smaller groups) in Nigeria is that trafficked persons may be forced and compulsorily recruited by these militia groups for their activities.

Procurement or recruitment of a person for organ harvesting.⁶⁰ Section 20(1) deals with the trafficking of persons generally to harvest the organ or organs of such a person. It provides that 'any person who-

⁵² Supra

⁵³ Unreported. Charge No: B/31c/2004 (High Court of Edo State, Benin Judicial Division). Judgment was delivered on 22/9/2006)

⁵⁴ Unreported. Charge No: A/12c/06 (High Court of Anambra State, Awka Judicial Division). Judgment was delivered on 23/5/2007)

⁵⁵ See also the cases of *Oloye V. A-G Federation* (2019) LPELR-46738(CA); and *AGF vs. Sylvester Idubor* Unreported. Charge No: Fhc/s/27c/08 (Federal High Court, Sokoto Judicial Division). Judgment was delivered on 18/3/2008).

⁵⁶ Section 19

⁵⁷ See Kingsley N.O. Onu (2018) 'An Appraisal of the EU-ACP Cotonou Partnership Agreement' *The Gravitas Review of Business & Property Law* Vol. 9 No. 3; 133-153, at 147

⁵⁸ Ibid

⁵⁹ Peterside, B.Z. 2014 A Threat to National Security: The Case of Boko Haram in Nigeria. 3:4 Academic Journal of Interdisciplinary Studies. Pp. 283-290 p.286 Retrieved June, 1, 2015 from Doi:10.5901/ajis.2014.v3n4p283.

⁶⁰ Section 20

- (a) through force, deception, threat, debt bondage or any form of coercion-
- (i) abuses a position of power or situation of dominance or authority arising from a given circumstance ; or
 - (ii) abuses a vulnerable situation ; or
- (b) through the giving or receiving of payments or benefits in order to induce or obtain the consent of a person directly or through another person who has control over him; enlists, transports, delivers, accommodates or takes in another person for the purpose of removing the person's organs, commits an offence and is liable on conviction to imprisonment for a term of not less than 7 years and a fine of not less than N5,000,000.00.'

It is also an offence for any person to procure or offer another person, assist, or be involved in any way in the removal of human organs, or in the buying or selling of same.⁶¹ The punishment upon conviction is the same as in section 20(1). Section 20(3) deals with the prohibition of the enlistment, transportation, delivery, accommodation, or taking in a person under the age of 18 years to remove the person's organs by another person. The punishment upon conviction is the same as in section 20(1). However, the striking difference between the offence created under section 20(1) and section 20(3) is that the victim under the later must be below the age of 18 years, and there is no burden on the prosecution to establish any of some of the following, to wit: force, deceit, coercion, debt bondage, abuse of vulnerable situation, payment of money for the organ harvesting as required under the earlier. □

This provision is laudable in the wake of the global trend of organ harvesting and ritual killings in Nigeria. However, the punishment is rather disturbing, being that organ harvesting sometimes leads to the instant death of the victim. This meets up with the definition of murder under the Criminal Code,⁶² and the penalty is capital punishment.⁶³ It, therefore, give the offender a way to escape capital punishment. Every offender of this section will rather prefer to be tried under this Act than under the criminal code when death occurs. □

Prohibition of buying or selling of human beings for any purpose.⁶⁴ Section 21 provides that 'any person who buys, sells, hires, lets or otherwise obtains the possession or disposal of any person with intent, knowing it to be likely or having reasons to know that such a person will be subjected to exploitation, commits an offence and is liable on conviction to imprisonment for a term of not less than 5 years and a fine of not less than N2,000,000.00.' We respectfully submit that this provision is laudable one as it promotes the dignity of the human person, being that man is not a commodity that can be sold or purchased. It is also more elaborate than its predecessor under the repealed Act that limited the victims to only persons below the age of 18 years. However, the pegging of the purpose for the buying, selling, hire or let of person to be exploitation will turn out to be a herculean task for the prosecuting authorities, because, it will be very difficult to prove this purpose, and it is a material ingredient in establishing this offence. □

Exploitation was defined to include 'includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, deprivation of the offspring of any person, forced labour or services or practices similar to slavery, servitude or the removal of organs';⁶⁵ it, therefore, connotes that any purpose for buying and selling of a human being other than the ones listed above cannot ground a charge under this section. Secondly, a prosecuting authority, on the other hand, must establish any of them before it can secure a conviction under this section.

In the case of *Alfred v. State*,⁶⁶ the 1st and 2nd Accused persons enticed and stole little master Light Mark from the church premises where his father David Mark pastors. They took him to the 3rd Accused person (the appellant) who was the owner of Chim Motherless Babies Home from where the appellant sold him to the 4th Accused.

The 3rd accused admitted that the 1st and 2nd Accused persons brought the stolen child to him. The 4th accused bought little Light Mark as her son because she wanted to circumvent the rigorous adoption process. The 3rd Accused conspired with 1st and 2nd Accused to con 4th Accused to commit the offence and did commit the offence.

⁶¹ Section 20(2)

⁶² Section 316-318 of the Criminal Code Act, Cap C38, Laws of the Federation of Nigeria (LFN) 2004

⁶³ Section 319 Criminal Code Act

⁶⁴ Section 21

⁶⁵ Section 82

⁶⁶ (2017) LPELR-42612(CA)

The High Court convicted the accused persons of both the charge of kidnapping for guardianship and buying and selling of a human being. On appeal, the Court of Appeal confirmed the conviction on kidnapping for the guardian but acquitted the appellant on the offence of buying and selling of a human being because the prosecution failed to prove that the purpose of buying and selling of master Light Mark was immoral. This is because 'the immorality in Section 21 of the Act must be proved by the prosecution otherwise the conviction of the appellant on the offence must be set aside.'⁶⁷

Forced labour.⁶⁸ Section 22 provides that 'any person who (a) requires, recruits, transports, harbours, receives or hires out a person to be used for forced labour within or outside Nigeria; or (b) permits any place or premises to be used for the purpose of forced labour, commits an offence and is liable on conviction to imprisonment for a term of not less than 5 years and a fine, not less than N1,000,000.' In the case of *AGF. Vs. Ekundayo Oduyemi & I other*⁶⁹ the accused persons arranged for the movement of the victim from Jos, Plateau State, to other parts of Nigeria for forced labour and sexual exploitation. The accused persons were found guilty by the court and accordingly sentenced to six months imprisonment respectively. Also in *Raji v. FRN*⁷⁰ the appellant and one Evans approached the mother of the victim in order to sponsor the victim to travel to Kuwait and further her career as an artist. However, when the victim arrived in Kuwait, she was placed in the custody of two women that engaged in forced labour and sold her from one person to another. The victim was able to escape and return to Nigeria through the help of the Nigeria Embassy in Kuwait. The appellant's conviction by the High Court was affirmed by the Court of Appeal.□

Employment of child as a domestic worker and inflicting grievous harm.⁷¹ Section 23(1)(a) provides that 'any person who-(a) employs, requires, recruits, transports, harbours, receives or hires out a child under the age of 12 years as a domestic worker, commits an offence and is liable on conviction to imprisonment for a minimum term of 6 months and not exceeding 7 years.' However, the Act also outlaws the employment, requirement, transportation, harbouring, or letting out of 'a child to do any work that is exploitative, injurious, or hazardous to□ the physical, social and psychological development of the child.'⁷² The punishment for this offence upon conviction is a term of imprisonment for a minimum term of 2 years but not exceeding 7 years without an option of fine.⁷³ It is important to note that offenders under subsection 1 above may be liable to additional not less than 2 or 3 years imprisonment where the victim (the child) was not paid or compensated for services rendered, or he/she was inflicted with bodily harm or defiled respectively.

Trafficking in slaves.⁷⁴ This Act makes unlawful the act of recruiting, importing, exporting, transferring, transporting, buying, selling, disposing, or trafficking in any way a person as a slave or accepting, receiving, detaining or harbouring a person as a slave by any person.⁷⁵ Section 25 deals generally with slave dealing and it attract the same punishment as in section 24.

It is our submission that the reason for the pegging of the victims of most of the crimes created under the Act to persons below the age of 18 is not clear;⁷⁶ reason being that in Nigeria of today that is ranked as the world poverty headquarters, most graduates and persons above the age of 30 are roaming the streets unemployed and are, as such vulnerable to the offences created above.

⁶⁷ Ibid. Per AWOTOYE J.C.A (Pp. 21-22, paras. A-C). See also *Nwokocha v. State* (2019) LPELR-47075(CA).

⁶⁸ Section 22

⁶⁹ Unreported. Charge No: PLD/J22/05 (High Court of Plateau State, Jos Judicial Division). Judgment was delivered on 28/5/2009)

⁷⁰ (2019) LPELR-47182(CA)

⁷¹ Section 23

⁷² Section 23(1)(a)

⁷³ Ibid

⁷⁴ Section 24

⁷⁵ Ibid. The punishment upon conviction is imprisonment for a term of not less than 7 years and a fine of not less than N2,000,000'00.

⁷⁶ Kigbu S.K and Hassan Y.B. (2015) op. cit.□

We strictly submit that the Act be amended and the age limits expunged to reflect the present-day reality in Nigeria. Other offences created under the Act include Offences relating to fraudulent entry of persons into another country;⁷⁷ conspiracy where the offence is committed;⁷⁸ conspiracy where the offence was not committed;⁷⁹ escape or aiding and abetting the escape of any person in the lawful custody of the Agency or suspected to have committed an offence under TIPLEA, 2015;⁸⁰ Where a person is convicted abroad for offences relating to trafficking in person;⁸¹ Attempt to commit any of the offences under the Act;⁸² Where evidence establishes an attempt to commit an offence or the Commission of the full offence;⁸³ An offence under this Act committed by body corporate on the instigation, connivance of or attributable to any neglect on the part of the Secretary of the body corporate, director or manager;⁸⁴ A body corporate convicted under this act;⁸⁵ A commercial carrier that knowingly carries any person in contravention of the Act;⁸⁶ Impersonation or assumption of character of an officer of the agency;⁸⁷ Tampering with evidence and witness;⁸⁸ where the offence is committed on the instigation of the Manager, Secretary, etc;⁸⁹ Any tour operators, travel agents or airline who violates the provision of section 35(1) and (2) commits an offence;⁹⁰ A conviction for any of the offences under the Act;⁹¹ and Obstruction of the Agency authorised officers;⁹² and Offences related to forfeiture orders.⁹³

3.0 Jurisdiction and Prosecution of Offences under TIPLEA, 2015

The Act empowered NAPTIP through its Legal and prosecution department⁹⁴ to prosecute suspected offenders under the Act; extradite suspects; provide legal advice to other departments and other incidental legal matters.⁹⁵ By this, the agency can freely initiate actions against suspected offenders without dependence on other agencies or authorities. However, the prosecuting powers of the agency are without prejudice to the overriding powers of the Attorney General of the Federation or States to take over or discontinue a criminal proceeding as the case may be.⁹⁶ NAPTIP usually initiates criminal cases with the name 'Attorney General of the Federation' as the complainant. □

⁷⁷ This attracts a punishment of imprisonment for a term of not less than 5 years without an option of a fine upon conviction. See Section 26.

⁷⁸ This attracts the full punishment of offence conspired and committed upon conviction. Section 27(a)

⁷⁹ This attracts the half punishment of offence conspired but not committed upon conviction. Section 27(b)

⁸⁰ This is punishable with a term of 5 years imprisonment upon conviction. Section 28

⁸¹ This attracts a punishment of imprisonment not exceeding 1 year and forfeiture of assets to the federal government. Sections 51(1)(b) and 50.

⁸² This offence attracts upon conviction half the punishment for the offence. Section 29

⁸³ For attempt, the offender shall be liable to half the punishment for the offence. Section 30(1). Where the full offence is established on a charge for an attempt, the offender shall not be acquitted but be punished as though he was charged with the main offence. Section 30(1).

⁸⁴ The officer shall be liable on conviction to the same punishment provided under this Act for individuals committing the offence. Section 31(1)

⁸⁵ Shall be liable to a fine of N10 million and the court may also order for the winding up of the company and forfeiture of its assets and properties to the Victims of Trafficking Trust Funds. Section 31(2)

⁸⁶ The punishment upon conviction is a fine not exceeding N10 million. Section 35

⁸⁷ The punishment on conviction is imprisonment for a term not exceeding 5 years without an option of fine. Section 33

⁸⁸ The punishment on conviction is imprisonment for a term not exceeding 5 years or to a fine not less than N250,000.00 or to both

⁸⁹ The punishment upon conviction is the same punishment for individual offenders. Section 31(2) □

⁹⁰ Liable on conviction to a fine not exceeding N10,000,000.00. Section 35

⁹¹ The passport of the person convicted shall be forfeited to the Federal government of Nigeria. Section 48

⁹² The punishment on conviction to imprisonment for a term not exceeding 5 years or to a fine of N50,000.00 or both. Section 32

⁹³ Section 58. This attracts not less than 1-year imprisonment without an option of a fine. □ □

⁹⁴ Section 11(1)(b).

⁹⁵ See Section 12(2).

⁹⁶ Sections 174 and 211, Constitution Federal Republic of Nigeria 1999 as Amended. □

This practice was challenged in the case of *Serab Ekundayo Ezekiel V. Attorney General of the Federation*⁹⁷ where the appellant complained that the officer of the Agency that signed the amended charge in the case did not sign on behalf of the Attorney General of Federation; and since the agency is a separate body that has perpetual succession, and power to sue and be sued in its corporate name, with no statutory provision making it a department in Attorney General's office. The agency could not initiate the charge in its name but on behalf of the Attorney General. The Supreme Court resolved the issue by holding "...that for the purposes of investigation and prosecution of matters, law officers of the Agency are ... under the control and general supervision of the Attorney General and can, in the circumstance, sign processes and charges for and on behalf of the Attorney General of the Federation."⁹⁸

The jurisdiction to try all the offences created under the Act is vested on the High Court.⁹⁹ The Act defined the High Court to mean the Federal High Court, the High Court of a State, or the High Court of the Federal Capital Territory.¹⁰⁰ This means that a suspected offender can be arraigned in any of these courts in the state where the trafficking took place. The trafficker may also be prosecuted in another state if some part(s) of the trafficking took place in such a state.¹⁰¹ Nigerians and foreigners outside foreign countries that have violated the provisions of the Act may be repatriated back to Nigeria for trial through a request made by the Attorney General of the Federation based on an order of the Court, where extradition treaty exists between Nigeria and such a country.¹⁰²

The Act empowered the trial Judges to reduce the sentences of a person convicted under the Act who facilitated the arrest of other accused persons or their sponsors.¹⁰³ The High Court can in addition to the sentence passed on a convicted person under the Act order that any property, asset, or fund used in facilitating the commission of the offence or a proceed of such venture be forfeited to the Victims of Trafficking Trust Fund.¹⁰⁴ The passport of a convict under this Act shall be forfeited to the Federal Republic of Nigeria and same handed over to the Nigerian Immigration Service for necessary action, and same shall not be returned to the convict except on the order of the President while exercising his power to grant pardon under the Constitution.¹⁰⁵ The court also has the jurisdiction to order for interim attachment of proceeds or assets of persons accused of commission of any offence created under the Act to the Victims of Trafficking Trust Fund, where there exist a prima facie case against such an accused person and the proceeds or assets were acquired through the commission of an offence created under Act.¹⁰⁶ The procedure for the seizure of property was well spelt out under the Act.¹⁰⁷ Where a person has been convicted under the Act such interim attachment above shall be made final,¹⁰⁸ and where such a convict has assets in a foreign country which are proceeds of an offence for which the convict was convicted in Nigeria, subject to any treaty or arrangement between Nigeria and such a foreign country, such asset shall be forfeited to the Victims of Trafficking Trust Fund.¹⁰⁹

The Act did not provide for the applicable Criminal Procedure law for the administration of the Act. It is suggested that the criminal procedure law that applies to the court of arraignment will be applied to such a case, however, the Act empowered the court to adopt all legitimate measures that it may deem expedient to eliminate the unnecessary delay of trial of offences created under the Act.¹¹⁰

⁹⁷ (2017) LPELR-41908(SC)

⁹⁸ Ibid. 10-11

⁹⁹ Section 36(1)

¹⁰⁰ Section 82

¹⁰¹ *Njovens v. The State* (1973) NSCC 257.

¹⁰² Sections 70. It is important to note that Nigeria must reciprocate such gestures under section 69. The Act also provided for the procedure for the exchange of information and intelligence between Nigeria and a foreign country. See sections 69-74 □ □

¹⁰³ Section 36(3)

¹⁰⁴ Section 36(3)

¹⁰⁵ See section 48

¹⁰⁶ See section 55. This also includes money in the bank. See section 60

¹⁰⁷ See Sections 52-54

¹⁰⁸ See section 56 and 49

¹⁰⁹ See section 50

¹¹⁰ This is notwithstanding the contrary provision in any other enactment. See Section 37 □ □

The exclusive jurisdiction over civil cases emanating from the Act is vested in the National Industrial Court of Nigeria.¹¹¹ A victim may institute a civil action against his/her traffickers for compensation, damages, and restitution.¹¹² However, the Court in making an award to the victim shall take into account the award made by the court in the criminal trial.

Where any person or body seeks to initiate a civil action against the agency, such a person or body must first issue the agency with a pre-action notice and satisfy the conditions prescribed under section 77 of the Act.□

4.0 Victims' Rights, Welfare and Protection

Nations usually consider victims of trafficking as a threat to their national security, being that they have been exposed to international criminal syndicates.¹¹³ The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons with special regards to Women and Children (Palermo Protocol)¹¹⁴ recognized the need for state parties to recognize and develop legal framework protection of victims of trafficking and their fundamental human right.¹¹⁵ In line with the demands of the Protocol, the Act made elaborate provisions for victims' welfare, protection, and compensation. The Act mandates the Agency (NAPTIP) to ensure that victims of trafficking: are not discriminated upon on the ground of colour, race, ethnicity, sex, the status of being a trafficked person or for the fact that they have being involved in the sex industry;¹¹⁶ has access to adequate health care and social services while in temporary residence.¹¹⁷ has access to the embassy or consulate of his/her human country;¹¹⁸ is safely returned to his/her home if the person so wishes and when possible;¹¹⁹ is not denied access to temporary visas during the dependency of any action related to trafficking in person;¹²⁰ personal family history and identity are protected;¹²¹ and his family are protected from intimidation and reprisal attacks from trafficking syndicates; facilities are maintained and rehabilitated.¹²²

Provided that the circumstance so justifies, a victim of trafficking is granted immunity from detention or prosecution for offences accruing from being a victim of trafficking, including non-possession of travel documents, use of fake travel, or other documents.¹²³ A victim of trafficking has the right to access information about him/her being trafficked.¹²⁴

The Act mandated to be established for the Agency transit shelters for a rescued victim of trafficking (particularly women and children) which shall be run as homes to facilitate their reintegration into the society through assistance, protection, and counselling.¹²⁵ The Act did not explain the rationale for the particularization of women and children for this awesome innovation. One may suggest that it is because this group is adjudged to be the most vulnerable, however, we submit that trafficking and effects of trafficking are not gender-sensitive, hence, this kind gesture should not be sectionalized.□

¹¹¹S. 254(1) (i) Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2011.

¹¹² Section 65(3)

¹¹³ Obokata, T., "Trafficking of Human Beings as a Human Rights Violation: Obligations and Accountability of States". In *Trafficking of Human Beings from a Human Rights Perspective Towards a Holistic Approach*, (Boston: Martins Nijhoff Publishers, 2006) p. 153.□

¹¹⁴ Adopted by the General Assembly of the UN in its Resolution 55/25 of 15th November 2000 signed and ratified by Nigeria on the 13th of October 2000 and June 2001.□

¹¹⁵ Article 2, 5 and 6 of the Protocol

¹¹⁶ Section 61(1)(a and h).

¹¹⁷ Section 61(1)(b)

¹¹⁸ Section 61(1)(c)

¹¹⁹ Section 61(1)(d)

¹²⁰ Section 61(1)(e)

¹²¹ Section 61(1)(f and g)

¹²² Section 61(1)(h)

¹²³ Section 62

¹²⁴ Section 63

¹²⁵ Section 64

A trafficked person shall be entitled to compensation, restitution, and recovery for psychological, emotional, and economic damages which shall be assessed and paid from the assets forfeited by the convicted trafficker.¹²⁶ The Court may in addition to other punishments meted out to a person convicted for an offence under Act, order the convict to pay compensation to the victim.¹²⁷ A victim may institute a civil action against his/her traffickers for compensation, damages, and restitution.¹²⁸ However, the Court in making an award to the victim shall take into account the award made by the court in the criminal trial.

The Act established a victim of Trafficking Trust Fund¹²⁹ to pay compensation and restitution to victims of trafficking and for the establishment and maintenance of victims' support services.¹³⁰ The sources of funds for the Trust fund include appropriation from the Federal Government, forfeited assets of traffickers, and donations.¹³¹ A Trust Fund Committee was also established to administer the fund.¹³²

5.0 Recommendation and Conclusion

Trafficking in person is a fundamental abuse of human dignity and a sore to our collective conscience. A country like Nigeria that is the origin, transit, and destination point for global trafficking in persons must be more proactive in its fight against human trafficking. This paper has appraised the legal frameworks for combatting trafficking in persons in Nigeria and also pointed out some lacunas in the extant legal framework.

This paper, however, makes the following suggestions to how the existing frameworks can be strengthened:

1. That all the offences that limited the victim's age to 18 years be amended to read 'any person', this is because young adults (like secondary school leavers and tertiary institutions students and unemployed or underemployed graduates) and old people are also highly vulnerable.
2. That the use of the words 'importation and exportation of persons' in section 14 of TIPLEA be expunged and replaced with a more dignifying verb, as they are derogating. They reduce human beings to the level of commodities that can be imported and exported. A pro-human rights law shouldn't be seen breaching human rights.□
3. The list of possible culprits under section 15 of TIPLEA should be expanded to include animals, sex machines, and dolls.
4. Section 16 of TIPLEA should be amended so that the procurer would read 'any person' to bring about gender balance and also eliminate any loophole for female procurers.
5. The words '*forced or compulsory*' should be expunged from section 19 of TIPLEA.
6. That the penalty for the offence of organ harvesting under section 20 should be made stiffer especially, where death results.
7. That the purposes proposed for the buying and selling of human beings under Section 21 be expunged, and replaced with except for authorized adoption. A human being is not a commodity.
8. The jurisdiction of courts in civil and criminal human trafficking cases should be unified in a single.

¹²⁶ Section 65(1)

¹²⁷ Section 65(2)

¹²⁸ Section 65(3)

¹²⁹ Section 67(1)

¹³⁰ Section 67(4)

¹³¹ Section 67(2)

¹³² Section 68