

**AN APPRAISAL OF ISSUES RELATING TO CHILD CUSTODY IN
NIGERIA**

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BENIN CITY**

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**A PROJECT WORK WRITTEN IN, AND SUBMITTED TO THE FACULTY OF LAW, UNIVERSITY OF BENIN, IN
PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF
LAWS (LL. B) OF THE UNIVERSITY OF BENIN, BENIN CITY.**

DECEMBER, 2022

CERTIFICATION

I, **Ernest Oghenemine ARIGO**, with Matriculation Number **LAW1604616**, hereby certify that apart from references made to other people's works as duly acknowledged herein, this entire project proposal is the product of my personal research, and it has neither in part nor in whole been presented for another degree elsewhere.

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APPROVAL

We certify that this project work was completed and written by **Ernest Oghenemine ARIGO**, with Matriculation Number **LAW1604616** in partial fulfillment of the requirements for the award of the degree of Bachelor of Laws (LL. B) of the University of Benin.

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DEDICATION

I dedicate this project work to all children who loose parental custody as a result of dispute and separation.

ACKNOWLEDGEMENT

I specially want to thank God for his divine love and mercies showed unto me during the writing of this project and my stay generally in the University of Benin, Benin City, Edo State.

My sincere thanks go to my parents, Mr. and Mrs. Michael Arigo, you people made sure I never lacked anything. As long as I needed it. Words cannot express how grateful I am, I say may God continually bless you both. I also want to acknowledge my grandmother for her wonderful contribution towards making me a better person in life. A very big thanks to my special Brother, Efe Arigo for his words of advice and financial support

I also wish to acknowledge Barr. D. T. Achi, my project supervisor, Sir, thank you for your guidance, your intellectual dexterity helped to make sure this work is worth reading, I am honored to be your student.

I also wish to thank my siblings, Esther Arigo, and Favour Arigo. I thank them all for their care and support so far. My course mate - Hope Okwe se, Abida Israel and Mr Fred Edeki are also not left out.

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ABBREVIATION

ABJ	-	Abuja
ALL	-	E. R All England Reports
ALL	-	NLR All Nigerian Law Reports
AU	-	African Union
CFRN	-	Constitution of Federal Republic of Nigeria
CRC	-	Convention on the Rights of Child
CRWC	-	Charter on the Rights and Welfare of the Child
Ed.	-	Edition
FHC	-	Federal High Court
FLR	-	Federation Law Reports
IRA	-	Infants Relief Act
LEDAP	-	Legal Defense and Assistance Project
MCA	-	Matrimonial Causes Act
NWLR	-	Nigerian Weekly Law Reports
Pt.	-	Part
SSMPA	-	Same Sex Marriage Prohibition Act
UN	-	United Nations

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ABSTRACT

The modern tendency of the law is to recognize that children are indeed people. The Children Act 1989 defines a child as a person under the age of eighteen, this is similar with the Child Right Act, 2003. Custody is a concept inclusive of maintenance. Custody, surely concerns the responsibility of the spouse for the child in regard to the child's needs, food, clothing, education or instruction and the like. In Nigeria, child custody legislation is that the welfare of the child should be the first and paramount consideration of the court in child custody disputes. The following legislations govern child custody in Nigeria:

- a. The Matrimonial Causes Act, (MCA) 1970
- b. The Child's Rights Act, 2003
- c. The Infants Law, 1958

The researcher wants to appraise the issues relating to child custody under the following areas:

1. Child Custody before/after divorce
2. Child custody in non-divorce situations; child adoption, fostering and guardianship/ward-ship
3. Socio-cultural perceptions on child custody in Nigeria.

The context of divorce/separation of child's parents may arise where there is a breakdown or discord in the relationship of child's parents which could lead to an action for child custody in court. Fostering involves giving parental care to a child who is not one's natural or legally adopted child Adoption severs the legal relationship between the child and the natural parents or guardians.

Child's Rights Act 2003 makes provision for adoption and this is reflected in the laws of states which have passed similar legislation. Guardianship is provided for in Part IX of Child's Rights Act 2003. A guardian is one who has legal authority and duty to care for another person or property especially because of the other's infancy, incapacity or disability. The researcher also looks at the negative perceptions on child custody in Nigeria and provides criticisms.

CHAPTER ONE

1.1 Introduction

In discussing issues relating to child custody, the child should occupy the center stage. As provided in Part 1, section 1 of the Child's Rights Act, 2003 which states that the "best interest of a child to be of paramount consideration in all actions," The issue of child custody dates back to early years, as portrayed in the Bible, as to the wisdom of King Solomon in determining the rightful custodian of the child in dispute. Hence even to the modern times courts views that the issue of custody as a relief is for the preservation, safety, protection and promotion of child's total well-being.

As in the case of, *Re O (Transracial Adoption Contact)*¹. The court was of the view that there would be benefits for the child, a girl aged ten, in having contact with her mother as a condition for the adoption order. The child whose parents were Nigerians had convoluted fantasies about her mother which if left uncorrected would harm her development. In addition she lived in a locality where it would be very difficult to buttress her Nigerian heritage and identity. Thorpe J. decided that the case was a proper one for a contact order to be made. Therefore, the above judgment re-enforces the English Children Act 1989, and Nigeria 's Child's Right Act, 2003 which provides that in any dispute regarding child custody, the child's best interest should be paramount.

¹ 35 (1995) 2 FLR 597

CHAPTER ONE

INTRODUCTION

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Human rights are universal, innate in every human without discrimination, non-transferable, indivisible and interrelated, with all rights having equal status and being required to protect

² 35 (1995) 2 FLR 597

human dignity. The Beijing Platform for Action states provides that the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, their Sexual and reproductive health, free of coercion, discrimination and violence³.

Reproductive and sexual rights of women relating to their procreative activities are a constellation of civil liberties concerning reproductive health issues which include pregnancy, abortion, personal bodily rights of a woman to decide whether to get pregnant or not or to bear children sterilization are internationally acknowledged and guaranteed rights of women⁴. Prior to the 1990's, the Concept of reproductive health concentrated on controlling women's fertility as a means of decline population growth and nothing more . The focus was on health rather than reproductive wellbeing. This position has changed because several consensus documents explaining the relationship between human rights and sexual and reproductive health have been developed. The first document to formally embed reproductive rights as human rights is the 1968 Final Act of the Tehran Conference on Human Rights. The 1975 Declaration of Mexico on the Equality of Women and their Contribution to Development and Peace confirms the principle of equality of rights within the family and the principle of sacredness of the human body. In 1993, another document signalling a worldwide consensus on the right to sexual and reproductive health was developed at the World Conference on Human rights held at Vienna, the Conference birthed the Vienna Declaration and Programme of Action. Section 3 of the Vienna Programme of Action deals with women's rights and their right to accessible and adequate health care and the widest range of family planning services, as well as equal access to education at all levels,

³ Chinwe Patricia Iloka, Chi. Johnny Okongwu, ' Sexual and Reproductive Rights of Women in Nigeria: Imperatives of Domestic and International Laws' *African Journal of Law and Human Rights* (AJLHR)(2022) 6(2) 177

⁴ (n 1)

including sexuality education. The 1994 International Conference on Population and Development (ICPD) in Cairo placed reproductive rights on the global agenda. Its Programme of Action clearly affirmed and emphasised that reproductive and sexual health is protected by the human rights already recognized by both National and international laws. In 1995, the Fourth World Conference on Women (FWCW) took place in Beijing and the Beijing Declaration and Platform for Action (BDPFA), was adopted at the Conference. The Beijing Conference among other things reiterated the rights to equality in access to and the enhancement of women's sexual and reproductive health as well as education⁵. ICPD makes it clear that reproductive rights are not a new set of rights. Reproductive rights are a constellation of freedoms and entitlements that are already recognized in National laws, international human rights instruments and other consensus documents. Reproductive rights refer to a diversity of civil, political, economic, social and cultural rights affecting the sexual and reproductive life of individuals and couples⁶.

The United Nations defines human trafficking as “the recruitment, transportation, transfer, harbouring, or receipt of people through force, fraud or deception, with the aim of exploiting them for profit,”⁷. Trafficking in persons involves all such activities that result in the exploitation of human beings. Exploitation in this sense includes exploitation for the purposes of prostitution and other forms of sexual exploitation, forced labour or services, slavery or practices similar to

⁵ *‘Reproductive Rights are Human Rights: A Handbook for National Human Rights Institutions’* The Danish Institute For Human Rights, United Nations Human Rights Office of the High Commissioner UNFPA /PUB/14/6

⁶ Ibid

⁷ Amy Novotney, *‘7 in 10 human trafficking victims are women and girls What are the Psychological effects’* Date created: April 24,2023 < <https://www.apa.org/topics/women-girls/trafficking-women-girls#:~:text=The%20physical%20and%20mental%20health,%2C%20depression%2C%20and%20substance%20abuse>> accessed 30 June 2023

slavery, servitude or the removal of organ⁸ . Exploitative activities associated with human trafficking such as child sexual exploitation, forced marriage, servile forms of marriage, child marriage are clearly prohibited under international human rights law because these trafficking activities are human rights violations⁹. Statistics from the United State Department of State reveal that the usual number of trafficked victims worldwide is more that 27 million persons and a larger number of these victims individuals trafficked for both labour and commercial sex are women and girls¹⁰. The act of trafficking and its accompanying human rights violations can pose serious consequences for the victim. Women who have been trafficked may suffer physical health, reproductive health and mental health problems¹¹. Women who have been trafficked into Commercial sex trade are highly probable to experiencing sexual and reproductive health issues, including sexually transmitted diseases (STDs) and other gynaecological problems. These Women may often not have access to, or are not allowed to use, condoms or other methods of birth control, and may only have irregular gynaecological examinations. Such women face the risk of unwanted pregnancies and miscarriages. Women who work as prostitutes experience high rates of abortion, sterilization and infertility¹². Human Trafficking violates human rights such as: the right to life, liberty, and security; the right to freedom of movement; and the right not to be

⁸ *'Trafficking in Persons'* United Nations Human Rights Office of the High Commissioner September 2013 <<https://www.ohchr.org>> accessed 30 June 2023.

⁹ Ibid

¹⁰ (n 10)

¹¹ <<http://hrlibrary.umn.edu/svaw/trafficking/explore/4effects.htm>> accessed 30 June 2023

¹² *'4. Effects and Consequences of Trafficking in Women'* <<http://hrlibrary.umn.edu/svaw/trafficking/explore/4effects.htm#:~:text=Women%20who%20have%20been%20trafficked%20into%20the%20sex%20trade%20may,of%20unwanted%20pregnancies%20and%20miscarriages>> accessed 30 June 2023

subjected to torture and/or cruel, inhuman, degrading treatment or punishment among others¹³. Human trafficking or trafficking in persons is not only a violation of human rights but also a crime that is against all laws¹⁴.

To address the increasing incidences of women and girls that are trafficked every year, the United Nations adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially of Women and Children, supplementing the United Nations Convention against Transnational Organized Crime back in 2000¹⁵. This Protocol serves as an International legal framework for national laws in individual Countries¹⁶. More than 175 nations have ratified or acceded to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, which defines trafficking in persons and contains obligations to prevent and combat the crime¹⁷.

1.1 STATEMENT OF RESEARCH PROBLEM

In the African Continent, Human trafficking is a serious problem . Africa is a major region of origin for victims, who are trafficked into other parts of the world such as Western Europe and the Middle East. Domestic or intra-regional trafficking are also common in certain areas in Africa, particularly in Sub-Saharan Africa. A large number of those victimized in Sub-Saharan

¹³ ‘ *Human Trafficking: A Human Rights Violation*’ Dec 10, 2018 < <https://combathumantrafficking.org/blog/2018/12/10/human-trafficking-human-rights-violation/> > accessed 30 June 2023

¹⁴ O.M Atoyebi, Joannah Titus, ‘*Trafficking And Victim Protection Under Human Rights In Nigeria*’ November 21,2022 < <https://omaplex.com.ng/trafficking-and-victim-protection-under-human-rights-in-nigeria/#:~:text=Under%20the%20Nigerian%20Constitution%2C%20Chapter,liberty%20of%20Nigerians%5B6%5D> > accessed 02 July 2023.

¹⁵ ‘*Human Trafficking and its impacts on women, girls and children*’ International Women and girls series < <https://ecpat.org/story/international-women-and-girls-series-5-how-does-trafficking-affect-women-girls-and-children/> > accessed 30 June 2023

¹⁶ Ibid

¹⁷ ‘ *About Human Trafficking*’ United State Department of State < <https://www.state.gov/humantrafficking-about-human-trafficking/> > accessed 30 June 2023

Africa are women and children who are subsequently exploited in a variety of sectors such as agricultural and domestic work, prostitution and even military (e.g. child soldiers). It has been estimated that 3.7 million people in Africa are in slavery and forced labour at any given time, and the annual profits generated from these amount to \$13.1 billion in this region alone¹⁸.

It has been estimated by the International Labour Organisation (ILO) that Africa is the world region where modern-slavery, including human trafficking, is most common with results such as forced marriages and sexual exploitation disproportionately affecting women and girls¹⁹. Estimates from the Global Slavery Index shows that almost 1.4 million Nigerians live in modern slavery worldwide . These estimates suggest that Nigeria, alongside the Democratic Republic of Congo, rank top position in the number of modern slaves in Africa thereby accounting for more than a quarter of victims in the African region²⁰. Another estimate from The International Organization for Migration (IOM) also reveals that approximately 80% of girls arriving in Europe from Nigeria are potential victims of trafficking . In Nigeria, Edo State is considered to be the main source region for human trafficking. In the last two decades, there has also been a growth in internal trafficking from rural communities to cities such as Lagos, Abeokuta, Ibadan, Kano, Kaduna, Calabar and Port Harcourt. Women and girls are trafficked mainly for domestic work and sexual exploitation. Reports indicate

¹⁸ 19- *Human Trafficking in Africa: Opportunities and Challenges for the African Court of Justice* by Tom Obokata Edited by Charles C. Jalloh, Kamari. M. Clarke, Vincent O. Nmeielle published online by Cambridge University Press: 02 May 2019 < <https://www.cambridge.org/core/books/african-court-of-justice-and-human-and-peoples-rights-in-context/human-trafficking-in-africa/9CDA6F771919FB283583F5C4196678B0> > accessed 30 June 2023

¹⁹ Ligia Kiss, David Fotheringham, Nambusi Kyegombe, Alys McAlpine , Ludmila Abilio , Agnes Kyamulabi , Eddy J. Walakira, Karen Devries and Clare Tanton ‘*Paper: Violence, abuse and exploitation among trafficked women and girls: A mixed- methods study in Nigeria and Uganda*’ Kiss et al. BMC Public Health (2022) 22:794 < <https://doi.org/10.1186/s12889-022-13021-2> > accessed 01 July 2023.

²⁰ Ibid

that both Government and security officials are often involved in cases of trafficking for the purpose of sexual exploitation²¹.

On the 5th day of February, 2021 during a joint presentation of the key findings of the United Nations Office on Drugs and Crime (UNODC) Fifth Global Report On Trafficking in Persons by the UNODC itself and the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) in Abuja- Nigeria to stakeholders from the Government of Nigeria, civil society organizations and international partners, it was revealed that Countries in West Africa recorded more victims of trafficking than other countries in Sub-Saharan Africa and children who were trafficked were majorly used for the purpose of forced labour. UNODC data suggests that close to 80% of victims in West Africa were trafficked for forced labour, and further suggests that the major form of exploitation in the region is forced labour²². On this report Imaan Sulaiman-Ibrahim, the then NAPTIP Director-General had this to say;

NAPTIP 2021 Data Analysis reports that the highest number of persons trafficked during this period in Nigeria were women from ages 18 years and above. According to another NAPTIP report on Statistics taken from 2019-2022, 61% of human trafficking in Nigeria happens internally, while 39% is generated from cross-border trafficking²³. The UNODC also reports that

²¹ Ibid

²² *Trafficking in West Africa: three out of four victims are children says UNODC report* < https://www.unodc.org/nigeria/en/human-trafficking-in-west-africa_-three-out-of-four-victims-are-children-says-unodc-report.html > accessed 02 July 2023

²³ ‘ *Nigeria: Human Trafficking Facts Sheet*’ Pathfinders Justice Initiative Published on September 6, 2022 < [https://pathfindersji.org/nigeria-human-trafficking-factsheet/#:~:text=250%20women%20\(100%25\)%20were,%20\(NAPTIP%202021%20Report.\)](https://pathfindersji.org/nigeria-human-trafficking-factsheet/#:~:text=250%20women%20(100%25)%20were,%20(NAPTIP%202021%20Report.)) > accessed 02 July 2023

South Africa is also a transit Country for trafficking in North America and Europe and not only a major destination for human trafficking²⁴.

The Organization For Security and Co-operation in Europe (OSCE) , reports that human trafficking is a 150 billion dollar global industry. That two-thirds of this figure is generated from commercial sexual exploitation, while another fraction results from forced economic exploitation, including domestic work, agriculture and other economic activities. Furthermore that the average woman trafficked for forced sexual servitude/exploitation generates \$100,000 in annual profits. The United Nations UN), reports that the smuggling route from East, North and West Africa to Europe is said to generate \$150 million in annual profits ²⁵.

Apart from the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children which is the specific Human Rights document that addresses the Crime of Trafficking in persons on a global level, there exist other International human rights Instruments on this subject. They include but are not limited to; Universal Declaration of Human Rights (UDHR), Convention On The Elimination of All Forms of Discrimination Against Women (CEDAW), International Convention on All The Elimination Of All Forms of Racial Discrimination (ICERD), Convention Against Torture (CAT), Convention on the Rights of The Child (CRC)²⁶. With respect to the African Continent, Regional human rights documents exist on the subject of Trafficking of Women. They include; African Charter on Human and Peoples' Rights (ACHPR) Banjul Protocol, African Charter on the Rights and Welfare Of The Child (ACRWC), The Protocol

²⁴ ‘ 10 Facts about Human Trafficking in Africa’ The Borgen Project < <https://borgenproject.org/human-trafficking-in-africa/> > accessed 02 July 2023

²⁵ Ibid

²⁶ ‘ *International Standards on Trafficking in Persons* ‘ Special Rapporteur on Trafficking in Persons, especially Women and Children , United States Human Rights Office of The High Commissioner < <https://www.ohchr.org/en/special-procedures/sr-trafficking-in-persons/international-standards-trafficking-persons> > accessed 30 June 2023

To The African Charter On Human And Peoples' Rights On The Rights Of Women In Africa (Maputo Protocol 2003), Ouagadougou Action Plan to Combat Trafficking in Human Beings Especially in Women and Children 2006²⁷. In addition and as part of the Universal and regional anti trafficking legal framework States within the African region have enacted their individual national laws , some of which criminalize trafficking generally and of Women especially. In Nigeria, the some of the laws on human trafficking are; The Constitution of the Federal Republic Of Nigeria 1999(as amended), the Trafficking In Persons (Prohibition) Law Enforcement and Administration Act 2015 as amended, and the Child's Right Act 2003²⁸.

Despite the provisions of the existing Framework on Trafficking in Persons; International, regional and National , Trafficking is still prevalent within the African region. According to the International Labour Office, forced marriage of young girls and women can be in exchange for money, paying off debt or to settle disputes among families. Forced marriage can result in Sexual and Physical abuse, domestic servitude and sexual exploitation. Furthermore, the International Labour Office reports that women and girls account for over 99 percent victims of Sexual exploitation, a number which is alarming²⁹.

1.2 RESEARCH QUESTIONS

1. How does trafficking in persons or human trafficking violate or infringe Women's reproductive rights generally?

²⁷ Christine Njagi Mmbwanga, Jkia Law Court, Senior Resident Magistrate ' *The Legal Framework: International, regional and national* , Scripta Varia > African Women Judges and Prosecutors On Human Trafficking and Organized Crime. The Pontifical Academy of Sciences < <https://www.pas.va/en/publications/scripta-varia/sv148pas/njagi.html> > accessed 02 July 2023

²⁸ (n 18)

²⁹ (n 28)

2. What are the effects of Trafficking in Persons on Women's reproductive health?
3. What are the existing legal frameworks for trafficking in Persons of Women in Africa *viz-a-viz* Nigeria and South Africa ?
4. What is the effectiveness or otherwise of the existing Anti-human trafficking Laws in Nigeria and South Africa?
5. What are the Challenges associated with tackling trafficking in Persons as a Crime and Violation of Women's reproductive rights in Nigeria and South Africa.

1.3 AIMS AND OBJECTIVES OF THE STUDY

The Aim of the Study is to undertake a thorough evaluation of trafficking in persons as a Violation of the reproductive rights of Women with a main focus on Women within the African region and more particularly this study seeks to achieve the following objectives ;

1. To Identify the prevalent Violations of Women's reproductive rights that exist in Africa as a result of the various forms of trafficking in persons that exist.
2. To pinpoint the effects of trafficking in persons on Women's Reproductive health.
3. To Identify the existing legal frameworks International, Regional and National that seek to directly or indirectly address Trafficking in persons generally and trafficking of women paying particular attention to Nigeria and South Africa
4. To assess the effectiveness or otherwise of the existing frameworks for Trafficking in persons *viz-a-viz* challenges associated with implementation of these frameworks
5. To Establish the main causes of continuous trafficking activities whether Domestic/ anti-trafficking within Nigeria and South Africa or across border trafficking despite the existing anti-trafficking laws.

6. To Recommend effective working solutions to tackling trafficking in persons both as a crime and as a human rights violation .

1.4 SCOPE AND LIMITATIONS OF THE STUDY

This Study will undertake a general overview of all or the major forms of Trafficking in persons or human trafficking and a specific examination of how trafficking violates the human rights of Women, human rights of women in this context includes the reproductive rights of Women , particularly women in Africa . The term 'Women' in this study will include young girls and female Children below the age of 18 years. Also to be featured in this study is the health impacts of these human rights violations on their victims taking into account that the protection of women's rights particularly their reproductive rights are crucial to the socio-economic development of any Nation. Reproductive health has transcended Population regulation in the context of fertility control to germane subjects such as gender equality and discrimination against women, Violence against women and women's rights generally. This Study will focus its lens on the Legal frameworks that have emerged as a result of International human rights struggles with respect to the International and regional human rights documents as well as national laws that seek to address gendered rights. This Study will confine its search within the African region using Nigeria and South Africa

1.5 SIGNIFICANCE OF THE STUDY

This Study will undertake an extensive analysis of the subject matter of discourse to unravel the human rights violations that occur and are recurrent as a result of the trafficking of women and young girls in Africa. The Findings of this Study will include; That human

trafficking is both a violation of human rights and a Crime, that there are existing frameworks that spell out the existence of Women's reproductive rights and as well provide as well provide platforms for the enforcement of these rights in any cases of breach. The Study also finds that in the presence of these frameworks, there are still high numbers of women that are trafficked both intra Country and across borders from and to the African Continent which is a major transit ,source and destination hub for human trafficking trade.

This Study will also add to existing literature on the subject of human trafficking and reproductive health law by bringing to the fore the undeniable fact ,of how human trafficking is a reproductive health issue and also how Women's reproductive rights are being violated as a result of their being trafficked, the reasons why trafficking in persons is still ongoing despite the enactment of anti-trafficking laws and the numerous challenges encountered in the enforcement of the various anti-trafficking laws, as well as making corresponding suggestions that may be adopted by Policy makers, Health stakeholders and the general public in the Countries which this study shall cover being Nigeria and South Africa and this is because there are no previous studies or existing literature in the field of reproductive health attempting to link the incidences of trafficking in person to the violation of Women's reproductive rights in Nigeria and South Africa.

1.6 RESEARCH METHODOLOGY

- 2 Research methods or methodology refers to the way in which problems are approached and answers are sought. Simply put, it implies the process of the research, how a research was

conducted³⁰. Legal research may be carried out by using one or more methodologies. There are two broad methods of legal research: doctrinal method (desktop and library-based research) and the non-doctrinal method (empirical and socio-legal research. Doctrinal approach involves research into the law and legal concepts prominently through the study of legal rules; by analysing court judgements and statutes with little or no reference to the world outside the law. Doctrinal research is referred to as ‘theoretical, pure legal, academic, traditional, conventional and black-letter law, and is concerned with the formulation of legal doctrines through the analysis of legal rules.’ Doctrinal research is more concerned with an accurate and coherent description of the law rather than scientific theories about it³¹. Doctrinal research involves the interpretative, descriptive analysis and systematization of Legal norms or doctrines³².

Non- doctrinal approach Involves research that uses methods taken from non-law disciplines to generate data to answer research questions. It can either be qualitative or quantitative³³. Non-doctrinal method is as Scientific approach to empirical investigation and scientific data collection using scientific techniques for critical analysis and data presentation of an identified research topic. This method of research includes activities such as research designs,

³⁰ *Notes on Advanced Legal Research Methodology*, Post graduate Programmes, Faculty of Law, University Of Benin Page 8

³¹ Ibid

³² *The Nigerian Association Of Law Teachers (NALT) Manual Guide on Uniform Format and Citation Guide On Legal Research : For Law Faculties And Legal Research Institutes In Nigeria*, A Manual on Legal Research Format and Citation Guide for Legal Profession (NALT'S Blue Book Basic Guide) Series No.3 3rd Edition, 2022 at page 22

³³ Ibid

population sampling among others. Also used under this method are; Questionnaires, Public Opinion, Opinion polls, Interviews, etc³⁴

The Doctrinal research approach will be used in this Study to do the following; trace the historical foundation of trafficking in Persons in Africa especially in Nigeria and South Africa, to identify the reproductive rights of Women in Africa and how trafficking infringes on these rights, to analyse the Legal frameworks for trafficking in persons and as well assess their effectiveness or otherwise. This Study will cite both Primary sources including the Constitution, Federal Laws and International Law(Treaties and Agreements); and Secondary sources such as Books, Journals, Dictionaries, Projects, Thesis and Dissertations , as well as materials from Online materials .

³⁴ Ibid at page 35

CHAPTER TWO
CONCEPTUAL, THEORETICAL FRAMEWORKS AND
LITERATURE REVIEW

2.1 CONCEPTUAL CLARIFICATIONS

This study shall by way of definitions explain Key words or Concepts that both Constitute and are associated with the topic of discuss. These key terms are; **Trafficking in persons, Women trafficking, Violation, Reproductive and Sexual health, Reproductive right(s), human right(s).**

2.1 THEORETICAL FRAMEWORKS AND HISTORICAL FOUNDATION

2.1.4 Historical Foundation

Trafficking especially of Women and girls is not a new happening or phenomenon. It has existed all through history in many forms but today it has become a Worldwide demand-driven business with a serious market for cheap labour and Commercial sex workers. Human trafficking has been rated third position on the list of most serious crimes, only after other crimes such as commercial crimes and drug trafficking¹.

Trafficking of African Women and Children is promoted by a number of conditions that escalate this problem, the most important of these conditions are war, poverty and ineffective or non-existent birth registration systems. In 2005, UNICEF reported that conflict, discrimination and repression which are all conditions related to and brought on by female trafficking and further exacerbated by poverty. Traffickers take advantage of the weaknesses that war, hardship,

¹ Mary Oluwabusayo Abiodun, *Factors That Contribute To The Trafficking Of Nigerian Women And Children* (Masters in International Relations Faculty Of Landscape And Society Norwegian University Of Life Sciences 2022)15

inadequate education, joblessness and a general lack of opportunities provide. In Africa, one of the reasons why female trafficking is widespread because a large number of new births are not officially given citizenship because they are not registered at birth. Another reason in particular is the fact that easily accessible borders, civil and political upheaval and lack of economic prospects have made it possible for Africans to migrate legally and illegally to various other Countries and a huge proportion of illegal migrants are trafficked females².

Nigeria has established itself as a nation to watch as a trailblazer both in intra and cross-border people trafficking. In recent years Nigeria's problem with human trafficking has gotten worse despite the growth of International Organization dedicated to fight against it. Factors responsible for the growing trend of human trafficking in Nigeria have been identified; Nigeria's economy grew significantly during the oil boom of the 1970's with the potential for much greater success on future. On the other hand, a UNICEF reports as at 2021 claims that Nigeria's economy growth had drastically reduced by the end of the decade as a result of the drop in the price of oil globally. The protracted Military dictatorships in the Country further worsened the disastrous effects of this economic downturn and which led to an economic catastrophe and financial crisis. During these military era, there were formalized breaches of human rights which led to International Sanctions being imposed on Nigeria and consequently worsened social unrest, Inter-ethnic disputes, juvenile delinquency, violations of Women's and Children's rights and severe unemployment³. According to a 1999 report, mass migration increased the population of large cities because rural areas were the most affected and parents and families started to take bigger chances to escape poverty and improve their living conditions. Routine actions like placing and

² Fayemi Ademola Kazeem, ' The Challenges Of Prostitution And Female Trafficking in Africa: An African Ethico-Feminist Perspective' *The Journal of PAN-AFRICAN Studies* (2009) (3) (1) 202-203

³ Ibid

fostering kids in relatives' homes were turned into lucrative business ventures that parents could profit from, and the practice of using cheap labour through human trafficking gained popularity, thereby pushing a lot of young women, girls, and children out into the streets to work⁴.

In South Africa, there is scanty but persistent evidence that implies that human trafficking occurs both internally and across borders, a modern day version of slavery has occurred for at least a century. At the beginning of the 19th century, young women and girls were trafficked into Cape town for prostitution while women were trafficked from Europe into the South Africa mines in response to the demand by European mine workers for European Women. In 1966, there was a report put forward by *Jeanne Afrique* which stated that an approximate of 6,000 young South African girls were trafficked yearly to Europe and a good number of these girls were used as sex slaves in French territories. Another report released in 1990 by Anti-slavery International supported the fact that children were trafficked from Mozambique into South Africa and traded as sex chattels. The menace of human trafficking has continued to thrive in South Africa regardless of consistent strides made to create awareness of its existence. This is due to the fact that traffickers have continued to take advantage of the susceptibilities created by poverty, war, poor educational background, unemployment etc⁵.

The History of Across borders trafficking in persons in South Africa dates back to the Country's Colonial era. *Molo Songolo*, a Children's rights Organisation gave a report evidencing the fact that between the years 1726-1834 about 36,169 slaves were transported from Indonesia, Ceylon, Java, India, The East Indies, Mauritius, Malaysia and other Countries to work as domestic

⁴ Ibid

⁵ Jonathan Martens, Maciej Mac Pieczkowski Benardette, *Seduction, Sale and Slavery: Trafficking in Women and Children for Sexual Exploitation in Southern Africa* (IOM International Organisation For Migration Pretoria South Africa 2003)

workers in the South Africa mines. Slave trade was a system put in motion by the Colonial Authorities in then South Africa to boost the South African economy by importing cheap labour into the Country. Domestic trafficking too dates back to the late 19th century and early 20th century. During this time, a criminal leader called Nongoloza Mathebula (1867-1948) and his Criminal gang were notoriously known for abducting and kidnapping Women and boys from neighbouring areas to the mine compounds and kept them as slaves. It was this period too, that prostitution and the spread of Sexually transmitted diseases were discovered. During the period of the political struggle in South Africa between the 1980's to the early 1990's Jack Rollers was popular for kidnapping young women and girls and keeping them in concealed residences where they were constantly raped and physically abused. These Women prior to their abduction seemed to be more high-ranking than men from inferior socioeconomic backgrounds. They lived quiet lives and passionately sought educational attainment and were also physically attractive. At this time these activities were not regarded as human trafficking however, since South Africa became a party to the United Nations human rights oriented legislations, the Country has categorized trafficking as Criminal and has defined trafficking for sexual exploitation under part 6, section 71(1-2)b of the Criminal law (Sexual offences and Related Matters Act, Act(32 of 2007) as amended⁶.

In South Africa, the most reported form of trafficking is domestic trafficking. Reports obtained from trafficking research reveal the fact of children who are trafficked from economically and socially disadvantaged areas in South Africa such as rural areas and farms in the Eastern Cape and Kwazulu-natal to urban areas such as in the Western cape and Guateng. Other research results have established cases of Adolescents who are recruited and transported to engage in

⁶ Thozama Mandisa Luty, 'Human Trafficking Of Young Women and Girls for Sexual Exploitation in South Africa' *Intech open* (2012) < <http://dx.doi.org/10.5772/39202> > accessed 06 September 2023.

commercial sex in hidden brothels across South Africa under the guise of securing jobs for them. Other Sources which include the print media(newspapers), electronic media and workshops have helped to reveal the existence and continued practice of this scourge⁷.

The historical existence of human trafficking in South Africa cannot be complete without recalling the infamous story of Saartje Baartman ,a young South African Woman who was transported from the Cape Colony under false promises of economic and educational opportunities. On her arrival to Europe, she was sexually and otherwise exploited by European citizens in England and France. None of the promises were fulfilled to her instead her naked body was exhibited as a center of attraction for public viewing. She died in France and her private parts are Currently on display at the Museum there. The historical record of Saartje Baartman is an example of the origin of slave trade in South Africa both domestic and International⁸.

2.2.2 Theoretical Frameworks

Many Theories have been developed and some adopted by scholars in an attempt to explain the concept of Trafficking and why it occurs in society. A few of these numerous theories will be discussed hereunder;

Feminist Schools of Thought

The bulk number of theories about human trafficking come from feminist schools of thought. This is because Women all over the World are historically, culturally, socially, economically, politically, and legally more disadvantaged than their male counterparts around the World , and

⁷ Ibid

⁸ Ibid.

this enslavement and oppression manifest itself on various levels at the communal, local, national, regional, international, and family platforms. Bagchi & Sinha (2016) have identified two broad approaches of the feminist theory. They argue that the feminist approaches have been broadly divided into two opposing ideas or concepts ; The Global Alliance Against Trafficking in Women (GAATW) adopted the first concept while the Coalition Against Trafficking in Women (CATW) embraced the second concept.. In her book, *Female Sexual Slavery* (Barry 1984), Kathleen Barry, the founder of the contemporary movement's came up with the first concept for female prostitution and trafficking. Her theory of female sexual enslavement makes a connection between prostitution and human trafficking. According to her theory, sexual dominance is the root cause of trafficking, and ending the oppression and subjugation of women is the only way to eradicating the menace of trafficking of Women. Also, According to her philosophy, the issue of human trafficking is one of supply and demand, with the sex industry (and males) establishing the demand and the traffickers enlisting the supply (women) in response. The Global Alliance against Trafficking in Women (GAATW), which was influenced by the second wave of feminism, adopts the second Concept. Under this second Concept, feminists in this category assert that prostitution is a legally approved occupation or work together with migration, and as well a way to getting out of poverty⁹.

Western Feminism and African feminism

Western feminism is of the view that gender hierarchies should be eradicated in all societies around the globe as part of a universal agenda for action, thus the goal of Western feminism is to remove gender hierarchies in all civilizations as its agenda of action In this perspective,

⁹ Bagchi. S, Sinha .A, ‘ Human Trafficking in India: Theoretical Perspectives with special reference to the human trafficking scenarios in The North Eastern Part of India' *International Journal of Research in Economics and Social Sciences* (IJRESS) (2016) (6) (9) 111.

feminism in the West is seen as a by-product of universal philosophy , which impacts all women regardless of ethnicity, socioeconomic standing, or religion. African-oriented scholars have opposed Western feminism by arguing that this widely accepted notion is untrue, and this led to the creation of the concept of African feminism. The main contention of these African Scholars is that feminism, as it currently exists, is a Western phenomenon, a portrayal of the Western People's cultural preferences and as such, was created to address the specific needs of Western women. And therefore, feminism has no application to Africa. These scholars have supported African feminism which objective is to fight against the oppression of African women in all spheres of life, including the economic, political, social, cultural, psychological, educational, and sexual, while taking into account the unique experiences of African Women. The major pioneers of the African feminism school of thought are ; N.E Mba (1982), C. B. Davies (1998), C.S. Filomina (1987), M.Gwendolyn (1997) though there exist other scholars¹⁰.

African feminism, according to Filomina and Davies, does more than simply import and imbibe Western women's agendas. It studies African nations for institutions that are beneficial to women and rejects those that work to their detriment. Instead, it focuses on some specific demands and objectives resulting from the actualities of women's lives in African countries. Fayemi(2009) argues that while the aforementioned scholars' pioneering efforts to lay the theoretical groundwork for an African orientation in feminist discourse is highly applauded , these academics' interpretation of African feminism is unable to address some of the disturbing problems bedevilling African Women. He also observed that sufficient analysis has not been carried out on how African feminism can aid in overcoming the enormous and radically different challenges that the female gender in contemporary Africa is currently facing. According to these

¹⁰ (n 26) at page 204

academics, African feminism is unable to resolve some of the worrisome issues facing African women¹¹.

However Molaria Ogundipe-Leslie has faulted Filomina and Davies theories on African feminism failed to address all facets of the challenges faced by African Women. Molaria Ogundipe-Leslie identified and discussed six repressive situations that women in Africa must encounter. The first one is external oppression (foreign invasion and colonialism); the second is cultural heritage (traditional beliefs and practises like genital mutilation, circumcision, etc.); the third is her own awkwardness or under-development, which is a result of colonisation and neo-colonialism and its accessory, poverty; the fourth is men's superiority; the fifth is her race and complexion and this is because the international economic order is divided along racial and class lines and the sixth is her own self-perception.. Ogundipe argued that the idea of African feminism by Filomina and Davies did not address all six of these above listed oppressive situation because the both scholars failed to address the issue of how the African Woman sees herself(her self-image and identity which according to her is the most important of all six conditions which the African Woman must surmount. Ogundipe therefore advocated for the need to develop new standards or ideas that will help tackle the issue of the African Woman's self-image and perception and will equally address the other five conditions or situations of the African Woman. Ademola K.F(2009) refers to these new standards as 'African ethico-feminism'.¹².

Ademola(2009) recommends the idea of African ethico-feminism which is a new brand of feminism. According to this view, women's low self-esteem stems from their perplexities about their natural abilities and the morality of the different options available to them in their regular

¹¹ Ibid

¹² Ibid

social interactions and day-to-day living. This model of feminism recognizes gender-specific concerns and Women's subordination to men and strives to address them and this approach is similar to other western feminist approaches such as radical, existential or liberal feminism but is different from western feminism in the sense that it does not encourage division, individualism or rivalry between the male and female gender. The major idea of African ethico-feminism is to see and handle African women first as human beings instead of as sexual beings. This model of feminism aspires to eliminate all forms of male dominance and oppression of Women. In essence, it is a moral and feminist concern for the survival and well-being of African Women and at the same time reiterating female autonomy while still pursuing the complementary roles of gender socialization for both men and women¹³.

2.3 LITERATURE REVIEW

Ikeatu & Egondou(2020) in their Article *Violations of Women's Reproductive Rights in Nigeria*, adopted definitions of concepts such as Reproductive health as provided in the ICPD Program of Action and Reproductive rights as provided both in the Beijing Platform for Action and the ICPD Program of Action. They explain that the origin of the term '*Reproductive rights*' dates back to the year 1984 when the International meeting on Women and health was held in Amsterdam and it was in that meeting that *Reproductive rights* was coined. They explained that according to the ICPD Program of Action, the concept of Reproductive health spend across a broad scope of services which includes but not limited to prevention and treatment of infections, sexually transmitted diseases, including HIV/AIDS breast cancer and cancers of the reproductive tract. They went further to explain that the ICPD acknowledges Reproductive rights as certain human rights that are already recognized in National laws, International human rights documents

¹³ Ibid at page 205

and other Consensus documents . And that Reproductive rights also encompasses the rights of Individuals and Couples to Reproductive choices free from pressure, violence and discrimination¹⁴. They posited that the right to health covers prevention and treatment of Sexually transmitted diseases including HIV and AIDS and other infections of the reproductive System. They describe the spread of HIV infection as an occurrence that is fast growing in Nigeria and more especially among the youth population. They established the rate of the spread of HIV/AIDS infections in Nigeria through sexual intercourse to be not less than 80% of the Nigerian population. Risky sexual behaviours such as prostitution enable the spread of HIV/AIDS which is caused by reasons such as Unemployment, industrialization and development as well as poverty¹⁵. This Article did not really address the other effects of human trafficking on Women’s reproductive health , it focuses on prostitution only as an enabler to the spread of HIV/AIDS in Nigeria but does not address the other forms of trafficking.

In the book, *Marriage Trafficking: Women in Forced Wedlock*, the Author Kaye Quek in the book’s introduction noted that Trafficking in person has a new variant called ‘ Marriage Trafficking’ and that the International rights community, the United Nations Office On Drugs and Crime (UNODC) and the UN Special Rapporteur on Human Trafficking have begun to pay attention to this form of trafficking. More specifically the UNODC provided for marriage trafficking in its 2016 *Global Report on Trafficking in Persons*. She also Observed that prior to and after the 2016 global report on human trafficking, there have been countless reports by many International Rights Organisations that revealed trafficking activities that which involved the sale of Women across countries that suggested that these Women were being traded for the purpose

¹⁴ Ikeatu Egundu Grace, ‘ Violations of Women’s Reproductive Rights in Nigeria’. *NAUJILJ* (2020) (11) (2) 158-159.

¹⁵ Ibid at 161-162.

of forced marriage. Quek further noted that the International Community has recognised that this form of trafficking is a grave violation of human rights, more research has to be done in order to ascertain the forms in which trafficking occurs as there is not much evidence or studies in this regard and this is because the spotlight on research in trafficking is cast on the other forms of trafficking namely sexual exploitation and more so for prostitution and forced labour which takes centre stage in International anti-trafficking policies. She therefore, pointed out the necessity for more scholarly research to be carried out to expand the scope and understanding of the existing forms of trafficking and that this would help having a better understanding of trafficking for the purpose of forced marriage as a form of trafficking¹⁶. Quek adopted the definition of trafficking in persons as provided in the Palermo Protocol(2000) and points out the fact that the UNODC three elements that must be present in every trafficking activity as defined by the Palermo Protocol for such activity to qualify as trafficking. They are Act, the means and the purpose. Even though the Protocol did not distinguish between situations where the use of force or violence or where consent was obtained from the trafficked, it is still the most comprehensive definition of trafficking¹⁷.

Diana Meyers in her Chapter of the Oxford Handbook Online titled *Victims of Trafficking, Reproductive Rights, and Asylum* focused on strengthening and supplementing the already existing arguments proposing that Women who are Nationals of economically underdeveloped countries who have been trafficked into economically developed countries for the purpose of sex labour should be given priority as when determining who should be qualified for asylum. These arguments are of the view that these women are exposed to acts such as sexual violence and

¹⁶ Kaye Quek, *Marriage Trafficking: Women in Forced Wedlock* (1st edition, Routledge 2018)

¹⁷ Ibid

forced labour as well as their fear of being persecuted along with the stigmatization, social exclusion and the possibility of being re-trafficked if they are deported back to their country of origin. Meyers however while in support of the above explanations brought out a very salient point that has not hitherto been considered by those arguing in favour of women who are trafficked internationally and this point is the fact that the Reproductive rights of these women are not being considered also a reason to grant trafficked Women asylum. Thus the major objective of Meyer's work was to provide an explanation on how trafficking of Women particularly for sex affects their reproductive rights. She also cited the violation of their reproductive rights as a reason to grant these Women asylum¹⁸.

In the Abstract to the Chapter, Meyers pointed out a noteworthy fact that International law prohibits trafficking for sex as a Crime. She also recognized the fact that trafficking violates the victim's reproductive rights and this impacts negatively on their health and reproductive abilities. Other rights that traffickers infringe upon include the victim's right to liberty and security of persons. In the course of the work, Meyers gave a brief history on the emergence and development of the Concept of Reproductive rights as contained in International human rights documents such as the Convention On The Elimination Of All Forms Of Discrimination Against Women (CEDAW), Universal Declaration Of Human Rights (UDHR), International Covenant On Civil And Political Rights (ICCPR) International Covenant On Economic Social And Cultural Rights. These documents entrench the rights of individuals such as the right to the highest attainable standard of physical and mental health including reproductive health, right to reproductive freedom and self-determination, right to marry and found a family, right to maternal care with a view to reducing maternal and infant mortality. The concept of reproductive rights in

¹⁸ Diana Tietjens Meyers, 'Victims of Trafficking, Reproductive rights, and Asylum' in Leslie Francis (ed), *The Oxford Handbook of Reproductive Ethics: Oxford Online* (2016) 1-3

International human rights law is mostly gendered taking into account the peculiarities and vulnerabilities of Women in their specific roles in reproduction. It is clearly seen that reproductive rights are predicated upon the concept of human rights¹⁹.

In an attempt to link sex trafficking and reproductive health exposition was made on the harmful effects of the former on the latter based on the scarce information available on the statistics and experiences of Women who are trafficked Worldwide. The health consequences of sex trafficking on Women's reproductive health range from contracting sexually transmitted diseases and HIV/AIDS and diseases of the female reproductive tract such as pelvic inflammatory disease, chlamydia and cervical cancer all of which can affect a woman's fertility if left untreated. Available reports also stated that only few Women have access to birth control services or contraceptives and the traffickers did not provide these Women with any form of medical care, the only medical care they are entitled to is when their employers or traffickers sponsored them for abortions because it is to the advantage of the traffickers. Abortions further worsened the damage already done to their reproductive health because the procedure was always carried out by unqualified medical practitioners and in unhygienic and unsuitable environments. The above account on the health conditions and experiences of trafficked women is equally what Nigerian Women who are trafficked for sex work experience²⁰.

In their Article *Human Trafficking in Nigeria: Implication for Human Immune Deficiency Virus And Acquired Immune Deficiency Syndrome (HIV/AIDS Pandemic)*, the Authors Enaikelé & Olutayo based their work on the trafficking of Nigerian Women both intra and across borders, Nigeria being a Country of origin, transit and destination for trafficking which has been named

¹⁹ Ibid

²⁰ Ibid

as “the third largest source of profit for organized crime apart from drugs and arms” according to (UNHCR, 2000) . The work attempted to connect human trafficking activities as a contributory factor to the rapid spread of HIV/AIDS which they referred to as a growing pandemic. In the work, there are also efforts to highlight the reasons for the susceptibility of Nigerian women and girls to being trafficked, the effects of trafficking on their reproductive health which maybe physical and psychological. The paper also strove to appraise the effectiveness or otherwise of legal anti-trafficking instruments in Nigeria and proffered possible solutions to tackling trafficking in Nigeria²¹. It is described in this Article of how economically vulnerable Nigerian Women are trafficked to Europe, America, Saudi Arabia and South Africa under the guise of living a better life abroad. The traffickers deceive these women with promises of helping them secure highly remunerative jobs. According to Enaikele and Olutayo, Nigerian women are commonly trafficked for commercial sex which is usually unprotected sex often resulting into several abortions, sexually transmitted infections including HIV/AIDS. These women are also used for pornography and bestiality. Other downsides of trafficking on Women’s health are; these women experience violence and torture which impacts greatly on their mental and psychological health and manifests in the form of feelings of guilt, betrayal, lack of trust, fear, shame, timidity, hopelessness, and a loss of self-esteem and integrity. As a way of overcoming these feelings, victims have recourse to using drugs and many eventually become suicidal. In spite of the horrible experiences that trafficked victims go through, immigration laws in most destination countries are not in their favour as they are subjected to arrest, prosecution, detention or deportation. There are reports that the rapidly developing prisons in France, Spain, Italy, Netherlands, United States, Saudi-Arabia and South Africa house immigrants who are trafficked

²¹ M.D Enaikele, A.O Olutayo, ‘ Human Trafficking in Nigeria: Implication for human immune deficiency virus and acquired immune deficiency Syndrome (HIV/AIDS) pandemic’ *International Journal of Sociology and Anthropology* (2011) (3) (11)

for commercial sex and who are mostly Nigerians²². This Article gave a brief examination of the legal framework for trafficking in Nigeria which include ratified International human rights Instruments treaties and conventions, regional protocols such as the CEDAW, Child Rights' Convention and the Maputo protocol and National laws. The legal framework in Nigeria was commended because it has the capacity to investigate, prosecute and punish traffickers. In conclusion Enaikele and Olutayo called on the Nigerian Government to develop the Country by Providing qualitative education, jobs and social infrastructure in order to dissuade the citizenry from considering leaving the country in search of greener pastures. They also called for Nigeria's co-operation and partnership with other climes in curbing trafficking since it is a transnational crime²³.

Fayomi O. Olu in his Article *Women, Poverty and Trafficking, A Contextual exposition of the Nigerian Situation*, listed the factors responsible for the trafficking of Nigerian women especially sex trafficking to include; poverty, gender inequality in the economic, social and political sphere and the failure of the Nigerian Government to protect Nigerian Women's human rights which has weakened the job and employment capacities of these Women unlike their male counterparts²⁴

Further reasons for the trafficking of Nigerian Women include the fact of gender discrimination. Reports have it that Nigerian Women are underprivileged and as a result cannot exercise the following; power of decision making at the family, community and National levels, unequal access of girl children to education like the boy child, and their non-recognition in the areas of

²² Ibid

²³ Ibid

²⁴ Fayomi O. Olu, ' Women, poverty and trafficking: A Contextual Exposition of the Nigerian Situation' *Journal of Management and Social Sciences* (2009) (5) (1) 65-79

labour and politics. Fayomi in his paper adopted the definition of human trafficking as provided by the Palermo Protocol. In his attempt to establish a connection between poverty, trafficking and Women, the author identified the major causes of human trafficking in Nigeria and noted that trafficking of Nigerian Women could be socio-culturally, economically and politically generated. He notes that culture and tradition adversely impacts the capacity of Nigerian Women and girls to exercise their sexual and Reproductive rights. This is largely due to men's desire to dominate women's bodies which is a key issue of sexuality that more often than not result in perpetration of violence against women. Culture encourages the voicelessness and powerlessness of Women²⁵.

Chinwe Patricia Iloka named trafficking as one of the violations of the Reproductive and sexual rights of Women and girls in Nigeria amongst others. In her work, *Contemporary Issues on Reproductive and Sexual health Viz-a-viz the rights of Women in Nigeria*, she opined that acts of trafficking are acts of gross abuse and violations against Women's rights to liberty, equality and security and freedom from torture and degrading treatment and these Violations negatively affect a Woman's right to make free and informed choices in all aspects of life free from every form of discrimination and violence²⁶.

In their Article, *A Critique of Incessant Violations of Women's Health and Reproductive Rights in Nigeria*, (Ifemeje et al) attributed the incidence of the trafficking of Women to educational and economic determinants. They explained that in the Africa,, there is a deep-rooted culture of male superiority over females. That in African families, the male child is often given preference

²⁵ Ibid

²⁶ Chinwe Patricia Iloka, ' Contemporary Issues On Reproductive and Sexual health viz-a-viz the rights of Women in Nigeria' *Nnamdi Azikiwe University Journal of International Law and Jurisprudence (NAUJILJ)* (2022) (13) (2) 81 & 85 < <https://www.ajol.info/index.php/naujilj/article/view/233139> > accessed 14 September 2023.

when deciding which child should be trained in school. Parents would rather spend the family's financial and economic resources in training their sons in school and thus be exposed to economic opportunities and greener pastures while the girl children are trafficked in order to yield money which is used for the family. They went further to criticise these cultural practices by saying that it has prevented African Women and girls from exercising their Reproductive rights. In these settings , Women's rights such as right to education, right to freedom from discrimination, right not to be subjected to torture or inhumane treatment are infringed upon²⁷. The position adopted by (Ifemeje et al) is also that of Umejiaku & Uzoka in their Article *Violation of Health and Reproductive Rights of Children in Nigeria: A Critique*²⁸.

In the Text, *Trafficking in persons*, the Authors discussed trafficking in persons. They covered aspects such as the meaning and causes of trafficking, elements of trafficking, forms of trafficking in persons, effects of trafficking on the victims, they also made suggestions that could aid in the fight against trafficking. They listed and discussed sex-slavery, Organ harvesting, Labour trafficking, forced marriages and trafficking in Children as forms of trafficking. According to (Atolagbe et al) trafficking has negative impacts on the victims. Some of the effects of trafficking include; depression, homelessness, poor social conditions, ostracism, physical and sexual abuse and death. Sexually transmitted diseases which is the result of sexual abuse is also a harmful effect of trafficking²⁹. Though this literature did not exactly discuss trafficking and its violation of Women's right to reproductive health, it can be seen that the

²⁷ Ifemeje S., Obidimma E., Nneka Umejiaku, ' A Critique of Incessant Violations of Women's Health and Reproductive Rights in Nigeria' *Journal of Law, Policy and Globalization* (2013) (11) 5

²⁸ Nneka Obiamaka Umejiaku, Ngozi Chisom Uzoka, 'Violation of Health and Reproductive Rights of Children in Nigeria : A Critique' (*AJLHR*) (2019) 3(1) 151

²⁹ Atolagbe Samson, Oladimeji Taibat, Ogunleye Shamshudeen, Ajayi Amidu, Abdulkareem Saheed, Olusegun Adekemi, Babalola Michael, Adeleye Olasukanmi, Lawal Musliyu, *Trafficking in Persons* (Freedom Press Oyo- Ibadan 2022)

adverse effects of trafficking have implications on women's reproductive health. All the effects of trafficking as discussed in this text are violations of Women's reproductive rights such as the rights to life, right to health including reproductive health, right to reproductive autonomy, right to bodily integrity.

Based on scholarly research carried out on if human trafficking activities exist in South Africa Aranisola & Zarowsky made certain findings which revealed that the repugnant practices of human trafficking indeed exist and there are consequential violations of the human rights of victims with adverse effects on their reproductive health. Findings of their research are succinctly evaluated in their work, *Human trafficking and human rights violations in South Africa: Stakeholders' perceptions and the critical role of legislation*. According to them, both intra trafficking and cross border trafficking exist in South Africa. That there are trafficking syndicates operating within the Country and these syndicates include; Russian Mafia, Chinese Mafia, South African syndicates, Zimbabwean syndicates, Nigerian syndicates and syndicates from Czech. That there are many players in the line of trafficking who knowingly or unknowingly play roles in trafficking activities and these include; The traffickers, brothel owners, transporters who are involved in transferring or transporting victims to trafficking destinations, night club owners, massage parlours, Medical Doctors in the employ of traffickers who provide victims with basic health care services and end-users of the victims. Futhermore, that these traffickers lure victims into trafficking under the guise of assisting them secure mouth-watering jobs only for these victims to later discover that they were trafficked and this deception is made possible through the use of the social media(Facebook and the electronic media. Their research shows that human trafficking violates the victims' human rights and there are many instances of these violations ,the victims right to freedom of movement is infringed upon, right to bodily

integrity is impaired as many victims especially Women and female children are exploited and used for commercial sex thereby making them susceptible to contracting Sexually transmitted diseases including HIV/AIDS. Trafficked victims were also used to commit other crimes such as drug trafficking, armed robbery, arms smuggling and gang robbery etc. There were also reports of victims who experienced Gender-based violence and Xenophobic attacks. Trafficked Children are subjected to cheap labour inhumane working conditions by their captors. This is not all, the end-result of trafficking on the victims' health are a legion of health problems ranging from physical injuries, emotional shock, depression, Post-traumatic stress disorder and eventually psychiatric problems³⁰.

In the text, *International Perspectives and Nigerian Laws on Human Trafficking*, the Author Olaide Gbadamosi threw some light on trafficking and how it constitutes a human rights violation. According to Gbadamosi, presently, trafficking is the third largest and fastest developing criminal enterprise globally a pressing challenges relating to human rights. Trafficking in persons is both a criminal act and an uncondonable violation of universal human rights. Trafficked victims, often women are denied their human rights such as right to life, liberty, right to freedom from discrimination, right dignity, freedom from degrading and inhuman treatment, right to privacy and freedom from slavery in all forms. The crime of trafficking is an aberration of the principles of human rights as embedded in International human rights documents and therefor it is principal for human rights to take center-stage in the fight against trafficking in persons³¹.Gbadamosi states that trafficked victims are deceived , coerced or forced

³⁰ Joshua Aranisola, Christina Zarowsky, 'Human trafficking and human rights violations in South Africa: Stakeholders' perceptions and the Critical role of legislation' *African Human Rights Law Journal* (2014) (14) (509-525) 517-522.

³¹ Olaaide Gbadamosi, *International Perspectives and Nigerian Laws on Human Trafficking* (First edition All Nations Press Benson Idahosa University, Benin City 2006) 35-44

into labour or sexual exploitation. The aftermath of trafficking on the victims are physical, emotional and psychological. With the aid of a table, the Author presented an illustration of acts or abusive activities that victims go through, the specific rights that those acts infringe upon and the International human rights instruments that condemn those acts. The acts of abuse listed in the table include; physical torture(rape and assaulting in the form of beating), mental and psychological torture(threats of violence), Forced abortion and denial of access to contraceptives, denial of Women's right to reproduction and bodily autonomy, deprivation of food, malnourishment and lack of access to medical and health services, etc. According to the tabular illustrations, these acts constitute violations of victim's human rights including their rights to enjoy physical, sexual and psychological health as well as their right of freedom from physical and domestic violence and their right of freedom from forced prostitution and trafficking³².

³² Ibid

CHAPTER THREE

FORMS OF TRAFFICKING IN PERSONS, CAUSES OF TRAFFICKING IN PERSONS AND EFFECTS OF TRAFFICKING IN PERSONS ON WOMEN'S REPRODUCTIVE HEALTH.

3.1 FORMS OF TRAFFICKING IN PERSONS

The Palermo Protocol's definition of Trafficking in Persons focuses on all such actions that culminates in the exploitation of the victims. The Protocol went further to list exploitative activities such as; Prostitution or other forms of sexual exploitation, forced labour, slavery practices and organ removal as trafficking practices. These are the general forms or types of human trafficking, however there is no particular classifications of human trafficking.

According to Hassan (2015), section 50 of the old Trafficking In Persons(Prohibition) Law Administration And Enforcement Act, 2003 defines trafficking in persons to include forms such as involuntary servitude (domestic, sexual or reproductive) in forced or bonded labour or slavery- like conditions.¹ This Study shall discuss some major forms of trafficking in persons;

3.1.1 Sex Trafficking

Sex trafficking is the procuring, transportation, harbouring , receipt of Adults through coercion, force or deceit for the purpose of prostitution or commercial sex. Under these circumstances a crime of trafficking is said to have been committed and it is immaterial whether the victim's original consent was obtained, thus where the victim is continually detained through any means either physical force or psychological against the victim's will, trafficking is said to have

¹ Bashir Mashi Hassan, *Why is human trafficking a challenging issue in Nigeria* (M.A Thesis of the Faculty of Business, Environment and Society Coventry University 2015)

successfully taken place. Sex trafficking may also occur within the context of debt bondage such as when women and girls are forced to continually engage in commercial sex in order to enable these girls and women offset debts which were allegedly and illegally incurred in the course of acquiring or transporting them to their destination countries. These are debts purportedly accruing to their traffickers and the settlement of same is most often the ticket to their freedom². There are reports that sex trafficking is the most frequent form of human trafficking worldwide. It has also been declared as “the perfect Criminal business unlike drugs or guns, which can only be sold once to any particular party, the sexual services of trafficked victims can be sold again and again”. Sex trafficking can take dimensions such as forced prostitution, pornography and any other sexual practices³.

3.1.2 Forced Labour

The International Labour Organization has roughly accessed forced labour as the most prevailing form of human trafficking globally. Forced labour which is also known as involuntary servitude is an end-point of unscrupulous employers taking advantage of grey areas in law enforcement to exploit vulnerable workers. Some of the contributory factors to the incidence of forced labour include unemployment, poverty, crime, discrimination, corruption, and political conflict. Forced labour unlike other forms of trafficking does not involve criminal networks rather it involves individuals who subjugate victims to forced labour. The prevalent forms of forced labour are household work and factory jobs⁴.

² Andrew Usiesi Ojeibun *Combatting Human Trafficking In Nigeria, The Role Of Law* (LLB Thesis of the Faculty Of Law University Of Benin 2019)

³ Nina Mollema *Combatting Human Trafficking In South Africa: A Comparative Legal Study* (PhD Thesis of the University of South Africa 2013)

⁴ Florence Shu Acquaye, ‘ Human Trafficking: Trends in Africa’ *16 Gonzagas Journal of International Law* 1 [2012] (16) (1) 8

3.1.3 Debt Bondage

This form of trafficking is also known as bonded labour. It is a tactics often employed by traffickers or trafficking recruiters on their victims in order to keep them in servitude. In these cases, victims are lured to other destinations with promises of better living standards; job, educational or other benefits in consideration of a debt which he or she enters into voluntarily. However, on arrival at the destination, traffickers use this debt to their advantage to exploit their victims with the aid of force or coercion⁵.

3.1.4 Marriage Trafficking

Marriage trafficking could occur in the form of forced marriage or child marriage though the Palermo Protocol did not particularly spell this form of trafficking in its definition. However the inclusion of the term “ practices similar to slavery” is an indication that marriage trafficking or servitude is a form of exploitation within the meaning of human trafficking. The Beijing Declaration and Platform for Action cautions against the trafficking of Women and girls and strongly recommends that Governments should all necessary actions in eradicating all forms of violence against women and more specifically should engage appropriate measures to tackle all factors that make the trafficking of women possible for all exploitative purposes including forced marriages⁶. The practice of *bride kidnapping* for the purpose of forced marriage is also a linkage to human trafficking. This is a practice whereby women are kidnapped and exploited for marriage sake. This practice can take place both within a country and across borders. Women and girls could be trafficked whether they give their consent or not and forced into marriages .

⁵ Ibid at Pp 9-10

⁶ Interlinkages Between Trafficking in Persons and Marriage: Issue Paper of The United Nations Office On Drugs and Crime (English, Publishing and Library Section, United Nations Office, Vienna 2020) Pp 18-19

Sometimes these women may have been initially transported for the purpose of engaging them in forced or domestic labour but will end up being used as sex slaves or in forced and abusive marriages. In these kinds of marriages, the women and girls experience all manner of sexual and physical violence such as rape, sexual abuse which limit their reproductive rights such as their right to sexual self- determination, reproduction and bodily autonomy. A good number of these women face Reproductive violence such as making them carry unwanted pregnancies, denial of access to health care and family planning services⁷.

Kaye Quek (2018) has identified ‘Marriage Trafficking’, a recent form of trafficking in persons and in the book *Marriage Trafficking: Women in Forced Wedlock* elaborated on how marriage or certain kinds of marriage can be seen to constitute trafficking in person in certain situations. This form of human trafficking has been in existence but given no recognition or categorization. Global attention was previously focused on other more frequent forms of trafficking such as sex trafficking and forced labour.

3.1.5 Child Trafficking

This is a form of human trafficking that entails the acquisition or procuring of children through persuasion , force or deception in order to exploit them. Children are trafficked for the purpose of sex trade or prostitution, forced labour, forced marriage, or to be used as combatants. Young girls who are abducted alongside their male counterparts by combatant forces or rebel groups are often subjected to marrying male members of these rebel groups or having unprotected sex with them thereby exposing them to the risk of contracting sexually transmitted diseases including HIV/AIDS and unwanted pregnancies. Children who are trafficked to engage in commercial sex are equally exposed to these sexual and reproductive health issues and in addition are exposed to

⁷ Ibid at Pp 26 and 38

drug use and addiction, often malnourished and socially excommunicated. Children are also unlawfully used for domestic labour or help such as Cooks, gardeners, servants, guards or messengers⁸.

Findley(2018) noted that there are two issues that ought to be addressed when exploring the subject of trafficking in persons and for their organs, the first being the ‘obtaining of consent of the victim’ and the second which is ‘ payment for the organ’. Findley explained these two issues as follows;

1. That the Palermo Protocol addressed the issue of victims consent and described the consent as irrelevant and will become invalid where the same was obtained via threats, coercion or abuse of vulnerability. What matters in determining whether organ trafficking or any other form of trafficking has taken place is if these three elements are present; the act, the means and the purpose.
2. Secondly, the Protocol addressed the issue of payment by saying that even if the trafficked victims received payment for their organs, they were still termed as victims of human organ trafficking. Thus the purpose of exploitation still subsists.⁹

A thin line of distinction has been drawn between these two terminologies; *trafficking in persons for organ removal*, and, *trafficking of human organs*. This distinction itself is complex and an attempt at understanding it would stem from analysing issues such as consent, who are the actors involved in trafficking in persons for organ removal and the modus operandi of traffickers.

⁸ (n 2)

⁹ Ibid

3.2.1 Gender Vulnerability and Inequality- Trafficking in all its forms, be it for sex, forced labour or otherwise has been described as being highly gendered, thus gender is at the heart of all trafficking processes. This means that a large percentage of trafficked victims are Women and girls and this is made possible because of Women's vulnerability and gender inequality. Women's bodies are subject to trade and exploitation as a result of their vulnerability. The Susceptibility of the female gender is engineered by a number of influences. Firstly, the male and female genders are each culturally socialized in ways which depicts male prominence over femininity. This Assertion is noteworthy following the claim by Beauvoir (1949) who argues that gender characteristics are not the product of biological differences but rather learned social conditioning. In the human trafficking industry, sex-traffickers and consumers who are commonly males exercise male gendered traits of power and authority over Women . Another influence is that of gender inequality. The nexus of traditions, customs, and ideas that have been socially formed decides and controls how self-identities are shapened in society. It is theoretically possible to comprehend the many ways that various gendered groups and their ascribed identities interact to shape people's experiences of being in privileged and underprivileged positions, which exposes them to vulnerable positions of discrimination, oppression, and exploitation. In Nigeria, In Nigeria, cultural and traditional gender assigned roles, gender imbalances and practices like polygyny and child foster-care expands Women's vulnerability. Accordingly, it has been suggested that the issue of

human trafficking be tackled from a gender and rights angle as this will help eradicate discriminatory practices and assist Women in dealing with possible exploitation¹⁰.

The issue of Power dynamics is also germane to Women's vulnerability. In predominantly patriarchal societies, power cuts across subjects like gender identities, class, and cultural beliefs in affecting and moulding how vulnerable men and women will be. Power dynamics as a contributory factor to the vulnerability of young women to trafficking is at the heart of most feminist discuss. Feminists are of the view that women are relegated and subordinated in society because of power inequality between the Male and female gender. Power dynamics of male dominance boosts trafficking of women and this is manifest in factors such as low levels and lack of education among women and poverty. In patriarchal societies such as is common in African cultural settings, it is the norm for men to take dominion over women and for the male dictatorship to be extolled, there is therefore an established culture of silence for the women whereby their voicelessness equates to their being submissive. Hegemonic masculinity determines women's lives negatively, it gives women less autonomy concerning themselves and that of their children¹¹. The gender inequalities between men and women is further evidenced in economic opportunities. Discrimination and marginalisation of women and unequal access to economic and employment opportunities unlike their male counterparts are intertwined with trafficking. This trend is most common in many poor and economically disadvantaged Countries. A large percentage of Women are engaged in informal work like farming, petty trading and street hawking, monies realized from these trades are

¹⁰ Kemi Fisayo Oyebanji, *Human Trafficking Across A Border In Nigeria: Experiences Of Young Women Who Have Survived Trafficking* (M.A Mini-Thesis of the Department of Women's and Gender Studies of the University of Western Cape 2017)

¹¹ Ibid

insufficient as their contributions in taking care of their families. Thus Women engage whether voluntarily or involuntarily in trafficking as a way out of social and economic uncertainties. Because of the Patriarchal nature of African societies and male preference over female children, the boys are given preference over the girl children in the areas of education and schooling. The results being females who have low levels of education and are mostly school drop-outs and this limits their access to available economic opportunities¹². Even in destination Countries Power dynamics and male dominance over females still continues to be the norm. Male clients control the sexual performances of female victims by forcing them to use alcohol and drugs. These women do not have the power to insist on the use of condoms thus exposing their vulnerability to HIV/AIDS and other infectious diseases. Therefore in view of all that has been said, there are suggestions that the scourge of human trafficking be addressed from a gender and rights perspective since Women are the most affected¹³.

3.2.2 Push and Pull factors – According to Farr(2005), the Push and Pull factors have been used repeatedly to explain the occurrence of human trafficking. It is a common cause of trafficking in persons and is also known as the Push and Pull theories of migration. The Push and pull theories of migration as developed by Everett Lee is documented in his Paper, *A Theory of Migration*, published in 1966 and is regarded as his most essential input to migration research. Lee developed his theory of migration on Sociological ideas. By pinpointing the elements that determine how much people travel between source and destination countries within the same territorial region of the two countries in issue, he

¹² Ibid

¹³ Ibid

aims to formally establish a theory of migration. Lee separates the elements that affect both the migration process and the choice to relocate and classifies them into the following four groups; Factors impacting the location of origin, Factors impacting the location of destination, Unforeseen obstacles, and Individual concerns. Lee's contention is that each of these four groups has a distinct set of qualities that intervene to determine what will make people enter a location, retain them there, or pull them there. With large differences between the factors impacting the areas of source and the factors controlling the areas of destination, the commercial growth of both the source and destination regions differ substantial in this regard. It is probable that people will move once they have carefully weighed these two factors. The individual's perception of their origin is, according to researchers, typically more feasible and precise than their concept of the future, which is less vivid and less precise. Therefore any barriers standing in the way of migration must first be eliminated in order for migration to occur. Others factors to contemplate in the process of migration are the length of travel and mode of transit. While Lee mentions individual concerns or personal considerations as one of four factors that constitute both the elements that affect the migration process and the choice to relocate, Khalid & Urbanski (2021) posit that personal considerations or individual concerns is what influences most people's decision to migrate and this factor is more important than the real elements that define the source and destination. The interaction in between the location of source and the location of destination is affected by both push and pull factors. At the location of source, there are numerous push factors in play that encourage individuals to migrate out of their homeland. These factors range from a lack of educational possibilities, employment and business prospects, and so forth. At the

location of destination, there are also factors that intervene to attract migrants to remain there perpetually, these factors present at the destination together constitute the Pull factor. The pull factors include but not limited to; Employment opportunities and Job vacancies , access to quality education, freedom of religion and political participation¹⁴. It has been observed and rightly too, that both the push and pull factors give rise to the vulnerability of Women and girls to human trafficking. Some Push and Pull factors are hereby examined¹⁵;

3.2.3 Push factors - The Push factors include Poverty, religious ritual manipulation, Cultural and social factors, scarcity of information , Inadequate legal framework, Restrictive migration policies. These will now be discussed below;

1. Poverty – Nigeria, a Country with a population of more than 200 million people as at 2022 has been rated as one of the world's poorest nations despite its plentiful human and natural resources. The indications of poverty in Nigeria is evident in factors such as poor standards of living, devalued Naira, Government’s inability to provide basic necessities such as food, shelter, health care services, security and a general low level of economic opportunities. A large number of the country's population reside in rural areas that typically under-developed and have few educational and employment prospects. Thus even though children who are resident in these rural regions of Nigeria acquire some schooling at the secondary school level, they are usually not able to secure employment or become enrolled in higher educational institutions after finishing their studies. Most parents struggle to effectively care for and feed their

¹⁴ Mary Oluwabusayo Abiodun, *Factors That Contribute To The Trafficking Of Nigerian Women And Children* (Masters Thesis in International Relations of Faculty of Landscape and Society, LANDSAM Norwegian University of Life Sciences 2022)

¹⁵ Ibid

children in light of the current state of the economy. So in order to make ends meet, parents engage their children in different kinds of labour and this includes human trafficking. Rural urban migration is determined by economic and political stability. It is more probable that people who live in areas that are politically and economically hostile are likely to move to better climes. The business of trafficking in persons has thrived both within Nigeria and between Nigeria and other destination countries because of these poverty indices. Traffickers make use of poverty to lure their victims and take them outside the Country by claiming that those destination Countries are a bee-hive of economic opportunities.

- 2. Religious ritual manipulation-** One pattern of trafficking in human beings that goes unnoticed is religious ritual manipulation due to the fact it is not regarded as human trafficking. This form of human trafficking is unique to Northern **Nigeria**. It commonly passes for organised travel in the form of the hajj or Umra, two types of Islamic religious pilgrimages. Additionally, it hides itself under the guise of Almajiri or Peripatetic scholarship. This particular form of human trafficking is not recognised as human trafficking especially if carried out in the student's homeland and under parental watchful eye. It is additionally not regarded to be trafficking in persons where it occurs in a foreign nation. Due to their desire to embark on a religious pilgrimage to Saudi Arabia, children and young women are lured to migrate illegally and are subjected to sex slavery. In contrast to the general perception, sexual exploitation for financial gain happens not just in the southern region of Nigeria. It also happens in the North. The tool of religion is used by traffickers to ensure that

their victims adhere to their agreements and responsibilities. Confidentiality Oaths are often imposed and take place at traditional shrines between the recruited girls and women in front of voodoo priests in order to maintain secrecy. Traffickers use religion as an instrument to make sure that their victims fulfil their commitments and obligations. In order to guarantee secrecy, Confidentiality oaths are usually commanded on and required of the victims. These Oaths of secrecy are administered between the recruited girls and women in front of voodoo priests at traditional shrines. The probe into cases of Nigerians being trafficked to Europe has been significantly impeded by the usage of these oaths.

- 3. Cultural and Social factors-** A large percentage of women in Nigeria are considered to be culturally subservient. Nigerian women more vulnerable to being used as human trafficking victims because due to a variety of traditional practices and norms. These women are restricted to a repressive power structure in which masculine will has to constantly be upheld even if doing so will be detrimental to the female folks. One of these obnoxious cultural practices prevents women from inheriting property, even if they are the sole heirs. Despite the current upsurge in urbanisation, many of these outdated traditional and societal conventions continue to exist and can still have an impact on even highly educated women.
- 4. Inadequate legal framework** - Trafficking has increased lately. Due to law enforcement's unorganised strategies and a system of laws that primarily targets human trafficking for sexual exploitation to the exclusion of other forms of trafficking. The majority of law enforcement personnel are devoid of the equipment technical know-how, and gender peculiarities needed to efficiently fight criminality.

There are allegations that law enforcement organizations are unscrupulous. Trafficked victims frequently assert that Nigerian officials aid traffickers by giving them fake passports and expediting their passage at points of entry and exit as well as across borders. Law enforcement personnel are occasionally reluctant to look into violent crimes, especially those perpetrated against women and children who are unable to pay the costs of investigations or to give bribe to the police. This leads to the continued impunity of those who engage in rape of women and girls, carry on sexual and domestic violence against women, and as well as human traffickers in Nigeria as there are no punishments levelled against them. International human trafficking victims are frequently misclassified as illegal aliens and deported prior to comprehensive and conclusive investigations into their cases. Traffickers have a dismal track record of being prosecuted and sentenced and even when do, they are usually freed from prison before serving their jail time. According to research, a confluence of dishonest political office holders, corrupt government Organizations, and inadequate legislation protects the freedom of traffickers while worsening the situation of those who have been victims of trafficking. It is noteworthy that efforts have been made by some non-governmental and Women's rights Organizations on fighting the scourge of human trafficking by demanding the Government to ensure the prosecution of human traffickers.

- 5. Restrictive migration policies-** During the 1970's, it was easier for Nigerians to migrate out of the Country. This period in Nigeria's economy was the period of economic growth. For example Visas were easily granted to Nigerian businessmen and successful women especially from Edo State. But in recent times Nigerians who

wish to relocate to other Countries in search of greener pastures and away from poverty are often faced with strict migration policies. Traffickers take advantage of this quest for a better life by helping unsuspecting migrants to leave the country under the pretext that better standards of living await them at their destination Countries. On top of that, there is the increased possibility of illegal immigration caused by tighter border controls in more prosperous countries. This leads to a high demand for the purported skills of human traffickers. Therefore, the more barriers to legal migration there are, the more people will need and pay for the services of traffickers, and the more profitable the human trafficking industry will be.

6. Scarcity of information- Most victims of human trafficking are ignorant or unaware of the antics of traffickers and trafficking activities. The decision to relocate is fuelled by the innate desire to escape poverty and harsh economy. Vulnerable individuals often get recruited with a guarantee of enhanced opportunities for employment elsewhere. When it comes to job prospects, the standard enticement is a position with a higher salary than those available in their current place of residence. Unknown to victims, a great portion of them are going to be subjected to all forms of exploitation and captivity. Nigerian girls and young women trafficked outside Nigeria for prostitution did not envisage that they would be made to engage in such kind of work.

3.2.4 Pull factors - The pull factors operate in the reverse manner from the push factors. The pull factors include elements such as a growing demand for cheap or exploitative labour and the assurance of financial reward or better living conditions, while the push factors include elements like economic hardship, an unsafe environment, conflict, impoverishment, and political violence. Accordingly, the Pull factor is what makes

anything tempting to choose. The pull factors consist of components that attract people to the destination Countries. Some elements of the Pull factors are hereby discussed below;

- 1. Demand for low skilled labour-** Because of its global reach and wide ranging effects, human trafficking is dubbed "the underbelly of globalisation." As a result of globalisation, there is a substantial need for low-skilled labour across many sectors. These sectors are; Construction, domestic service, manufacturing, home medical care, sex work, and, service sector labour such as circuses, begging and camel racing, Agriculture and food .Both developed and disadvantaged nations are in demand for cheap labour. Employment prospects for trafficked labourers are often found in sectors where it is simpler to sustain extremely exploitative working conditions that offend labour laws and human rights, as well as in hard-to-monitor settings.
- 2. Profitability –** According to the year 2018 projections, the practise of trafficking in persons a form of modern-day slavery, is a thriving enterprise rendered practical by the fact that it is more uncomplicated to transport human beings across international borders than illegal chemicals or arms, which are seized upon discovery and cannot be transported.

The Causes or contributory factors of trafficking in persons as identified in Nigeria are the same prevalent causes also existing in South Africa¹⁶. In addition to the above named causes of human trafficking, a other pull factor is a lack of legal protection of trafficked victims¹⁷.

¹⁶ (n 3)

¹⁷ Human Trafficking In South Africa: Root Causes And Recommendations , Policy Paper Poverty series No. 14.5 (E) Paris,2007. Caroline BACQUET, Manilee BAGHERITARI, Helena DROBNA, Juliette RUBENSTEIN, Eunice SMITH, Saori TERADA (ed) ; Tsireledzani: Unerstanding The Dimensions Of Human Trafficking In Southern Africa(Research Report, March 2010)

3.3 Effects of Trafficking in Persons on Women's Reproductive Health

Human trafficking victims are experience activities that have adverse effects on their health, they are exposed to a wide variety of physical, sexual and psychological abuse. Other effects are; the substance abuse such as the coerced and forced use of hard drugs and alcohol as well as impeding their social well-being¹⁸.

Trafficking for the purpose of forced prostitution, just like other forms of forced labour is a global phenomenon that is seen as a serious human rights violation, and is noted to have significant negative impacts on the victims' physical and mental health including their sexual health and reproductive health. Trafficked victims who are forced into prostitution are subjected to non-consensual or coerced sex and lack the capacity to negotiate the use of condoms and this increases their chances of contracting Sexually transmitted diseases including HIV, they also develop gynaecological issues like vaginal discharge, pelvic infections, headaches, backaches, fatigue, as well as psychological disorders like depression and post-traumatic stress disorder. Persons who are trafficked for other purposes apart from prostitution are not exempted from sexual violence. Traffickers use sexual abuse as a tool to bully their victims. Another health consequence of trafficking in persons is that because trafficking is illegal, trafficked victims are denied freedom of movement, access to information and health and social services including sexual health services. Furthermore, trafficked persons are unwilling or unable to disclose or denounce any form of mistreatment to Authorities because they fear repercussions of their illegal or irregular migration status and this compounds their defencelessness. It has been discovered

¹⁸ *Trafficking in human beings and health implications* (Seminar on health and migration,9-11 June 2004) pg 2 https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/microsites/IDM/workshops/Health_and_Migration_09110604/related%20docs/background.pdf > accessed on 08 October 2023.

that Women and girls are the most victims of all forms of sexual violence including forced prostitution¹⁹. There are reports from female victims of sex trafficking of their male clients who were unhygienic such as having smelling mouths and this led to the victims contracting infectious diseases such as tuberculosis²⁰.

Another downside of trafficking in persons has been revealed through the relived experiences of some Women who were trafficked. Some of them reported that they were douching and working even while on their menstrual periods. Most of these women felt that douching was crucial to their personal cleanliness and health. A good percentage of these women used either utilized a feminine cleansing solution from a drugstore "syringed" with soda, or just washed with soap and water. Additionally, there have been reports of a small number of women using disinfectants like Dettol, a skin disinfectant made up of chloroxylenol and isopropyl alcohol. Even with quality soap and water, douching has the harmful potential to lower the vagina's usual quantities of lactobacillus. This has negative effects on lubrication, the epithelium, or lining of the vagina, and the typical vaginal flora, which act as a barrier against potential pathogens. There is some evidence that douching is likely to raise the incidence of pelvic inflammatory disease (PID), albeit this possibility of getting pelvic inflammatory disease may be explained by the higher prevalence of dangerous sexual behaviours among women who douched. It is disgusting to note that some of these women still engaged in vaginal sex during menstruation by inserting a sponge

¹⁹ *Sexual health, human rights and the law* (World Health Organization Press Publication 2015) Pg 43 < <https://www.who.int/publications/i/item/9789241564984> > accessed on 04 December 2022; Linus Akor, 'Trafficking of Women in Nigeria: Causes, Consequences And The Way Foward' *Corvinus Journal of Sociology and Social Policy* (2011), (2), (2), (89-110) 105-106; Mezie-Okoye, Charles Chukwura, ' Trafficking of Nigerian Girls and Women for Sexual Exploitation: A Violation of Women's Rights' *Research Journal of Humanities, Legal Studies & International Development (RJHLSID)* (2020), (4),(1) 182-184.

²⁰ (n 18)

for absorption. Vaginal sex during menstruation is connected to a high probability of contracting Sexually transmitted diseases²¹.

Yet another negative consequence of human trafficking is the fact of the high incidence of abortion and termination of pregnancies that happens from sex work. Unplanned pregnancies are an occurrence from rape, contraception failures during sex work and unsafe sex with their intimate partners or pimps. While a few women carried their pregnancies to term, the remaining group of women opted to terminate their pregnancies. Termination is often carried out illegally and by unqualified persons and in unsanitary environments without analgesia. Clandestine abortions is intensified by elements such as anti-abortion laws in destination countries, ignorance of abortion services, lack of free or affordable termination of pregnancy services. The health risk of unsafe abortions extends to not only the abortion itself but also the complications that arise post-abortion. Some of these complications include Sepsis, incomplete abortion, haemorrhage and intra-abdominal injury. Post-abortion complications are further strengthened by the fact that these women are not given enough time to rest and recover before they are asked to resume working. Illegal abortions are often arranged by the victim's employer or trafficker and is used by these women as a means of birth control²².

Another aspect of the health of trafficked victims that needs to be examined is the area of their mental health. Psychological intimidation and assault are characteristic features of violence against women and are the main strategies utilized by those who carry on the business of human trafficking. During the destination stage, these Women are controlled and held captive by the use

²¹ Zimmerman C., Yun, K., Shvab, I., Watts, C., Trappolin, L., Treppete, M., Bimbi, F., Adams, B., Jiraporn, S., Beci, L., Albrecht, M., Bindel, J., and Regan, L. (2003). The health risks and consequences of trafficking in women and adolescents. Findings from a European study. London: London School of Hygiene & Tropical Medicine (LSHTM) Pp 49-51.

²² Ibid

of a variety of psychological abuse thus making victims become dependent on their enslavers. The victims ultimately become reliant on their captors as a way to regaining a state of psychologic and physiologic calm and this is the number one aim of the traffickers ,when these women are pushed to a state where they can no longer differentiate between their individual social and personal identity from the one created via exploitation. Psychological abuse occurs in the forms of; Intimidation and threats , lies and deception, emotional manipulation, Unsafe, unpredictable and uncontrollable events.²³.

²³ Ibid

CHAPTER FOUR

LEGAL FRAMEWORK FOR TRAFFICKING IN PERSONS/ HUMAN TRAFFICKING IN NIGERIA AND SOUTH AFRICA

4.1 INTERNATIONAL LEGAL FRAMEWORK ON TRAFFICKING IN PERSONS.

There are a plethora of International documents that exist and may be used to tackle the issue of human trafficking. These documents directly or indirectly address trafficking in persons, some are humanitarian and human rights based, some others prohibit trafficking or slavery generally while another number of these Instruments make provisions for slavery or trafficking concerning sexual exploitation. Instruments that seeks to address socio-economic issues and rights are also important in the fight against human trafficking as they serve to reduce the proneness to human trafficking. This work will discuss those Universal treaties, International Conferences and Regional treaties, that is treaties that provide a framework for the African Continent have been ratified both by Nigeria and South Africa in this regard.

4.1.1 Universal Treaties

- (i) **Protocol to Prevent, Suppress And Punish Trafficking In Persons Especially Women and Children, Supplementing The United Nations Convention Against Transnational Organized Crime (2000)** – This protocol is an optional Protocol to the United Nations Convention Against Transnational Organized Crime which is mainly concerned with the trafficking in persons of Women and children. In its Preamble, it seeks to address trafficking in all its forms recognizing this gap in existing International documents. It has earlier been stated in this dissertation that in order to effectively combat trafficking in persons, it is

important to define it such that it should include all forms or aspects of human trafficking and that this is key to protecting trafficked victims via enforcing their human rights and simultaneously target human trafficking Perpetrators¹This Protocol (otherwise known as the Palermo Protocol) is the extant International Instrument that provides an well-rounded comprehensive definition to the term “ Trafficking in persons” as it has defined same to include almost all forms of exploitation that exist as human trafficking activities². The Palermo Protocol undertakes at integrated approach at solving the problem of human trafficking in a number of ways. Firstly by treating all such activities that are indicative of trafficking in persons as an offence and equally mandating member states to adopt all such measures legislative and otherwise that would ensure the following; Criminalise human trafficking in accordance with their individual domestic criminal laws thus providing a framework for States to follow, protection and assistance of trafficked victims among other things, shielding their privacies and identities by keeping legal proceeding confidential, establish systems both legal and administrative with measures to provide victims with necessary information on important Court and administrative proceedings. In furtherance of the Protocol’s objective of protecting trafficked victims, it has paid particular attention to the psychological, social and physical recovery of victims and to this end it has compelled states to contemplate setting up measures to ensure their recovery by providing services such as Counselling and information services

¹ See (n 3 of page 16 of this dissertation); Article 2

² Article 3 of Protocol To Prevent, Suppress And Punish Trafficking In Persons Especially Women And Children Supplementing The United Nations Convention Against Transnational Organized Crime. Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000. This optional Protocol is also known as the Palermo Protocol.

concerning their rights under law, housing, medical, psychological and material assistance, educational, employment and training opportunities. The protocol asks National Governments to carry out the provision of these services in conjunction with non-governmental organisations and other important organisations as well as other components of society. The Protocol also provides for member states to incorporate compensation of victims for damages suffered as a result of their being trafficked into their respective domestic laws³. Weak border control has been identified as one of the leading causes of inter-Country trafficking of persons therefore the Protocol calls on member States to adopt legislative or other measures to prevent the use of their commercial airlines for trafficking; these measures shall include making it the duty of both Commercial airlines and any other transport company or individual owner or operator of any means of transport to make certain that passengers possess requisite travel documents necessary for entry into the destination State and also provide Sanctions thereto where there are violations in accordance with its local laws. The Protocol notes that State parties should undertake all such measures geared at the prevention and detection of human trafficking in taking into account International commitments in relation to the free movement of people. Also as a border control tactics, States shall take actions that permit the denial of entry or revocation of visas of persons found to be involved in the commission of the offence of trafficking in accordance with its local laws⁴. Article 11(6) of the Palermo Protocol promotes cooperation among border control agencies by establishing and maintaining direct

³ Articles 5, 6(1),(2),(6).

⁴ Article 11

channels of communication. The general human trafficking preventive measures as provided by the Palermo Protocol include; States' establishment of policies and programmes to prevent trafficked victims especially Women and children from re-victimization, to engage in research information and mass-media campaigns and socio-economic initiatives efforts and shall be carried out in collaboration with non-governmental organisations and other relevant stakeholders. The Vulnerability of Women and Children due to poverty and unequal opportunities and underdevelopment is among the leading causes of human trafficking therefore the Protocol has a made a provision that encourages States to adopt or strengthen measures including legislative or otherwise including through bilateral or multilateral cooperation to alleviate those above listed factors that contribute to the vulnerability of Women and children to trafficking. These measures include educational, social or cultural measures to frustrate the demands that promote exploitation of women and children and consequently lead to their being trafficked⁵. The Palermo Protocol was ratified by Nigeria in 2001⁶.

- (ii) **Convention On The Elimination Of All Forms Of Discrimination Against Women (CEDAW) 1979** – Fayemi (2009) posit that the trafficking of Nigerian Women is enabled by the fact of gender discrimination. He notes that in Nigeria, women cannot effectively exercise their sexual and Reproductive rights because of sociocultural, economic and political factors. Male subordination of Women and unequal access to employment and educational opportunities further give rise

⁵ Article 9

⁶ < https://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=40#:~:text=Nigeria%20ratified%20the%20Protocol%20to,Women%20and%20Children%2C%20in%202001 >
Accessed 07 December 2023

to the incidence of human trafficking especially of Women. The Convention hereinafter called the CEDAW recognizes the principles of non-discrimination and equality of men and women as entrenched in United Nations International human rights documents such as the Universal Declaration Of Human Rights, the Charter of the United Nations, it notes however that despite the presence of these documents, large-scale discrimination against Women continues to exist. Furthermore , the CEDAW calls for the eradication of discrimination against Women in all facets of society and that the development of any society is hinged upon the full participation of both men and women on the basis of equal opportunities given to both sexes⁷. By its provisions, this Women's convention has tasked Government with the primary duty of eliminating discrimination in economic and social life on the basis of equality and more particularly women in rural areas⁸ In relation to the trafficking of Women, the CEDAW in Article 6 has mandated States to take all appropriate measures including legislative, to suppress all forms of Women trafficking, exploitation and prostitution of Women. Article 11 of the CEDAW enjoins National Governments to take all appropriate measures to eliminate discrimination against women in all spheres of labour and employment and to grant them equal opportunities as their male counterparts. By this provision, Governments are asked to ensure Women's enjoyment of certain human rights relating to employment and the workplace. These rights include; right to work, right to same employment opportunities and selection for

⁷ Annex 1 of United Nations Convention On The Elimination Of All Forms Of Discrimination Against Women (CEDAW). *The Convention on The Elimination of All Forms Of Discrimination Against Women And It's Optional Protocol: Handbook For Parliamentarians* (2003)

⁸ Articles 13 and 14

appointments on the basis of equality, right to all employment and professional benefits including free choice of profession and employment, promotion, job security, vocational trainings and re-trainings and apprenticeships, equal remuneration and work conditions, social security in cases of retirement, unemployment, sickness, old age and paid leave. Article 11(1(f) specifically provides for the right to right to health including reproductive health. Article 11(1(f) is reproduced hereunder;

“ State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular, ...The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction”.

The import of this subsection is that Governments enforce the right to health and by extension the reproductive health of women in employment and more eradicate all forms of discrimination against women especially as it relates to labour and productivity by creating platforms whereby women will have equal access to everything that pertains to the labour market and this will in turn reduce the incidences of women trafficking. The right to health is further reiterated in the CEDAW whereby Governments have been asked to eliminate all forms of discrimination against women in the field of health care and access to health care services including reproduction⁹. Article 16 prohibits child marriage and betrothal and goes further to provide that all necessary actions should be taken including

⁹ Articles 11 and 12

legislative to specify the minimum age of marriage and to make the official registration of marriages compulsory.

(iii) International Covenant On Civil And Political Rights (1967) – Nigeria ratified the ICCPR on the 29th of July, 1993. This Covenant did not specifically mention human trafficking, however it contains some provisions that could be interpreted and used to address the issue of trafficking in persons. Firstly, it provides for the Right to life. The Covenant also provides for the right to freedom from torture, cruel, inhuman or degrading treatment or punishment. Furthermore the Covenant prohibits all forms of slavery and servitude. Human trafficking which has been described as a form of slavery is also inhumane and degrading. Trafficked Victims are exposed to all manner of cruel and inhuman treatments Such as commercial sex and forced labour. The Covenant also recognizes the right to marry and found a family provided the two parties to a marriage are of marriageable age and no marriage shall be entered without the free and full consent of the parties. By this provision on marriage, State parties have been asked to protect this right. The ICCPR provision on marriage could be used to address the issue of trafficking in women and children (young girls) for forced marriage, even though its is not a common form of trafficking, nevertheless it exists¹⁰. The ICCPR is aimed at the protection and preservation of the dignity of the human person which it recognizes as human rights and is based on the

¹⁰ Articles 6(1), 7, 8(1), (2), 23.

principles stated in the Universal Declaration Of Human Rights and the Charter Of The United Nations.¹¹.

4.1.2 Conference Documents

(i) International Conference For Population And Development (1994) – The entire chapter four of the ICPD Programme of Action is dedicated to the discuss of gender equality, equity and women empowerment, recognizing the importance of the empowerment and autonomy of women and the improvement of their political, social, economic and health status. It argues that improving the status of women their decision making abilities in all areas of life more especially in sexuality and reproduction and that the effectiveness of population and development programmes is dependent on improving the status of women. The ICPD Programme Of Action admonishes National Governments to take full measures, preventive and rehabilitative and both of national and International to eliminate all forms of exploitation, abuse, harassment and violence against women, children and adolescents and that furthermore, they should criminalize degrading practices such as trafficking in women, children and adolescents and exploitation through prostitution and to ensure protection of the rights and safety of victims and those who are vulnerable to being exploited such as migrant women, women who are domestic helps and school girls. The POA also provides for protection of migrants from International trafficking especially for the purposes of prostitution. It is also provided that national governments of both origin and destination Countries should take-up efficient sanctions against perpetrators of undocumented migration, exploiters of undocumented migrants or traffickers of undocumented migrants especially those who carry out International traffic of women, youths and children. The POA just like the CEDAW calls for the elimination of discriminatory practices against the girl

¹¹ Preamble to the International Covenant On Civil And Political Rights.

child such as son preference in the area of education, nutrition and access to food and health care. It also basis its actions on the need to prevent infanticide, pre-natal selection, trafficking in girl children and the use of girls in prostitution and pornography¹².

(ii) Fourth World Conference On Women (1995) – The Fourth World Conference on Women held in Beijing from 4th - 15th September 1995 birthed the Beijing Declaration And Platform For Action (BDPA), a document which is similar to the ICPD Programme Of Action in the fact that it recognizes the inequalities that exist between men and women further worsened by poverty that affects the lives of women and children more particularly. The Beijing Declaration stresses the need for women advancement and empowerment as a means to addressing the issue of the gender inequality and poverty that exist globally and that women advancement and empowerment is fundamental to Sustainable development and peace. It builds on other human rights documents such as the UDHR and the CEDAW. The Beijing Declaration also recognizes that women’s rights are human rights and calls for the enforcement of the human rights of women and girls¹³.

4.1.2 Regional Treaties

(i) African Charter On Human And People’s Rights (ACHPR) (1981) - The AHPR in Article 1, commands parties to recognize the rights, duties and freedoms enshrined in the Charter and to adopt legislative or other measures to give effect to them. These rights include; right to life, right to equality before the law and protection by the law, right to the inherent dignity of the human person and freedom from exploitation, slavery, slave trade, torture, cruel or

¹² Paragraphs 4.9, 10.16, 10.18, 4.15, 4.23 of Programme Of Action adopted at the International conference on Population and Development, Cairo, 5-13 September 1994.

¹³ Paragraphs 5,6,7,8,14, 9,10,13,16,18 of Annex 1 of Beijing Declaration; Paragraph 118 of Beijing Platform For Action .Beijing Declaration And Platform For Action ,The Fourth World Conference On Women.

inhuman degradation treatment and punishment and the Prohibition of same, right to liberty and security of the person¹⁴. Futhermore, Article 18 of the ACHPR provides for Governments' general protection and more especially the physical health and moral of the family which is the natural and basic unit of society and the elimination of discrimination against women and the protection of the rights of women and children as laid down in International declarations and conventions.

Article 27 is also relevant. By virtue therein, the ACHPR condemns the following traffic related activities; the inducement, coercion or encouragement of a child to engage in any sexual activity, the use of children in prostitution or other sexual practices, the use of children in pornographic activities, performances and materials and urges States to take measures to protect the child from sexual abuse and exploitation and to prevent same.

4.1.3 National Legislations That Address Trafficking in persons in Nigeria

(i) The Constitution Of The Federal Republic Of Nigeria 1999, As Amended- Trafficking in persons violates some rights that are enshrined in the Constitution. As earlier stated, these rights are not provided by the Constitution, they are inherent rights which the Constitution guarantees. The relevant parts are Chapters two and four. Chapter two which contain the fundamental objectives and directive principles of state policies are not rights *per se* but merely contains the objectives of the Nigerian Government on some subjects while Chapter four embodies the fundamental rights of citizens and these are enforceable rights. The rights documented in Chapter four relevant to the issue of human trafficking are; right to life, right to human dignity and freedom from torture, inhuman or degrading treatment, slavery or servitude, forced or

¹⁴ Articles 1,3,4,5,6 of African Charter Of Human And People's Rights. Concluded at Nairobi on 27th June, 1981.

compulsory labour, right to personal liberty, right to equality regardless of gender, ethnicity, origin, religion or political party and freedom from discrimination. None of the exceptions attached to each of these rights as embedded in the Constitution justifies the offence of trafficking, that is to say, trafficking in persons is not provided as an exception to any of the sections where these rights are found. Section 46 of the CFRN provides the right to legal redress where any of the above mentioned rights have been breached or is likely to be breached¹⁵. Section 46 is reproduced for emphasis sake;

“ Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that state for redress”

Section 17(3) provides amongst other things that the State of Nigeria shall direct its policy towards ensuring that there are adequate medical and health facilities for all persons and that children, young persons and the aged are protected against any exploitation whatsoever and against moral and material neglect¹⁶.

(ii) Criminal code and Penal Code – Under both the Criminal code applicable to the Southern part of Nigeria and the Penal code applicable to Northern Nigeria, trafficking and trafficking related activities are prohibited and sanctioned. Specifically Sections 222A, 225A, 227, 365, 366 and 369 of the Criminal Code and Sections 275, 278, 279, 280 and 281 of the Penal Code are instructive in this regard. The Penal code’s provisions on trafficking of women and girls for immoral purposes or sexual exploitation are similar to that of the Criminal code¹⁷. Section 222A of the Criminal code prohibits the prostitution, seduction, unlawful carnal knowledge or

¹⁵ Sections 33, 34, 35, 42 and 46 of CFRN

¹⁶ Section 17(3),(d), (f) of CFRN

¹⁷ Agbonmeire Efe Wilson, *A Critical Examination Of The Legal Framework For Combating Trafficking In Children In Nigeria* (LLM Dissertation, Faculty of Law University of Benin 2017)

indecent assault of a girl under sixteen years of age, same is punishable with imprisonment for two years. Section 223 prohibits the offence of procuring a woman or girl who is under the age of eighteen years to either have unlawful carnal connection with a man within or outside Nigeria, to become a common prostitute within or outside Nigeria, same is punishable with two years imprisonment. Section 224 prohibits procuring a woman or girl through the use of threats or fraud or administering drugs in order to have carnal knowledge with a man either within or outside Nigeria and same is punishable with two years imprisonment. Section 225 prohibits abduction of an girl who is below the age of eighteen years and unmarried from the lawful custody and protection of her parents or against their will, or from the lawful custody of a person having charge or custody of her or against the person's will for the purpose of having unlawful carnal knowledge of her, same is punishable with two years imprisonment . Sections 225A and 225B prohibit and punish the trade in prostitution and keeping of brothels by any person whether male or female. Section 226 prohibits and punishes the offence of unlawfully detaining a girl or woman against her will in a brothel or other premises for the purpose of having unlawful carnal knowledge of her. Section 365 prohibits and punishes deprivation of liberty and unlawful detainment of any person against his or her will and same is punishable with two years imprisonment. Section 369 prohibits slave trade. It outlaws all such sales trading activities; the purchase, sale ,transfer or taking of any person for such person to be treated as a slave, to put or receive any person in servitude as a pledge or security for debt, whether incurred or contingent or whether being owed by the person or not. The punishment for slave dealing is fourteen years imprisonment. Section 371 prohibits the stealing, detaining, receiving or harbouring of a child

below the age of twelve years from the lawful custody of his/her parents through the use of fraud, force or enticement and same is punishable with imprisonment of fourteen years¹⁸.

(iii) Prevention And Combatting Of Trafficking In Persons Act, 2013 – This Act is the principal legislation on trafficking in persons. Its objectives are¹⁹;

- (a) To South Africa's obligations towards International agreements regarding trafficking in persons.
- (b) To prevent trafficking in persons and to protect and assist victims of trafficking .
- (c) To provide for the prosecution of persons who commit offences defined under the Act with appropriate penalties.
- (d) To provide services for trafficked victims.
- (e) To combat trafficking in persons in a coordinated manner.
- (f) To provide effective enforcement measures.
- (g) To provide a framework for the administration and implementation of the Act.

Section 5 defines debt bondage and prohibits engaging of a person by another person in conducts that results in the former being in debt bondage. Section 6 prohibits facilitating or prompting of trafficking in persons by keeping in possession, intentional destruction , confiscation, concealment or tampering with any actual or purported documents of identification, passport, or other travel documents of a trafficked victim by the Perpetrator. Section 8(1) amplifies Section 6 by making further provisions to explain the offence of facilitating or promoting trafficking in persons. This includes; intentionally leasing or sub-letting any building, part of a building or any establishment to be used for trafficking or allowing same to be used for trafficking, intentionally

¹⁸ Sections 222A, 223, 224, 225, 225A, 225B, 226, 365, 369 and 371 of Criminal Code Act

¹⁹ Section 3

advertising, publishing, printing, broadcasting, using the internet or information technology or distributing information that promotes and facilitates trafficking, financing, controlling or organizing trafficking activities. Electronic service providers have been commanded to take all steps to prevent the use of their services for information on trafficking. Air carriers are equally criminally culpable where they transport a person within or across the borders of South Africa if they knew that the person is a victim of trafficking and where they report same to the police, failure of which the Carrier is liable to pay the expenses incurred or reasonably expected to be incurred in the care, transportation, accommodation and deportation of a victim back to his or her own Country of origin or transit²⁰. Punishments for the offences created under Section 4(1) and (2) are specified under Section 13(a) and (b) of the Act which is a fine not exceeding R100 million or imprisonment including imprisonment for life or such imprisonment without the option of fine or both. Punishment for the offence created under Section 8 is provided under Section 13(e) which is fine or imprisonment not exceeding five years or both. A Foreigner who is a victim of trafficking is equally entitled to the Right to health as provided under the Constitution Of The Republic Of South Africa, 1996 which is available to Citizens of South Africa²¹.

(v) Children’s Act, 2005 – The Purpose of this Act is to promote and fulfil the rights of Children as contained in Section 28 of the South African Constitution noting that International human rights documents such as the Universal Declaration of Human Rights, Geneva Declaration On The Rights Of The Child, African Charter On The Rights And Welfare Of The Child have stated that Children need special care and assistance, the Children Act is therefore

²⁰ Sections 8(1),(2),(3), 9

²¹ Section 21

based on the principles contained in those documents²². A Child has been defined under Section 1 as a person below eighteen years of age. Chapter 18 of the Act is dedicated to the issue of trafficking of Children. The inclusion of Chapter 18 is to give effect to the UN Protocol to prevent trafficking in persons and to combat trafficking of children and therefore the UN Protocol to prevent trafficking in persons is in force in South Africa and its provisions are law, subject to the provisions of the Children's Act²³ Trafficking in children is prohibited under this Act. Section 284 of the Children's Act provides;

Exploitation as used in this Act has been defined under Section 1 of this Act as all forms of slavery or practices similar to slavery, including debt bondage or forced marriage, sexual exploitation, servitude, forced labour or services, child labour prohibited in terms of section 141 and the removal of body parts. The Act further prohibits trafficking of children by their parents, guardians or other persons who have parental responsibilities and rights towards a child. Certain behaviours or activities that enable trafficking of children have also been listed out and forbidden by the Act. These include; knowingly leasing out and sub-letting a building or any part or establishment for the purpose of harbouring a child victim of trafficking; Advertising , publishing, printing, distributing of information, use of Internet or other means of Information technology that points to trafficking. It places a duty on Internet Service providers operating in South Africa to report any site on its server that contains trafficking information to the South African Police Service²⁴.

²² Preamble to the Children's Act, 2005.

²³ Sections 281 and 282

²⁴ Sections 287, 285

The Children's Act recognizes the importance of International presence in the fight against trafficking in persons and the transnational nature of the crime, therefore, it made provision for International Collaboration. The South African President may enter into an agreement with a non-State party to the United Nations Protocol to prevent trafficking in persons in matters of trafficking. The President may equally enter into an agreement with a State Party to the United Nations Protocol to prevent trafficking in persons in order to augment the provisions of the Protocol and to aid the application of the principles of the United Nations Protocol to prevent trafficking in persons²⁵.

3.3 BRIEF ANALYSIS OF THE EFFECTIVENESS OF THE EXISTING LEGAL FRAMEWORKS FOR TRAFFICKING IN PERSONS IN NIGERIA AND SOUTH AFRICA.

4.2.1 NIGERIA

Prior to the enactment of the Trafficking in persons (Prohibition) Enforcement And Administration Act of 2003 now repealed by the Trafficking in persons (Prohibition) Enforcement And Administration Act, 2015, the main Criminal legislation in Nigeria; Criminal and Penal Codes did not sufficiently address the Crime of trafficking of women and children²⁶. The Criminal and Penal Codes were unable to adequately address the crime of trafficking particularly with respect to slavery and sexual exploitation because of different political administrations and the Federal character of the Country. Nigeria's federal

²⁵ Section 283(1)

²⁶ Andrew Ikhayere Imiefoh , A Critical Appraisal Of The International Legal Framework On Gender-based Violence Against Women (LLM Dissertation, Faculty Of Law University Of Benin 2016)

nature made it possible for each State of the federation to make laws on Criminal matters within its jurisdiction and thus while some states see the necessity in making its own criminal laws, other States do not. The Anti-trafficking trafficking Act of 2015 is an improvement on the subject of human trafficking however it has been faulted for some reasons. The Act has obligated the NAPTIP to provide facilities and shelters for trafficked victims but this seems to be to the benefit of children who trafficked and not adults. The Act in trying to be hard in Traffickers contains a double-jeopardy clause that persons arrested outside for trafficking Nigeria should be convicted outside Nigeria and when such persons are deported to Nigeria, they should be further sentenced as a way or rehabilitating them. The rehabilitation of the offender in a victim-centred approach. Furthermore, the TIPPLEA did not specifically include forced marriage which is a form of trafficking. It is implied that forced marriage has been subsumed into the other forms of trafficking contemplated by the Act²⁷.

The NAPTIP which was established by the TIPPEA, 2003, is the Agency dedicated to the fight against all forms of human degradation and exploitation through the harmonisation of the Country's crime prevention and law enforcement assets. In administering and enforcing the provisions of the TIPPEAA, the NAPTIP has recorded some achievements. Via creative posters, public enlightenment, radio and television commercials, seminars, and training sessions, the organisation has been able to bring the fight against human trafficking to the community level in a number of States and Local Government areas within the nation. The Agency, through its legal and prosecution arms has constituted an Investigation Task Force comprising of representatives of the Nigerian Police, Immigration Service, National

²⁷ Mandisa Sibusiso Mcanyana , *The Legal Framework Regulating The Protection And Assistance Of Victims Of Human Trafficking: A South African Perspective* (LMM Mini-dissertation, University of Pretoria 2016)

Intelligence Agency and the Judiciary The task force has a total of 69 members of which 40 are new members²⁸.

The Investigation unit of the Agency has been able to secure some prosecutions and convictions. One of such cases is that of Sarah Okoma, a trafficker who was tried in Benin and sentenced to three years imprisonment in November, 2004. As at June, 2004 the NAPTIP received thirty-two cases of women who were trafficked from the headquarters of the Nigerian Immigration Service while forty-one other cases were received from other sources, out of which eight were arraigned before Courts in Benin, Uromi, Auchi, Kano, Ilaro and Ibadan. The Agency in co-operation with other security agencies has effectively apprehended traffickers along with their victims both inside Nigeria and beyond the Sahara desert²⁹.

The NAPTIP in partnership with the poverty alleviation agencies of the Federal Government such as the National Directorate of Employment, National Program For The Eradication Of Poverty to provide rehabilitated female victims of trafficking with access to funds for business and this is because the NAPTIP itself does not by itself provide micro credit schemes. Thee NAPTIP is also in partnership with the anti-trafficking units of the Immigration Service and local and International based non-Governmental organisations rehabilitate and reintegrate victims of human trafficking. NAPTIO has also been engaged in partnership and alliance with many nations in the West African sub-region and around the

²⁸ Linus Akor, ' Trafficking Of Women In Nigeria: Causes, Consequences And The Way Foward' *Corvinus Journal Of Sociology And Social Policy* (2011) (2) (2)

²⁹ Ibid

globe. The Agency signed a Memorandum of Understanding with England and Northern Ireland and a Memorandum of Agreement with the Italian Government³⁰.

Akor(2011) noted that in spite of NAPTIP's efforts to eradicate trafficking of Nigerian women, the illegal enterprise is still flourishing because of the other active players and small business that depend on and service it such as the forgers, fake lawyers who set up contacts between the traffickers and their victims, fake evangelists who pray for these girls and traditional priests who carry out undertakings for those girls. Also, the corrupt practices of officers of the Customs and Immigration services and the embassy officials who speed up the issuance of visas have encouraged human trafficking. These officials collect bribes in order for them to keep silent when young women who have no means of livelihood are taken out of the Country.

4.2.2 SOUTH AFRICA

With the enactment of the Prevention And Combatting Of Trafficking In Persons Act in 2013 by the South African legislature, it was intended that the newly passed law will help criminalize trafficking in persons, bolster law enforcement's ability to fight crime and discourage both current and future offenders from taking part in the illegal trade. Regrettably, both the enactment and implementation of the Act have not accomplished much solving the problem of trafficking. Relatively speaking, very few arrests have been made since the enactment of this law and even so, the numbers of prosecution and conviction are negligible when compared to the numbers of recorded cases. It has been argued that the question facing the South African Government is not that of the effectiveness of the anti-trafficking legislation but rather adopting effective strategies

³⁰ Ibid

to combatting the crime. The current anti-trafficking strategies alternate between strict immigration policies and an all-encompassing anti-trafficking law. And that these strategies have given traffickers motivations to reorganize their plans and to consider other exploitative presented by the current difficulties in the political, socioeconomic and cultural backdrop of the nation in order to grow their illegal commercial activities. Thus the question of why human trafficking has persisted in South Africa in the presence of anti-trafficking legislation is pinned against a consideration of these factors³¹.

The Palermo Protocol has been appraised as the first Universal treaty to provide a comprehensive and internationally accepted definition of trafficking and in addition is the first instrument to acknowledge poverty as a major cause of trafficking and also stressed the need for State parties to adopt measures to address trafficking. The Palermo Protocol equally sought to approach the menace of trafficking both from criminal law and human rights perspectives. Prior to the enactment of the Prevention And Combatting Of Trafficking In Persons Act of 2013, Common and Statutory laws were used to prosecute human trafficking crimes, the most prominent being the Sexual Offences And Related Matters Act 32 of 2007 and the Children's Act 38 of 2005. There were lacunas in these laws. The lack of definition of a couple of those offences created by these laws made it difficult to prosecute certain of these offences and specific punishments were not stipulated. Even though, the Bill of Rights contained in the South African Constitution entrenches certain human rights which human trafficking infringes upon, Section 36 of the same Constitution restricts the enforcement of these rights. Section 36 provides that violations should "reasonable and justifiable in an open and democratic society based on

³¹ Paul Oluwatosin Bello, Adewale. A. Olutola, 'Effective Response To Human Trafficking In South Africa: Law As A Toothless Bulldog'. <https://us.sagepub.com/en-us/nam/open-access-at-sage>> accessed on 01 December 2023

human dignity, equality and freedom, and taking into account all relevant factors”. There is no degree that can be used to decide reasonability and necessity³². Thus the emergence of the Prevention And Combatting of Trafficking In Persons Act, 2013 was among other reasons to provide an all rounded definition of trafficking to include both some ingredients present in the Palermo protocol and those applicable to the local circumstances. The Act also provides a Framework for the anti-trafficking Criminal Justice response in South Africa. Human trafficking which is still a worldwide problem is still prevalent despite anti-trafficking legislations present in many Countries and the major culprit is the weakness or ineffectiveness of existing counter-trafficking measures in different Countries and this includes weak law enforcement abilities³³.

Bello & Olutola (2022) describe human trafficking as a an issue that transcends being a cross-border crime or that of migration but rather a complicated phenomenon that arises from a country’s settings or environment and therefore it is a complex socio-economic phenomenon. This is one of the reasons why women and children who are the most economically vulnerable set of people are often trafficked. Despite the fact that socio-criminological research has beamed its spotlight, however this reality has not been given much importance. Legal approaches to combatting trafficking have failed to address the socioeconomic peculiarities that characterize this crime. South Africa has adopted and enacted some provisions of the Palermo Protocol but the objective has majorly been in criminalizing acts of trafficking and not really on the assistance and protection of victims. Overtime, the Government has been less active in their duty of protecting and assisting trafficked victims thereby leaving this duty to non-governmental organisations. The Anti-trafficking legislation in South Africa has been described as being

³² Ibid

³³ Ibid

‘explicit and comprehensive and yet not adequate enough to address the various facets of the crime’. This inadequacy is influenced by the complexity of trafficking and its interactions with a variety of factors such as socioeconomic and cultural factors, dynamic (demand and supply factors)³⁴.

3.4 CHALLENGES ECOUNTERED WITH COMBATTING TRAFFICKING IN PERSONS.

These are some of the factors mitigating against Combatting trafficking in persons in Nigeria³⁵;

1. Weak law enforcement- In comparison to other countries, for example South Africa, Nigeria has more laws which are less enforced.
2. Ineffectuality of legal sanctions- Criminal Sanctions are often weak and this measure is not enough to prevent the crime of trafficking or deter people from committing it.
3. Inability of law enforcement agencies in Nigeria to work with International agencies in attacking trafficking from the root. They focus on intercepting and prosecuting offenders who are not often caught.
4. Unreliable information on trafficking activities in Nigeria- There are no reliable statistics on the numbers of victims who are trafficked and this hampers monitoring and controlling measures.

³⁴ Ibid

³⁵ Andrew Usiesi Ojebun, *Combatting human trafficking in Nigeria, The role of law* (LLB Project of the Faculty of Law University of Benin 2019)

5. The absence of a strong force at the community level to combat trafficking in persons.
6. The low level of morality in the society- Parents have not been living up to their duties in instilling morality in the upbringing of their children.

In the South African context, some challenges have been recorded based on the results of some findings³⁶;

1. An understanding of what human trafficking is and low level of awareness of the crime – Human trafficking has been confused with other terms such as prostitution, human smuggling and illegal migration. Criminal justice officials and other relevant stakeholders have not been able to draw the lines of distinction between human trafficking itself and other related terms and this is one of the reasons for the inefficient responses to the issue of trafficking. Thus there is need for policy makers and all other key players to have a precise understanding of what trafficking is and legal provisions on it. There is therefore also a need for the Government to make available in large quantities, the Prevention and Combatting of trafficking in persons Act, 2013 and distribute same to several parts of the Country particularly at entry points, Courts, Police stations, restaurants, schools, hotels to create sufficient awareness and understanding of the crime.
2. Lack of/inadequate raining and re-training of anti-trafficking officials and other players – Another contributing factor for inefficient criminal Justice response to trafficking is inconsistent training of law enforcement officials. Even when trainings are held regularly or periodically for the relevant persons, there are still some underlining factors

³⁶ (n 48)

that make those training of no consequence. One is, the fact that since those trainings are organized in conjunction with NGO's, these initiatives are poorly funded. There is also a lack of motivation from these officials because there are no incentives or Governmental protection for these officers who may be attacked by traffickers. Other reasons include; stress from the daily workload in law enforcement institutions and the absence of a specialised law agency to enforce the provisions of the anti-trafficking Act. A link has been created between law enforcement capacity and poor training as a cause of the ineffectiveness of anti-trafficking legislation. That the former makes latter ineffective.

3. Government's commitment to the fight against trafficking – The Government is not committed to addressing the root causes of trafficking such a poverty, unemployment, gender inequality, illegal migrations into the Country, corruption, porous borders and poor service delivery. The Government is constrained to act in the presence of corrupt Government Institutions misplaced priorities in governance. Service delivery is challenged in the sense that the available jobs are given out to non-South Africans, therefore leaves the citizens largely unemployed. If the Government can commit to addressing the root causes of trafficking in persons, this will in no small measure help in reducing the rate of the crime itself.
4. Weak implementation of anti-trafficking legislations and non-consideration of intervening factors – An effective implementation of anti-trafficking legislations cannot succeed without due consideration of intervening factors that lead to trafficking. These factors are the socioeconomic and cultural context in which the crime occurs. The socioeconomic problems encouraging trafficking in persons in South Africa include the following; poverty, unemployment, high level illiteracy, cultural practices that involves the abduction of young girls for the purpose of forced marriage. Until these societal and

cultural practices are addressed, enforcement of anti-trafficking legislations will be difficult. When people are arrested, prosecuted and convicted for committing crimes, these criminal Justice processes can only serve as a deterrence to members of the society, it will not stop the socioeconomic causes of trafficking as these factors create the vulnerability of certain classes of people in the society.

CHAPTER FIVE

CONCLUSION

1.1 SUMMARY OF FINDINGS

This Research has analysed literature comprising of books, journals, Newspaper reports, laws etc relating to Trafficking in persons particularly of women and children all pointing out to the fact that trafficking in persons / human trafficking exists both as a crime and human right violation against women and girls as this gender are the most impacted and most vulnerable.

The definition of trafficking in persons and trafficking of children as provided by the United Nations Protocol to prevent and suppress and punish trafficking in persons , especially women and children to the UN Convention against transnational organized crime also known as the Palermo protocol was adopted in this study. From the definition provided, it can be seen that some key elements are often present in acts of trafficking.

- 1) It involves the recruitment, harbouring and movement of persons.
- 2) It is often engineered by the use of threats, force or other forms of coercion, of abduction, fraud, abuse of power, position of vulnerability and exchange of benefits or payments
- 3) Trafficking of persons is mainly done for exploitation of the victims. The forms of exploitation include sexual exploitation, force labour, servitude or practices similar to slavery, removal of organs. The study adopts the above definition because same is broad enough to include all or the major forms of human trafficking that exist and is the internationally accepted definition.

- 4) The Palermo Protocol in Article 3(b) provides that consent of victims having been obtained is irrelevant once the purpose for trafficking is for exploitation and the means of deception, coercion, force or other unlawful measures have been used.

This study has also found out that trafficking in persons violates specific human rights that relate to reproduction. They include; right to health, right to life, right to liberty, right to freedom from discrimination, right to freedom from torture, downgrading or inhumane treatment and others. This study finds that these human rights are guaranteed in a host of International human rights documents, regional human rights documents(the African region) and the respective national laws of each Country. That Nigeria and South Africa each has a legal framework that address trafficking in persons which are both human rights based and criminal. The criminal legislations in each of the two countries prohibit and punish the offence of trafficking in persons in any form and equally punishes traffickers. The legal frameworks also provides for the rehabilitation and reintegration of victims as well as compensation of victims. The health including Reproductive health of women who are trafficked are negatively affected. The effects range from physical to psychological. The Study finds out that in spite of the existing legal frameworks, women and girls are still being trafficked in and out of both Countries and this is based on how effective the anti-trafficking legislations are. It was found that there are challenges mitigating against the effectiveness of these laws and the general fight against trafficking. A major discovery from findings is that in both Countries, there are socioeconomic and cultural factors that contribute to why the business trafficking is still thriving in the presence of anti-trafficking laws. These factors include unemployment, poverty, gender inequality and vulnerability etc and that until these challenges are surmounted, the fight against trafficking is almost impossible. Thus Criminal trafficking legislations are not enough .

1.2 RECOMMENDATIONS

Human rights violations are both root causes and consequences of trafficking in persons, therefore it is pertinent that any steps taken to prevent and combat trafficking must be centred around human rights protection. The Scourge of human trafficking should be treated both as a crime and an aberration of universal human rights embedded in International human rights documents³⁷. It has also been suggested that trafficking in persons especially of women be approached from a gender and rights perspective because women are the most trafficked³⁸. The following suggestions are useful in the fight against trafficking in persons;

(Abiodun et al) made the following recommendations³⁹ ;

1. That the causes of trafficking in persons in Nigeria such as poverty, discrimination against women, limited access to educational opportunities, unemployment and child labour and fostering should be addressed both by the Federal and State Governments. The problem of unemployment can be solved when the Government creates an enabling environment for entrepreneurship development.
2. That the multiple security agencies in Nigeria (The Police, Immigrations, Customs service) should be fully vested with anti-trafficking duties.

³⁷ Chukwura C. , Okoye M. , ‘ Trafficking of Nigerian Girls and Women for sexual exploitation: A violation of human rights’ *Resesarch Of Humanities, Legal Studies And International Development* (2020) (4) (1) ; Olaide Gbadamosi, *International Perspectives And Nigerian Laws On Human Trafficking* (1st edition All Nations Press Benson Idahosa University Benin City 2006)

³⁸ Kemi Fisayo Oyebanji, *Human Trafficking Across a border in Nigeria: Experiences of young Women who have survived trafficking* (M.A Mini-Thesis Department Of Women And Gender Studies University Of The Western Cape 2017)

³⁹ Temitope Francis Abiodun, Marcus Temitayo Akinlade, Olanrewaju Abdulwasii Oladejo, ‘ The State and challenges of human trafficking in Nigeria: Implications for National peace and security’ *Journal of Public Administration And Governance* (2021) (11) (2)

3. Anti-trafficking legislations should be strict and severe on offenders in order to serve as a deterrence against committing the crime.

In response to the problem of trafficking in persons in South Africa, Bello & Olutola (2022) made the following suggestions;

1. Public awareness and enlightenment about the crime of human trafficking as distinguished from other related crimes such as prostitution, illegal migration and smuggling. It is important for the Government to make and distribute in large copies, the Prevention and Combatting of trafficking in persons Act and to ensure same in accessible at every exit and entry points in the Country as well as public places such as police stations, schools, hotels and restaurants and this would serve as enlightenment of the crime. Public awareness of the crime is necessary because law enforcement and all relevant stakeholders though aware that trafficking exists, lack a proper understanding and knowledge of the scope of the crime hence the ineffective response to it.
2. Since human trafficking is influenced by socioeconomic and cultural factors such as illiteracy, unemployment, poverty and gender based violence, there is need for the Government to address these factors and as such an effective response to tackling human trafficking goes beyond legal mechanisms.
3. There is the need to establish an anti-trafficking agency solely dedicated to enforcing anti-trafficking legislations in the Country. This is important in order not to overburdened the existing security and law enforcement agencies who are already overwhelmed with workload.
4. The need for training and retraining of security and law enforcement officers as this will eradicate corruption among law enforcement officials.

5. An effective response to human trafficking requires a harmonious approach which should be directed at addressing the root causes of the crime. To this end, it is essential to put out a set of concepts that could guide policy decisions in improving South Africa's Criminal justice system approach to human trafficking.

1.3 CONTRIBUTIONS TO KNOWLEDGE

That trafficking in persons is not just a crime but a violation of Women's reproductive rights. That Women's rights are human rights including their reproductive rights. That Women's human rights are entrenched in a number of human rights documents, universal, regional and national. That trafficking in persons violates several human rights some of which are; right to life, right to health, right to dignity of human person, right to personal liberty, right to freedom from discrimination, right to freedom from torture, inhuman and degrading treatment. That the issue of trafficking of women must be addressed from a human rights perspective, it must be treated not just as a crime through an effective criminal justice response but must be addressed upon a consideration of socioeconomic and cultural factors. At the heart of these factors are gender inequality and vulnerability and violence against women. It is these factors that make women and girls vulnerable to being trafficked and thus eliminating these factors which are the causes of trafficking is germane to eradicating the crime itself.

1.4 AREAS FOR FURTHER STUDIES

Existing literature linking trafficking in persons to women's reproductive rights are scarce. Human trafficking particularly of women should be considered a reproductive health

issue and as such there needs to be further research in the area of reproductive health and rights/Women rights as to the extent of how trafficking of women impedes the enjoyment of their reproductive rights. There is also scarce literature showcasing the effect of trafficking on Women's reproductive health particularly as it concerns women who are trafficked for the purpose of organ removal, marriage trafficking or forced marriage and forced labour. Existing literature on trafficking of women do not cover all the forms of trafficking in persons, the emphasis is on trafficking for the purposes of commercial sex or prostitution. Further studies needs to be carried out in emerging areas of law such as the use of the internet for trafficking activities. In modern times, the internet has been a major influencer of development and as such has also been used by traffickers to perpetuate their evil. The extant anti-trafficking laws in both Countries have not addressed the use of the internet for trafficking activities.

1.5 CONCLUSION

The concept of reproductive and sexual health was explained through the definitions provided by the Program Action of the International Conference for Population and Development (ICPD) and the Beijing Declaration and Platform for Action. Reproductive health similarly is a state of complete physical, mental and social well-being, the absence of disease or infirmity in all matters concerning the systems and functioning of reproduction. According to Erhun (2015), Reproductive health is a basic aspect of woman's well-being and same is important for the enjoyment of human rights and full human potentials.

Reproductive rights was also examined from the perspective of paragraphs 7.3 of the ICPD Program of Action and paragraph 95 of the Beijing Declaration and Platform for

Action as rights that embrace certain human rights already contained in National laws, international human rights documents and other consensus documents. Reproductive rights includes the right to the highest attainable standard of reproductive health, right to reproductive choice, free from discrimination and violence.

The concept of human rights was also examined as rights inalienable to every human free from discrimination of any sort. According to Iloka and Okongwu (2022) the Beijing Declaration And Platform For Action recognizes that the human rights of women include their right to have control over and decide freely and responsibly in matters concerning their sexual and reproductive health free from coercion, discrimination and violence.

Numerous international human right documents such as the CEDAW, ICCPR, ICESCR etc have acknowledged that trafficking of women and girls is a violation of their human rights such as the rights to liberty and autonomy, right to freedom of movement, right to bodily integrity, right to freedom from torture, cruel or inhumane treatment, right to freedom from discrimination and is also an act of violence against women.

Historically, trafficking of women is not a recent occurrence, however, presently, it is a global crime that ranks only after commercial crimes and drug trafficking. This study discussed a few of the theories that attempt to explain the occurrence of women trafficking in the society. The three theories discussed herein are the Feminist schools of thought, western feminism and African feminism and conflict theory. A major feature of these theories is that male sexual dominance over women of gender inequality and discrimination against women are the root causes of trafficking of women and that these are some of the common challenges faced by African women. Fayemi (2009), Ogundipe-Leslie identified and discussed six situations that African women must encounter. Firstly is external oppression, secondly is her cultural heritage such as

her traditional beliefs like female genital mutilation, thirdly is her poverty or backwardness, fourthly is men's superiority, fifth is her race and complexion, and sixth her own self-perception.

The conflict theory of Marxian ideology: This theory postulates that, society consist of groups that are constantly at longer heads with one another, that the more powerful group overreach themselves by abusing their power and dominance to take advantage of the less powerful group. In this case, the traffickers are the more powerful group while the victims are the less powerful group.

Western feminism theory is of the opinion that gender hierarchies should be removed from all societies while the goal of African feminism is to fight against the oppression of African women and male dominance.

Ademola (2009) recommends that Africa ethno-feminism can be employed as a valuable tool to addressing the problem of prostitution and female trafficking in modern day Africa various literature were reviewed on the subject of trafficking in persons. Those points are deduced from these literatures;

- 1) That Reproductive health spans a broad scope of health services including but not limited to preventive and treatment of STDs including HIV/Aids and other illness of the reproductive system and that the spread of HIV/Aids and other STDs is enisled through sex trafficking.
- 2) That human trafficking violates the human rights of victims that are entrenched in human rights documents and national laws.
- 3) That the effects of trafficking on the victim's reproductive health are physical and psychological.

- 4) That the possibility of women being trafficked is caused by their vulnerabilities; gender inequality and discrimination in their economic and social lives, the failure of the Nigerian government to protect human rights and unequal job and employment opportunities.
- 5) That the existing forms of trafficking include; sex-slavery, organ harvesting, forced labour, forced marriages and child trafficking.
- 6) That traffickers employ the use of force, coercion, deception (through the use of social and electronic media to recruit and transport victims.
- 7) That the network of people involved in the crime of trafficking include; the traffickers, brothel owners, transporters, night club owners, massage parlours and medical doctors.
- 8) That sometimes victims are also used to commit other crimes such as drug trafficking, armed robbery and arms smuggling.

This study identified and discussed the major forms of trafficking to include; sex trafficking, forced labour, debt bondage, marriage trafficking, child trafficking and trafficking for the purpose of organ removal. Some causes of trafficking in persons are; Gender vulnerability and inequality, push and pull factors of migration that affects the movement of people from the location of origin to the location of destination. The push factors are a lack of educational possibilities, employment and business prospects, poverty, social and cultural factors. Pull factors include: Demand for labour profitability of the trafficking business, better educational and job opportunities.

This study pin-pointed the effects of human trafficking on women reproductive health. Trafficked women are exposed to reproductive health issues such as exposure to HIV/AIDS and other sexually transmitted diseases, gynaecological problems such as pelvic infections and vaginal discharges, recurrent headaches, backaches, psychological disorders like depression,

suicidal thoughts, post-traumatic stress disorder. Victims are also denied freedom of movement and lack access to information on health care services. Trafficked women also experience unwanted pregnancies resulting from rape, unprotected sex and contraceptive failure or lack of contraceptives. This results into clandestine and illegal abortions often carried out by unqualified medical personnel in unsanitary environments. The health risks of unsafe abortions extends to post-abortion complications such as sepsis, incomplete abortion, haemorrhage and intra-abdominal injuries. Victims of human trafficking whose organs are removed often die from post-surgery complications and lack of medical care because they cannot afford the required medical services to enable them properly recover.

In Nigeria and South Africa, there are laws that have been enacted adopted to address the issue of trafficking in persons. The legal framework in both countries consist of international framework for trafficking in persons such as the Palermo Protocol, CEDAW, CCPR, ICESCR, Convention on the Rights of the Child (CRC), conference documents though not binding such as the ICPD and BDPFA exist to provide a framework for state parties to adopt in enacting their National laws. The Constitution of the Federal Republic of Nigeria, 1999 as amended as well as the Constitution of the Republic of South Africa, 1996 contained basis or fundamental rights of it's respective citizens that must be respected and fulfilled.

A focal point of all the International human rights documents examined in this study is the goal of women empowerment and the eradication of gender inequality and discrimination and violence against women as a strong weapon in the fight against trafficking of women and girls.

These documents also call for individual governments of state parties to take all measures legislative or otherwise in their fight against trafficking and to protect and assist victims of trafficking with services needed for their recuperation and reintegration into the society. They

also call for the criminalization of trafficking in persons and to this end, both countries – Nigeria and South Africa have enacted their respective criminal laws that prohibit and punish human trafficking generally of women and girls and all such activities that enable and encourage trafficking. The criminal laws in Nigeria include the Criminal and Penal Codes, Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015, the Child Right Act and Labour Act. The Criminal legislations that prohibits and punish trafficking of persons in South Africa include; the criminal law (sexual offences and related matters) Amendment Act 32 of 2007, Prevention and Combating of Trafficking in Persons Act, 2013.

Notwithstanding the existence of these laws, trafficking in persons continues to be a problem and to this end, the study has identified some general challenges which have been encountered with in the fight against trafficking . In Nigeria, some of the challenges include; weak law enforcement, weak criminal sanctions, unreliable statistics on trafficking activities, law enforcement’s inability to work with International anti trafficking agencies, and low levels of morality in society.

In South Africa, some of the challenges include lack of awareness on the part of the citizenry and government officials and a proper understanding of trafficking activities as disguised from illegal migration and smuggling, inadequate training and retraining of relevant stakeholders, Government unseriousness and lack of commitment in the fight against trafficking and weak implementation of anti-trafficking laws.

The study has recommended that any responses towards eradicating human trafficking should be human rights based and also from a gendered perspective because women and girls are more trafficked than men. Moreover women are more economically and socially disadvantaged than their male counterparts and thus more vulnerable to being trafficked. There are suggestions that

any meaningful fight against trafficking must be focused on eliminating the root causes of trafficking, same have been discussed above.

Furthermore, the existing legal frameworks in both Countries have to be strengthened particularly in the area of Criminal punishments for offenders. Anti-trafficking legislations have to be amended to include all forms of trafficking. Beyond this, Policy making and executive decisions as it concerns trafficking in persons have to be made after due considerations of the socioeconomic factors present in both societies.

Finally, trafficking in persons has to be treated as a reproductive health issue and more research has to be done in the area of reproductive health and rights particularly on the effects of trafficking on Women's reproductive health and as well on the least discussed forms of trafficking which are organ trafficking and forced marriage and how they impact the enjoyment of Women's reproductive rights.