



ENHANCING EFFECTIVE JUDICIAL RESPONSE TO HUMAN TRAFFICKING IN NIGERIA

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Abstract

Human trafficking is a horrifying form of organised crime that violates victim's human rights. Despite international and domestic efforts, the threat is not abating. People are bought and sold, forced to work in the black market or sex industry, and frequently face threats and violence. It is one of the most heinous crimes in the modern world. The criminal justice system, which consists of the police, courts, and prisons, work in synergy to handle the social repercussions of crimes with the goal of preserving peoples' right to safety and the exercise of their human rights. There is no disputing that courts' interpretation of the law plays a critical role in safeguarding the rights of victims of human trafficking as well as deciding the guilt and punishment of traffickers. In order to reduce human trafficking in Nigeria, this study examines the crucial role of the judiciary. The paper posits that in addition to knowing the legislation, judges must also be aware of the context of each case involving human trafficking. The paper's recommendations for strengthening judicial intervention against human trafficking are included in the conclusion.

Keywords: Criminal Justice System, Human Trafficking, Human Rights, Judicial, Situation Awareness, Nigeria.

Introduction

Human trafficking is a business that relies on supply and demand. It is a changing, evolving phenomenon. The commodity, or the product, in trafficking, is typically a human being. The trafficker's goal is to make money off that person.² Every year, thousands of men, women, and kids fall prey to human trafficking. This horrible crime affects almost every nation on the planet. There are numerous distinct types of human trafficking, such as child soldiers, forced labour or servitude, sexual exploitation, organ removal, and slavery.³ One of the most heinous crimes in the modern world is the buying and selling of individuals, forcing them to labour in the sex industry or underground economy, and frequently subjecting them to horrific threats and acts of violent violence.⁴ Trafficked individuals are transported across international borders; they live invisibly while attempting to hide from law enforcement for fear of being apprehended. They frequently face violence and the threat of reprisals from their traffickers. Even if these victims succeed in fleeing, their traffickers will attempt to track

1. Research Fellow, Nigerian Institute of Advanced Legal Studies, Akoka Yaba, Lagos, Nigeria.
2. Michelle Brewer, *What Role Do Judges Have in the Fight against Human Trafficking?* (16 Mar., 2023, 10.30 am) <https://www.gardencourtchambers.co.uk/news/what-role-do-judges-have-in-the-fight-against-human-trafficking-michelle-brewer-delivers-key-note-at-osce-international-conference>.
3. Joana Surma, *Global Human Trafficking: New Insights on an Old Crime* (18 Mar. 2023, 1.30 am) https://ecommons.luc.edu/cgi/viewcontent.cgi?article=4355&context=luc_theses.
4. KRISTINA TOUZENIS, *TRAFFICKING IN HUMAN BEINGS, HUMAN RIGHTS AND TRANS-NATIONAL CRIMINAL LAW, DEVELOPMENTS IN LAW AND PRACTICE 3* (Unesco Migration Studies, 2010).

them down and punish them (or their families) in order to discourage other victims from fleeing. Furthermore, they are typically seen as illegal aliens if they are found by the police. Consequently, victims are unwilling to testify making it harder to prosecute the crime committed against them.⁵ Judges make important decisions regarding the application of trafficking laws as well as the nature of the evidence needed to prove the crime. In addition to determining the guilt or innocence of suspected offenders and considering sentencing guidelines, their choices have an impact on the credibility of victims and how victims are identified and protected.⁶ Judges may also advise law enforcement agencies or take an active role in the investigation process, depending on the jurisdiction. In addition, given the international nature of the crime, judges may be required to collaborate and share information with court officials from other jurisdictions.⁷ Judges have a crucial role in protecting people from being re-victimized during prosecution, preserving human rights, ensuring fair and inclusive procedures, applying appropriate punishment to offenders, acknowledging the non-punishment principle for victims, and ensuring fair and inclusive court interventions.⁸ Indeed the pivotal role the judiciary plays in combating human trafficking cannot be overstated.

It is against this backdrop that this paper seeks to examine the critical role of judges in ensuring justice for trafficked victims and bringing traffickers to justice. Is the extant judicial response effective? This paper will attempt to answer this question in six parts beginning with this introduction. Conceptual clarification is undertaken in part two, while part three is the theoretical framework based on Labeling Theory. The legal framework for human trafficking is undertaken in part four. In Part five factors that can strengthen judicial response are examined. Part six is the recommendation and conclusion.

Conceptual Clarification

Human trafficking

According to the United Nations General Assembly, human trafficking is

*“the illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations, for the profit of recruiters, traffickers and crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labour, false marriages, clandestine employment and false adoption.”*⁹

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) in Article 3(a) defines trafficking as:

“...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

In Paragraph 3(b) it goes on to state: *“the consent of a victim of trafficking in persons to the intended exploitation set forth in sub paragraph (a) of this article shall be irrelevant where any of the means set forth in sub-paragraph (a) have been used.”*

5. Rosa Raffaelli, *The European Approach, the Protection of Trafficking Victims: The Council of Europe Convention, The EU Directive, and the Italian Experience*, 10 German L.J. 205, 206 (2009).

6. UNODC, https://www.unodc.org/documents/humantrafficking/2014/Brochure_Seminar_for_Judges_October_2014.pdf. (last visited on Nov. 1 2023).

7. *Id.*

8. CCI, (<https://ccj.org/wp-content/uploads/2021/08/A-Judicial-Initiative-on-Human-Trafficking.pdf>). (last visited on Nov. 1 2023).

9. UNITED NATIONS GENERAL ASSEMBLY (UNGA), *Traffic in Women and Girls*, UN Doc. A/RES/49/166.

Three interdependent elements must be cumulatively present to constitute a trafficking offence:¹⁰

- i. Act (what is done) – the recruitment, transportation, transfer, harbouring or receiving of persons;
- ii. Means (how it is done) – the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
- iii. Purpose (why it is done) – to exploit the person in the ways listed in the article.

Exploitation for forced labour or sexual purposes is the core element of human trafficking. All three elements must be present for the situation to be considered human trafficking, except in the case of trafficking in children. Trafficking in children (under the age of 18) involves only two elements: action and purpose. The UN Trafficking Protocol irrespective of the threat or use of force or other forms of coercion, fraud or deception, or even in the absence of coercive circumstances, render the consent given by a child immaterial to the liability of the offender.¹¹

In order to fully understand the crime of human trafficking, it is important to underline the characteristics that differentiate it from human smuggling. Human smuggling is defined in article 3(a) of the Additional Protocol against the Smuggling of Migrants by Land, Sea and Air as ‘the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.’ Human trafficking does not imply necessarily a transnational movement because a person can be

trafficked within the same nation; on the other hand, smuggling always consists of a border crossing; as its very own purpose is the entrance into another country.¹² Smuggling entails the wish to enter into another country. The relationship between the smuggler and the persons being smuggled is characterized by general agreement, as they share the same goal. Unlike victims of human trafficking who do not give consent as they are forced to take part in the activity through various coercive means. As the very purpose of human trafficking is the exploitation of the victim, after a movement the trafficked person remains in a state of lack of freedom, abuse or violence through enslavement, imprisonment, confiscation of documents, or blackmail. On the other hand, the interaction between a smuggler and a person being smuggled is typically limited to the movement itself, which is simply the crossing of a border which marks the end of the relationship.¹³

Human Trafficking: Global Crime, Local Impact

It is estimated that the global market for human trafficking, which involves the unlawful trade of individuals for exploitation or financial benefit, is worth \$150 billion.¹⁴ A total of \$109 billion of this amount is the consequence of commercial sexual exploitation, while another \$51 billion comes from forced economic exploitation, which includes domestic labour, agriculture, and other economic pursuits.¹⁵ The Global Slavery Index states that there are 40.3 million victims of modern slavery globally. 71% of these are girls and women, and 25% are children.¹⁶ Additionally, a report from the United Nations Development Cooperation (UNDC) suggests that nearly one third of all victims worldwide are children. One in five of the 4.8 million people who were victims of commercial sexual exploitation in 2016

10. IOM PUBLICATION PLATFORM, <https://publications.iom.int/books/iom-handbook-direct-assistance-victims-trafficking-0> (last visited on Mar. 22 2023).

11. *Id.*

12. UNODC, *Non-Criminalization of Smuggled Migrants*, United Nations Office on Drugs and Crime. <https://www.unodc.org/e4j/en/tip-and-som/module-1/key-issues/non-criminalization-of-smuggled-migrants.html>. (last visited on Mar. 22 2023).

13. *Id.*

14. INTERNATIONAL LABOUR ORGANISATION, https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang--en/index.html. (last visited on Mar. 22 2023).

15. PATHFINDERS JUSTICE INITIATIVE NIGERIA: TRAFFICKING FACTSHEET, <http://www.devatip.org> (last visited on Mar. 22 2023).

16. INTERNATIONAL LABOUR ORGANISATION, <https://www.ilo.org/global/topics/forced-labour/lang--en/index.html>. (last visited on Mar. 22 2023).

were children, with women and girls making up 99% of those victims. The International Labour Organisation (ILO) estimates that women and girls made up 84% of the 15.4 million persons who were forced into marriage and 59% of those who were subjected to forced work in the private sector. According to the Index, modern day slavery is most common in Africa, with Nigeria having the highest number of victims in the continent.¹⁷

According to the United States Trafficking in Persons (TIP) Report,¹⁸ EUROPOL identified Nigerian organised crime linked to human trafficking as one of the challenges for European governments in terms of law enforcement. Human trafficking in Nigeria threatens the foundational values of the society, the rule of law, respect for individual rights, as well as national and security in Nigeria.¹⁹ Nigeria serves as a country of origin, transit, and destination for trafficking victims. Traffickers use rural areas as a source of new victims for forced domestic labour and commercial sex exploitation in urban areas like Lagos, Abeokuta, Ibadan, Kano, Kaduna, Calabar, and Port Harcourt. Boys are victims of forced and bonded labour in street hawking, domestic service, mining, stone quarrying, agriculture, textile production, and begging, while women and girls are victims of forced labour in domestic service and sex trafficking. Traffickers run “baby factories” where they keep women against their will, rape them, and compel them to carry and deliver infants. These facilities are sometimes passed off as orphanages, maternity homes, or religious institutions.²⁰ Forty-eight percent of trafficking victims identified in France were Nigerians.²¹

As a transit nation, women from West African countries pass through Nigeria en route to Europe and the Middle East, where traffickers force them into commer-

cial sex. Nigeria’s ports and waterways around Calabar are transit points for West African children subjected to forced labour in Cameroon, Equatorial Guinea, and Gabon. Labour traffickers fraudulently recruited IDPs displaced by Middle Belt violence and exploited them in domestic service.²² As a destination country, West African children are subjected to forced labour in Nigeria, including in granite and gold mines. There are reports of traffickers coercing Togolese victims to work in palm wine production in rural Nigeria. The root causes of human trafficking can be attributed to “push” and “pull” factors.

Local circumstances known as “push factors” compel people to migrate in the quest of better living conditions. Poverty, oppression, human rights violations, a lack of social or economic opportunities, conflict or instability risks, militarism, civil unrest, internal armed conflict, and natural disasters are a few of these reasons. Population destabilisation and displacement make people more susceptible to abuse and exploitation via forced labour and human trafficking. Massive population displacement brought on by war or civil unrest may make orphans and homeless kids particularly susceptible to human trafficking. The pull factors are those conditions in the destination country that makes emigrating an attractive choice. Some of these factors are increased demand for inexpensive labour and/or exploitative labour practices, as well as the promise of greener pasture. Increasingly, the anonymity of the internet also helps fuel trafficking by creating conditions that enable online luring and trafficking of girls and women for the purpose of forced prostitution.²³

Nigeria is the first country in Africa to enact a law on human trafficking and has endorsed most international

17. *Id.*

18. *Trafficking In Persons, 2015 Trafficking In Persons Report – Nigeria*, <https://www.refworld.org/docid/55b73bb915.html>. (last visited on Mar. 22 2023).

19. LOUISE SHELLEY, *HUMAN TRAFFICKING: A GLOBAL PERSPECTIVE* (Cambridge University Press: New York 2010)

20. TIP REPORT, <https://www.state.gov/reports/2020-trafficking-in-persons-report/nigeria>. (last visited on Mar. 22 2023)

21. *Id.*

22. UNODC, *MEASURES TO COMBAT TRAFFICKING IN HUMAN BEINGS IN BENIN, NIGERIA AND TOGO*, (17 August 2023, 6.45pm), https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_9-2.pdf.

23. OWJN, *What is Human Trafficking?*, (14 August, 2023 4.00 pm), <https://owjn.org/2018/06/what-is-human-trafficking>.

instruments on human trafficking.²⁴ It has also entered into various bilateral agreements and memoranda of agreement on immigration matters.²⁵ Edo, Delta, Ondo, Ekiti and Lagos States have also formed taskforces against human trafficking.²⁶ The National Agency for the Prohibition of Trafficking in Persons (NAPTIP) has improved awareness, investigation, and prosecution of trafficking cases over the years. It has also focused on identification, protection, and assistance for survivors since its establishment. There is also a Victims of Trafficking Trust Fund to provide humanitarian and financial aid for victims.²⁷

Theoretical Framework

Labeling Theory

Labeling theory is a sociological theory that emerged in the 1960s and 1970s from two sociologists named Howard Becker and Edwin Lemert.²⁸ It is based on understanding criminal behavior. According to Lemert, the act of labeling and creating stigma around what is or can be considered deviant behavior only serves to further marginalise and force conformity to criminal status, as internalising the label and stigma alters one's view of self and their social roles.²⁹ Lemert and Becker's goal was to differentiate between inherent criminality and criminal behavior in individuals, and the effect labeling in criminalisation has on individual's deemed criminally deviant.³⁰ In cases of human

trafficking, trafficking victims do not display criminal behavior, Despite their unwillingness to participate, they sometimes commit crimes. Since being part of a criminal network criminalises the victims instead of the trafficker, preconceived views from outsiders and law enforcement officers view trafficking survivors as criminally liable. The labels of being criminally liable changes the victim's image of themselves. As victimisation continues, they feel that trafficking is a lifestyle choice.³¹ This is evidenced by some victims having extensive criminal backgrounds, serving time for prostitution and drug charges, and thinking of themselves as willing participants in prostitution and drug trafficking before they are rescued and identified as victims.³² As stated by Crewel and Guyot-Diangone labeling trafficking victims as criminally deviant is exceptionally detrimental to their well-being, deducing that "victims may not believe they are deserving of services unless they were 'forced enough,' and see victims who fit the kidnapped and forced narrative as more deserving of services."³³ Labeling theory exemplifies the power of self-perception as well as the perceptions of law enforcement and service agencies in ensuring victims are correctly identified and receive appropriate services.³⁴ The Criminal Justice System must protect victims of human trafficking by seeing them as 'victims' and not criminals. Labeling them as criminals, forcing them to testify against their will, re-victimises and traumatises them.

24. Aderanti Adepoju, Femke van Noorloos and Annelies Zoomers, *Europe's Migration Agreements with Migrant Sending Countries in the Global South: A Critical Review*, (14 August, 2023 5.00pm), [PY.library.uu.nl/bitstream/handle/1874/353968/Author_manuscript_Adepoju_van_Noorloos_Zoomers_Europe_s_migration_agreements.pdf?sequence=1&isAllowed=y](https://pdxscholar.library.pdx.edu/honorstheses/1405/).

25. Victoria Nwogu, *Nigeria Human Trafficking and Migration*, (14 August, 2023 5.38pm), <https://www.fmreview.org/peopletrafficking/nwogu>.

26. TIP REPORT, (17 August, 2023 3.14.am), <https://www.state.gov/reports/2019-trafficking-in-persons-report-2/nigeria/>

27. NAPTIP, <https://naptip.gov.ng/>. (last visited on Aug. 17, 2023).

28. Crewe Sandra Edmonds and Guyot-Diangone Julie, *Stigmatisation and Labeling. Encyclopedia of Social Work* (17 August, 2023 3.14.am), <https://doi.org/10.1093/acrefore/9780199975839.013.1043>.

29. *Id.*

30. *Id.*

31. Monroe Autumn Rain, *Mitigating Sex Trafficking: Preventative Methods for Reducing Sexual Exploitation* (14 August, 2023 5.38pm) <https://pdxscholar.library.pdx.edu/honorstheses/1405/>.

32. MESHELEMIAH JACQUELYN AND LYNCH RAVEN, *THE CAUSE AND CONSEQUENCE OF HUMAN TRAFFICKING: HUMAN RIGHTS VIOLATIONS* (The Ohio State University Pressbook 2019).

33. *Id.*

34. *Id.*

Legal Framework for Combating Human Trafficking in Nigeria

Trafficking In Persons (Prohibition) Law Enforcement and Administration (TIPPLEA) Act, 2015

In 2003, this law made human trafficking a crime. The Federal Government approved the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (Trafficking Act) to demonstrate the government's determination to combat human trafficking. The National Agency for the Prohibition of Traffic in Persons (NAPTIP) was founded under this statute. In December 2005, the Act was revised, and in 2015, the Trafficking in Persons (Prohibition) Law Enforcement and Administration (Amendment) Act was passed. The Act's goals are to create an effective and complete legal and institutional framework in Nigeria for the prohibition, investigation, prosecution, and punishment of human trafficking and associated offences, as well as to protect victims of human trafficking. Section 223 of the Criminal Code makes it illegal to obtain an illicit carnal relationship with any other person or individuals, whether in Nigeria or abroad. It also criminalizes causing a woman or girl to leave Nigeria with the goal of having her become a prostitute abroad or in Nigeria.³⁵ Jurisdiction of the Court is vested in the³⁶ State High Court, Federal Capital Territory (FCT) High Court and Federal High Court.

Criminal Code

The Criminal Code³⁷ applies in the South. Section 223 of the Criminal Code makes it illegal to procure a female under the age of eighteen who is not a common prostitute or of recognised immoral character to have an illicit carnal relationship with any other person or individuals, whether in Nigeria or overseas. It also criminalises causing a woman or girl to leave Nigeria with the goal of having her become a prostitute in Nigeria or abroad. Section 224 of the Criminal Code further

criminalises the use of threats, intimidation, false pretense, the use of drugs, or any other means to induce a woman or girl who is not a common prostitute or of known immoral character to have an illicit sexual relationship with a male, whether in Nigeria or overseas. Section 365 deals with unlawful incarceration or detention against a person's will, whereas Section 366 bans persuading someone to do anything using threats, monitoring, or other intimidation.

Penal Code

The Penal Code³⁸ is the criminal code that regulates Nigeria's northern states. In section 281 it provides that whoever procures, entices, or leads away, even with her consent, any woman or girl for immoral purpose shall be punished with imprisonment of up to seven years and shall also be liable to a fine. Section 275 makes it illegal to cause a female under the age of eighteen to go anywhere or to do anything with the goal that the girl would be compelled or persuaded into unlawful intercourse. Section 278 further states that anybody who buys, sells, employs, lets to hire, or otherwise gets or disposes of any person under the age of 18 with the purpose that the person will be or is likely to be hired or used for prostitution or other immoral act commits an offence. Slavery and forced labour are also criminalised under this Act.³⁹

Edo State Trafficking in Persons Prohibition Law (2018)

On May 23, 2018, the Governor of Edo State Mr. Godwin Obaseki, signed into law the Edo State Trafficking in Persons Prohibition Bill (2018). It provides an effective and comprehensive legal and institutional framework for the prohibition, prevention, detection, prosecution and punishment of human trafficking and related offenses in Edo State. The Law creates the Edo State Taskforce against Human Trafficking (ETAHT). The law empowers ETAHT to investigate and prosecute suspected traffickers.⁴⁰ The law criminalises among

35. TRAFFICKING IN PERSONS(PROHIBITION) LAW ENFORCEMENT AND ADMINISTRATION ACT 2015, § 1(Nigeria).

36. TRAFFICKING IN PERSONS(PROHIBITION) LAW ENFORCEMENT AND ADMINISTRATION ACT 2015 § 36 (Nigeria).

37. CRIMINAL CODE ACT Cap c38 LFN 2004 (Nigeria).

38. THE PENAL CODE ACT Cap 89 (Nigeria).

39. THE PENAL CODE ACT Cap 89 (Nigeria) § 279.

40. EASO, https://euaa.europa.eu/sites/default/files/publications/2021_04_EASO_Nigeria_Trafficking_in_Human_Beings.pdf. (last visited on Aug. 17, 2023).

other acts, the procurement or recruitment of persons for sexual exploitation or forced labour, organ removal and the employment of children under the age of 12 years as domestic workers.

International Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (i.e., the Palermo Protocol)

The protocol was adopted by resolution/RES/55/25 of 15th November 2000 at the 55th session of the General Assembly of the UN. It provides the first comprehensive and internationally accepted trafficking in article 3(a). Furthermore, the protocol represents the first international agreement that acknowledges poverty as a major contributing factor to human trafficking, and it highlights the necessity for member nations to implement policies aimed at deterring the demand side of trafficking. It also discusses human trafficking from the perspectives of human rights and criminal law. It is unrestricted by age, gender, or colour; however, it focuses especially on the trafficking of women and children. Its application is limited to international offences and encompasses all forms of exploitation related to human trafficking.⁴¹

International Labor Organisation Convention on Forced Labour (ILO) No. 29 of 1930.⁴²

According to Article 2 of the Convention, forced labour is any job or service that is demanded of a person without their consent and is done under threat of punishment. Additionally, it demands that the crime of engaging in forced labour be appropriately punished and

enforced. 178 nations had ratified the Convention as of August 2019.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979.

The UN General Assembly adopted CEDAW in 1979, and it is referred to as an international bill of rights for women. It defines what constitutes discrimination against women and lays down a plan for national action to abolish discrimination in this regard. It consists of a preamble and 30 articles. Discrimination against women is defined by the Convention as any distinction, exclusion, or restriction made on the basis of sex with the effect or purpose of derogating or nullifying the recognition, enjoyment, or exercise by women, notwithstanding their marital status.⁴³ State Parties are required by article 6 to take all reasonable steps including enactment of laws to put an end to all kinds of trafficking in women as well as the exploitation of women engaged in prostitution.

The Convention on the Rights of the Child (CRC) 1989

The CRC⁴⁴ protects the rights of children regardless of their colour, religion, race, or ability, it outlines the civil, political, economic, social, and cultural rights that each child has. It contains 54 articles in all. The treaty mandates governments to provide for the fundamental needs of children and work to maximise their potential. Additionally, it states that countries must stop the illegal movement of children from their nation.⁴⁵ It provides further that governments should protect every child from sexual exploitation and abuse,⁴⁶ and that governments should make sure that no child is abducted, sold,

41. Kigbu, S.K, Hassan Y.B, *Legal Framework for Combating Human Trafficking In Nigeria: The Journey So Far Journal of Law*, 38 POLICY AND GLOBALIZATION 205, 218 (2015).

42. ILO, Convention Concerning Forced or Compulsory Labour, 28 June 1930, C029, (17 December, 2022 12.53 am), <https://www.refworld.org/docid/5c6fc12b7>.

43. UNHR, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women> (last visited on Aug. 17, 2023).

44. UNICEF, <https://www.unicef.org/child-rights-convention> (last visited on Aug. 17, 2023).

45. CONVENTION ON THE RIGHTS OF THE CHILD, Article 11(1989).

46. CONVENTION ON THE RIGHTS OF THE CHILD, Article 34 (1989).

or trafficked.⁴⁷ There is also protection from all other forms of exploitation.⁴⁸

The Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children, 2006

The African Union in 2006 adopted the Ouagadougou Action Plan to Combat Trafficking in Human Beings, Especially Women and Children. It established an international instrument on the issue, and urged African States to adopt legislative and institutional measures to combat human trafficking.⁴⁹ It reaffirms international instruments on human trafficking and encourages African States to create measures that will combat trafficking in human beings.⁵⁰ One of its aims is cooperation between the European Union and the African Union in respect of best practices and mechanisms to prevent and combat trafficking in human beings.

Roles of Judges: Impediments and Gaps Judge's Responsibilities

A judge's role is to oversee the criminal trials ensuring that it is conducted in conformity with the law in a just and fair manner otherwise they run the risk of having an unfair trial, which would necessitate a re-trial. Alternatively, if an appeal is successful or no further legal action is taken, traffickers may go free. Some other roles of Judges in human trafficking cases include:⁵¹

Determination of bail applications.

- i. considering, and where appropriate, making orders allowing vulnerable witnesses to give evidence by video conference or behind a screen.
- ii. Protection of witnesses from intimidation and abuse by making relevant orders

- iii. making sure court interpreters are available when necessary, making sure that the cross-examination of child witnesses and vulnerable victims is understandable and admissible under the rules of evidence. Judges must not allow cross examination that is harsh, obnoxious, or threatening, or that covers sensitive or possibly humiliating personal issues i.e has more prejudicial than evidentiary value.
- iv. deciding the guilt of the accused in judge only trials as well as giving directions to the jury before considering their verdict.
- v. sentencing convicted offenders in both judge and jury trials.,
- vi. consideration of reparation or compensation in favour of victims.⁵²

Impediments to Judge's Role

Judges, no matter how experienced and well-trained can be impeded from carrying out their duties effectively by some factors:

Unwilling Witness

During prosecution against their traffickers, the evidence of a victim of human trafficking is very important. Obtaining the victim's testimony in court might be extremely difficult in some situations. This is because victims are afraid or reluctant to tell their traumatic stories in open court in front of the public and a judge.⁵³ Some of the reasons responsible for victim's reluctance to testify in court include fear of retaliation from traffickers and their friends, irregular status and fear of deportation, mistrust of authorities, embarrassment, and a belief that their traffickers' actions are normal. As opined by Davy, giving testimony as a witness may be

47. CONVENTION ON THE RIGHTS OF THE CHILD, Article 35 (1989).

48. CONVENTION ON THE RIGHTS OF THE CHILD, Article 36 (1989).

49. South Africa's National Policy Framework for Women's Empowerment and Gender Equality, (16 June, 2023 2.00 pm), <https://www.peacewomen.org/sites/default/files/SouthAfrica.pdf>.

50. Paul Bello and Adewale Olutola, *Effective Response to Human Trafficking in South Africa: Law as a Toothless Bulldog*, (16 June, 2023 2.00 pm) <https://doi.org/10.1177/21582440211069>.

51. UNITED NATIONS OFFICE ON DRUGS AND CRIMES (UNODC), The Role of the Criminal Justice System, (23 November 2023 3.36 am). <https://www.unodc.org/e4j/zh/tip-and-som/module-9/key-issues/role-of-the-criminal-justice-system.html>.

52. UNITED NATIONS OFFICE ON DRUGS AND CRIMES (UNODC), The Role of the Criminal Justice System, (23 November 2023 3.36 am) <https://www.unodc.org/e4j/zh/tip-and-som/module-9/key-issues/role-of-the-criminal-justice-system.html>.

53. Deana Davy, *Justice For Victims of Human Trafficking In Australia? Issues Associated With Australia's Criminal Justice Response To Trafficking In Persons*, 20 CONTEMPORARY JUSTICE REVIEW 115, 118 (2017).

a stressful experience that might result in “secondary victimisation.”⁵⁴ It is common knowledge that helping victims of trafficking advances goals of the criminal justice system because when victims feel comfortable and their needs are addressed, they are more inclined to cooperate with authorities.⁵⁵

Whether victims should be required to testify in court against their traffickers is a contentious topic in the anti-trafficking movement. One perspective, backed by international standards, holds that the victim should be given free will in this regard. The other viewpoint holds that the State should make this choice since traffickers cannot be brought to justice without the testimony of victims. According to the Bali Policy Process, victims must not be compelled to participate in the criminal justice process but must be empowered to choose whether or not they wish to testify.⁵⁶ Where victims are able to take part in the investigation and prosecution of traffickers, they should be offered witness protection.⁵⁷

Some victims do not want to give evidence in court because they are afraid of the effect of the voodoo and blood covenant they were compelled to take at a shrine.⁵⁸ Some of the items used for this oath-taking are the victim’s clipped fingernails, last menstrual smears, pubic hair strands, naked photographs of the victim; and sometimes a piece of kolanut covered by the blood of the victim.⁵⁹ Victims are typically too afraid to cooperate with investigators in this regard. Furthermore,

victims are discouraged from sharing their unpleasant experience because of stigmatisation particularly in situations of sexual exploitation. The outcome of the *Attorney General of the Federation v. Monday Aikhomu’s* case might change if victims choose to assist during investigations and court hearings.⁶⁰

What happened, in this case, is that the accused Monday Aikhomu was arrested in Kano in 2004 while travelling with three females to Zinder in Niger Republic enroute Spain. He was thereafter in Benin City High Court, charged with nine counts. Despite many attempts by NAPTIP, the victims declined to appear in court. In the end, the prosecution was unable to identify the victims who were supposedly heading to Zinder in Niger Republic with the defendants. The victims of the alleged crime were not presented before the judge during the trial, thus the judge discharged and acquitted the accused.⁶¹

Lack of Knowledge of Trafficking Issues

Some judges are unfamiliar with the anti-trafficking laws and issues. This situation can contribute to corruption and misapplication of the law.⁶² According to a Member of the House of Representatives, Nigerian courts and the Police Force penalise traffickers with fines alone, or offering the option to pay a fine instead of serving terms in the correctional centres.⁶³ This type of response encourages impunity. It is therefore important for judges to increase their knowledge on Trafficking in Persons issues and

54. *Id.*

55. Bernadette Maree McSherry and Miriam Cullen, *The Criminal Justice Response to Trafficking in Persons: Practical Problems with Enforcement in the Asia-Pacific Region*. 19 GLOBAL CHANGE, PEACE & SECURITY 205, 212 (2007).

56. IOM, <https://www.baliprocess.net/UserFiles/baliprocess/File/BP%20Policy%20Guide%20on%20Returns%20and%20Reintegration.pdf> (last visited on Aug. 17, 2023).

57. *Id.*

58. Clawson Heather et al, *Prosecuting Human Trafficking Cases: Lessons learned and Promising Practices*, 38 Journal of Law Policy and Globalisation 153, 154 (2015).

59. *Id.*

60. Unreported Charge no. B/13C/2004 ruling delivered 16/12/2005.

61. Bisi Olateru-Olagbegi and Anne Ikpeme, Review of Legislation and Policies in Nigeria on Human Trafficking and Forced Labour, (23 October, 2023 6.00pm), https://www.ilo.org/global/topics/forced-labour/publications/WCMS_083149/lang-en/index.html.

62. US Department of State, <https://www.state.gov/reports/2021-trafficking-in-persons-report/nigeria/> (last visited on Aug. 17, 2023).

63. Olufemi Makinde, The Whistler Rep Blames Security Agencies, Judiciary for Thriving Human Trafficking In Nigeria, (10 November 2023 2.55 PM), <https://thewhistler.ng/rep-blames-security-agencies-judiciary-for-thriving-human-trafficking-in-nigeria/>.

offences.⁶⁴ Judges must receive training on human trafficking because complex legislations and other legal issues in today's world require continuing education and training.⁶⁵

Slow Pace of Justice

Almost everyone involved in the Nigerian legal system are concerned about the slow pace of justice delivery in the country.⁶⁶ Delay experienced in human trafficking cases often make the victims give up and even forget some vital information needed in evidence.⁶⁷ It is imperative for a judge handling a trial to bear in mind that the various parties are waiting for the outcome of the case. The judge must ensure that the prosecutor and defense do not waste the time of the court.⁶⁸

Strengthening Judicial Response

Situational Awareness

Judges must be well-equipped to handle human trafficking cases as they play a pivotal role in countering human trafficking. According to Dettmeijer-Vermeulen,⁶⁹ "situational awareness" is a key quality for all judges dealing with cases of human trafficking. According to her, three main components constitute situational awareness. Each of these components address an area with which judges have to interact to deal with human trafficking cases properly. The first element is judicial understanding or awareness of the many forms

of trafficking that occurs, whether it is within or outside their country. The ability of judges to collaborate and communicate effectively with other judges in different areas is the second aspect of situational awareness.

For victims to be treated fairly in judicial proceedings, a comprehensive strategy in which knowledge from the many legal fields is examined jointly rather than individually is required. Cross-pollination of judicial and legal knowledge is necessary. An isolated strategy based solely on criminal legislation is ineffective in addressing human trafficking's complexities.⁷⁰ Judges must consider their place in the global community and their obligations under international law. This is the third part of situational awareness. This requires familiarity with and communication with judges from various nations. They must be aware of the impact of globalisation and how it affects the work they do. Judges need to be aware of their crucial responsibilities in advancing society through their judgments.⁷¹

Victim Vulnerabilities

Judges must be sensitive to the vulnerabilities of the trafficking victims who appear before them. They must first consider the factors that led the victims to be trafficked. i.e "push" and "pull" factors. They need to consider the vulnerabilities that result from the victim's involvement in trafficking. It is the knowledge of the victims vulnerabilities that will inform the judge's deci-

64. National Agency for the Prohibition of Trafficking in Persons, NAPTIP (12 November 2023 2.55 PM.), <https://naptip.gov.ng/naptip-dg-seeks-increased-collaboration-between-judges-and-prosecutors-for-seamless-dispensation-of-justice-on-human-trafficking-cases/>.

65. S.K Kigbu, *Challenges in Investigating and Prosecuting Trafficking in Persons' Cases in Nigeria*, 38 JOURNAL OF LAW, POLICY AND GLOBALISATION, 2015.

66. Bright Oniha, *Towards Fast Tracking Justice Delivery in Lower Courts in Nigeria*, Jne, (12 November 2023 4.05 PM.), <https://edojudiciary.gov.ng/wp-content/uploads/2018/08/towards-fastracking-justice-delivery-in-lower-courts-in-nig>.

67. TIP REPORT, (3 November 2023 3.45pm), <https://www.state.gov/reports/2021-trafficking-in-persons-report/nigeria/>.

68. Ndahi Marama, Borno Tops Prosecution of TIP Cases in North Eastern States Says NAPTIP, *The Vanguard*, (3 November 2023 3.45pm), <https://www.vanguardngr.com/2022/07/orno-tops-prosecution-of-tip-cases-in-north-eastern-states-says-naptip/>.

69. Michelle Brewer, 'What Role Do Judges Have In The Fight Against Human Trafficking?', (16 November 2023 12.00 PM), <https://www.gardencourtchambers.co.uk/news/what-role-do-judges-have-in-the-fight-against-human-trafficking-michelle-brewer-delivers-key-note-at-osce-international-conference>.

70. Corinne Dettmeijer Vermeulen, *Human Trafficking and the Importance of Situational Awareness for Human Trafficking Judges*, (16 November 2023 12.00 PM), http://www.endslavery.va/content/endslavery/en/publications/judges/dettmeijer_vermeulen.html.

71. *Id.*

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sion on the participation of the victim in the proceedings.⁷²

Evidential Issue

As is the case with other crimes, the strength and sufficiency of the evidence presented will determine whether a case is successful or not. There are particularly challenging evidential issues regarding human trafficking, many of which depend on the unique characteristics of the crime and the actions of the victim, whose testimony is sometimes the primary piece of evidence.⁷³ Human trafficking is a common global crime, there are however few cases of traffickers being prosecuted and found guilty. The timely acquisition of sufficient and admissible evidence is one of the major issues and as opined by Davor Raus,⁷⁴ certain skills are needed to do this. The current heavy reliance on verbal or written statements from the victims when investigating and prosecuting cases of human trafficking is a major challenge to the criminal justice system. According to the UNODC's Human Trafficking and Migrant Smuggling Section, such testimonies can be difficult to obtain and often lack the sufficient credibility needed for a court ruling against a trafficker.⁷⁵

Training

It cannot be overstressed that judges must understand human trafficking, the legal framework and sentencing guidelines. Upholding the rights of victims and prosecuting traffickers are two of the key objectives of the fight against human trafficking. Judges and other court staff play a critical role in the identification, referral, and protection of victims as well as the efficient prose-

cution of traffickers. They must understand innovations in criminal justice, laws, processes, and best practices.⁷⁶

A Case for Specialised Courts

Human trafficking cases can be peculiarly difficult in addition to being plagued by a slow criminal justice system. There are many ways that victims interact with and engage with the system. While some end up testifying in court as witnesses against their traffickers, others join the system as defendants for crimes they committed while being victims of trafficking.⁷⁷ Courts have a very important and decisive role in establishing processes that ensure victim's safety. One such response is applying a trauma-informed response to victims rather than a response that punishes them. This can be achieved through the establishment of special courts and dockets or by using a trauma-informed strategy in a conventional court. These few but significant modifications may alter positively how trafficking victims interact with the legal system, enhancing their readiness to identify themselves as victims, assist the criminal justice system, and advance their long-term recovery.⁷⁸

Conclusion and Recommendation

Effective judicial response will build victims' confidence and bring to justice traffickers of human beings ending the cycle of impunity. Increasing the number of convictions in human trafficking cases can be achieved in the court. This is because determining whether the requirements of the various trafficking offences are met, the kind of evidence that is admissible, or the kind of sentences that should be imposed, their interpretation of the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015 and other pertinent laws is essential in each case before the court. When convic-

72. Michelle Brewer *What Role Do Judges Have In The Fight Against Human Trafficking?*, (2 November 2023 2.59 PM.), <https://www.gardencourtchambers.co.uk/news/what-role-do-judges-have-in-the-fight-against-human-trafficking-michelle-brewer-delivers-key-note-at-osce-international-conference>.

73. UNODC Case Digest, Evidential Issues In Trafficking Cases. (23 May 2022 3.56 am) https://www.unodc.org/documents/human-trafficking/2017/Case_Digest_Evidential_Issues_in_Trafficking.pdf.

74. Davor Raus, United Nations, *The Key to Convicting Human Traffickers*, (14 November 2023 2.59 pm) <https://news.un.org/en/story/2022/03/1112712>.

75. *Id.*

76. UNODC, *Rights of Victims to Justice and Protection*, (28 September 2023 2.59 pm) <https://www.unodc.org/e4j/en/tip-and-som/module-9/key-issues/rights-of-victims-to-justice-and-protection.html>.

77. *Id.*

78. *Id.*

tion rates are up, the crime of human trafficking is likely to reduce. To strengthen the judiciary's response to human trafficking, judges must have situational awareness of each trafficking case, and the vulnerability of the victim must also be considered. Adducing evidence in human trafficking cases can be complex and technical, judges must be conversant with the rules of evidence. Special courts dedicated to human trafficking cases are important in protecting victims and increasing conviction rates in the justice system. Furthermore, judges must be knowledgeable about human trafficking, the applicable laws, and sentencing guidelines. Bringing traffickers to book and defending the rights of those who have been victimized must be the focus of the court in the fight against the crime of human trafficking. Judges must therefore be well equipped to adjudicate human trafficking cases.

This paper recommends that courts provide victims of human trafficking with better protection. The government should set up special courts with judges who are knowledgeable about and prepared to handle human trafficking cases. NAPTIP and other stakeholders must promote a greater understanding of the harm that human trafficking does to society. The crime of human trafficking can be greatly reduced by properly training judges and other staff of the judiciary to better handle the cases before them. Effective judicial response has a significant role in how trafficking victims experience the court system because it increases victim's willingness to cooperate with law enforcement as well as promotes the rehabilitation and reintegration of victims into the larger society.

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