

# HUMAN RIGHTS IMPLICATIONS FOR VICTIMS OF TRAFFICKING AND THE CHALLENGES INVOLVED IN PROSECUTION OF HUMAN TRAFFICKERS UNDER THE CRIMINAL JUSTICE SYSTEM IN NIGERIA

BY

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## Abstract

*The crime of trafficking in person is an age long phenomenon. The victims suffer different forms of human rights abused in the course of the procuring them and transporting them through their place of origin, transit to destination countries. The crime of human trafficking continues to thrive because the possibility of being caught by law enforcement agents is low and the profit from it is enormous. Above all where the culprits are caught, the challenges of prosecution under the criminal justice system in Nigeria is a daunting task. This article therefore examined the international human rights of trafficked victims and the challenges involved in the prosecution of their traffickers under the Criminal Justice System in Nigeria by adopting the doctrinal research approach.*

**Keywords:** Human Rights, Victims, Trafficking, Prosecution, Criminal Justice

## 1. Introduction

*“Human trafficking affects us all, whether we live in countries of origin, transit or destination. Preventing and combating it requires a comprehensive international approach. We must act together to stop a crime in our midst that deprive countless victims of their liberty, dignity and human rights”. -Ms. Asha Rose Mtengeti Migiro, Deputy Secretary General of the United Nations, 2007-2012.*

This article examines the plethora of rights issues for trafficked persons under Nigeria and International Human Rights Laws and the challenges involved in the prosecution of traffickers under Nigerian criminal justice system. These rights issues are the: right to safety, privacy, information, legal representation, right to be heard in court, right to compensation for damages, the right to assistance and seek for residence, right to returning to the victims own country. The identified challenges facing prosecutors and judges under Nigerian Criminal Justice System are: corruptions which prevent traffickers from being held accountable and can also prevent victims from seeking justice. Victims cooperation as a result of the voodoo rituals prohibit them from escaping and if the victim attempts to turn in the traffickers, severe consequences will ensue, lack of knowledge of trafficking issues by law enforcement Officers and Judges, language barrier, lack of funding and personnel resources, lack of international corporation on migration and trafficking.

## 2. Definition and Overview of Human Trafficking

Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. 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.<sup>1</sup>

Human trafficking is a booming international trade, making billions of dollars at the expense of millions of victims, many of them children, who are robbed of their dignity and freedom. Although most of us have never witnessed this crime, it happens every day all around the world. Criminals profit while satisfying consumer demand. In the middle are the victims, made vulnerable by poverty and exploited by traffickers who use force and deception to trap their prey.<sup>2</sup> Generally, victims of human trafficking includes: young girls sold by their families to trafficking gang network; children drugged and forced to fight as soldiers; men bonded/chained in labour on mines and farms; women enslaved in quarries and households; women and girls trapped in the sex trade; boys forced to fish in dangerous waters all of them people, human beings, coerced to do what others would never freely do, paid virtually nothing for their pains.<sup>3</sup> In a perverse commercialization of humanity, they are used like products and then disposed or resoled when their usefulness depreciates. More and more people are becoming aware of the horrors of human trafficking. Yet the crime persists. In many countries, international laws to stop human trafficking are still not adhered to and implementation remains inadequate. Few criminals are convicted and the majority of victims never receive help.<sup>4</sup>

## 3. Human Traffickers in Nigerian Context

According to Bisi Olateru-Olagbegi and Anne Ikpeme, “traffickers in Nigeria have many faces. They could be men or women members of organized criminal networks that traffic mostly women and young girls into forced prostitution. They could also be ordinary people who do not belong to criminal gangs but are relatives, neighbours, or friends who are better off than the victims or their parents/guardians. They could be diplomats who “import” domestic workers and hold them in

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<sup>1</sup>UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 2000.

<sup>2</sup>United Nations Office on Drugs and Crime (UNODC), “The Global Initiative to Fight Human Trafficking: A Crime That Shames Us All”, 26 March 2007, <<https://www.unodc.org/pdf/gift%20brochure.pdf>> accessed 28 June, 2022.

<sup>3</sup>*Ibid*

<sup>4</sup> *Ibid*

isolation and forced labour in their homes.<sup>5</sup> Some of them are people who import foreign-born women, ostensibly for marriage but in reality for the purpose of holding them in servitude and subjecting them to sexual abuse. Others are families that import men, women and children to work in forced labour in farms, factories and homes, and subject them to sexual and physical assault. In effect, traffickers could be next-door neighbours, parents/relatives or total strangers.<sup>6</sup> Most traffickers that recruit women and girls for the sex industry or domestic work are women. Such traffickers in many cases may have previously been trafficked themselves or are currently sex workers. Recruitment could be done with the help of their families. In some cases, community leaders and teachers are also reported to be involved in trafficking. In many cases, recruiters are relatives or acquaintances of the people who are trafficked and thus in a position of trust or known to the trafficked persons. They may even be parents and guardians themselves.<sup>7</sup> Means used Traffickers gain control of their victims in different ways. Sometimes the victims are kidnapped in one place and taken forcibly to another place, and in other cases they are lured with offers of well paid jobs in foreign countries as hairdressers, restaurant attendants, domestic workers etc. or with false promises of opportunities for education or marriage. After providing transportation and fake documentation to get victims to their destination, they subsequently charge exorbitant fees for those services, creating heavy debt bondage under extreme terms and conditions. Some of the exploitative practices used include coercion of victims through seizure of travel documents, oath taking, threats or physical violence on victims, threats to relations of victims, restriction of movement and communication, seizure of earnings of victims, and psychological pressure through guaranteeing silence and submission through ritual oaths”.<sup>8</sup>

#### 4. Nature of Human Rights Law

Human rights law gained international prominence after the end of World War II when the United Nations was established as the rallying point for all nations to prevent the further occurrence of another World War.<sup>9</sup> States Parties to the organisation ratified the Charter; thereby agreeing to limit their own sovereignty and adhere to certain international human rights. This meant that all human beings, regardless of whether or not they were in the territory of their home State, are

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<sup>5</sup>Bisi Olateru-Olagbegi and Anne Ikpeme, “Review of Legislation and Policies in Nigeria on Human Trafficking and Forced Labour: Review of legislation on Trafficking and Forced Labour in Nigeria”, ILO Working Paper, 1<sup>st</sup> January, 2006, 3-4.

Available online at <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_083149.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_083149.pdf)>, accessed 28 June, 2022

<sup>6</sup>G. Osakue and E. Okoojion, “*Trafficking in Girls-the Way Forward*”, Report of a Research in Edo and Delta States of Nigeria by Girls Power Initiative, 2002.

<sup>7</sup> *Ibid.*,

<sup>8</sup>*Ibid.*, S. Oloko, “Mapping of Existing Information and Materials on Forced Labour and Trafficking in Nigeria”, ILO, 2004.

<sup>9</sup>S. Davidson, *Human Rights*. (Buckingham: Open University Press, 1993) 27. After the cessation of the world war, the United Nations General Assembly adopted an important Convention, viz: Genocide Convention, 1948 and the Un General Assembly adopted the International Bill of Human Rights, which constitutes a detailed codification of Human rights. The Genocide Convention, 1948 was adopted on 9<sup>th</sup> December, 1948 and the Universal Declaration of Human Rights, adopted on 10<sup>th</sup> December, 1948. These two steps of United Nations General Assembly proved very significant in the direction of providing human rights and fundamental freedom for all individuals of the world community.

afforded certain human rights. While individuals were traditionally only afforded rights and protections from their home State under national human rights law, human rights norms shifted to view individuals as single human beings, deserving of protection on an international level. Individual human rights do not end at the limits of the State this recognition places the individual as the ultimate subject of international law and establishes the fact that the State is not superior to the individuals who comprise it.<sup>10</sup> International human rights law is seen as a last resort in circumstances when a State's national human rights laws fail to protect an individual, or in some cases where they are nonexistent.<sup>11</sup> Consequently, international human rights law instruments have a dual aim: reinforcing the national protection of human rights, and providing international protection when the national system is inadequate.<sup>12</sup>

## 5. Theories of Human Trafficking

Worldwide, an increasing amount of public attention is being directed toward the problem of human trafficking. The media are more frequently covering trafficking, anti-trafficking activism has risen, and most countries have created new policies, laws and enforcement mechanisms to address the issue. There are several theoretical propositions that were adopted to by different scholars to explain the phenomenon of human trafficking. These theorists discussed the occurrence of human trafficking from the sociological, crime, legal, globalisation, migration, economic and psychological points of view. This article observes that there are different theoretical propositions dealing with the subject of human trafficking. These theories include: criminal and human rights model theories, feminist theory (involving women and children, coercion and consent), the conflict theory of vulnerable women, rational choice theory of criminals, demand theory of prostitutes and economic theory of human trafficking. For the purpose of this article, the two theories of crime and human rights model that was developed by

Elizabeth Ivana Yuko, will be relied on to explain this article. She considered all of the actions a destination State could take to respond to human trafficking and categorised them as coming under either a crime or human rights model.<sup>13</sup>

### (a) The Crime Theory

The crime theory provides that those who breach criminal laws are viewed as criminals and are deserving of punishment. The criminal model also incorporates the rights of any person accused of a criminal offence. Criminalising human trafficking and related offences such as breaches of

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<sup>10</sup>H.J Steiner and P. Alston. *International Human Rights in Context: Law, Politics, Morals*. (2<sup>nd</sup> edn. Oxford University Press, 2000) 148

<sup>11</sup>Davidson (n 9) 1

<sup>12</sup>E. Ivana Yuko, "Theories, Practices and Promises: Human Trafficking Laws and Policies in Destination States of the Council of Europe", LLM Dissertation submitted to Postgraduate School, Dublin City University School of Law and Government, Ireland, September 2009, 18-19

<sup>13</sup>*Ibid*, 22-24, 29-31.

prostitution, immigration and labour law allows States to maintain their sovereignty, protecting their borders and those who reside within them. Nagan and de Medeiros argue that human trafficking, like other crimes, poses a threat not only to individuals, but also to public order and civic freedom.<sup>14</sup> When crimes, such as human trafficking, morph from occasional, isolated, or random occurrences into a recognized institutional practice, it is necessary to consider the threat they pose to public order, the criminal justice system and society.<sup>15</sup>

The rationale of the crime model is that human trafficking and its related offences pose a threat to the security and society of a State. Human trafficking must be criminalised in every State on both a national and transnational level, in order to ensure that there are no geographic regions in the world void of trafficking laws, which would facilitate the crime. The goal of the crime theory is to encourage as many States as possible to criminalise human trafficking in their national laws and to prosecute perpetrators.<sup>16</sup> The criminal model has been adopted continually by the international community<sup>17</sup> because the acts of trafficking violate domestic law; the link between trafficking and prostitution requires a criminal response; and trafficking often occurs in connection with other criminal activities.<sup>18</sup> By way of further analysis, Askola argues that, the crime theory can be viewed as “commonsensical” as a result of the links between human trafficking and illegal activities such as irregular immigration and prostitution.<sup>19</sup> Bruch contends that an advantage of criminalising trafficking is that it offers the potential for the direct prosecution of traffickers and a tangible way of enforcing international law.<sup>20</sup>

### **(b) Human Rights Theory**

The human rights theory provides that people trafficked into a State’s borders are viewed as victims of a crime<sup>21</sup> rather than criminal defendants, and are deserving of assistance and protection. The trafficked persons are granted human rights by the State, despite the fact that they are in and have entered the State illegally. States must adopt measures to ensure that trafficked persons are afforded their international human rights. Besides, this combines the protection of national and

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<sup>14</sup>W.P Nagan and Alvaro de Medeiros. “Old Poison in New Bottles: Trafficking and the Extinction of Respect”, (2006)(14)(1) *Tulane Journal of International and Comparative Law*, 259.

<sup>15</sup>*Ibid.*

<sup>16</sup>A. Amiel, “Integrating a Human Rights Perspective into the European Approach to Combatting the Trafficking of Women for Sexual Exploitation.” [2006] (12) *Buffalo Human Rights Law Review*, 12.

<sup>17</sup>K.E Bravo, “Exploring the Analogy between Modern Trafficking in Humans and the Trans-Atlantic Slave Trade.”[2007] (25) *Boston University International Law Journal*, 224.

<sup>18</sup>E. Bruch, “Models Wanted: The Search for an Effective Response to Human Trafficking”, [2004] (40) *Stanford Journal of International Law*, 17.

<sup>19</sup>H. Askola, *Legal Responses to Trafficking in Women for Sexual Exploitation in the European Union*. (Portland: Hart Publishing, 2007) 99

<sup>20</sup>E. Bruch, (n 18)

<sup>21</sup>M.Y Mattar, “Incorporating the Five Basic Elements of a Model Anti Trafficking in Persons Legislation in Domestic Laws: From the United Nations Protocol to the European Convention” [2006] (14) *Tulane Journal of International and Comparative Law*, 377.

international human rights, as the trafficked person is outside his or her home State most times.<sup>22</sup> The human rights theory best explains the topic of this article because this work discusses international human rights of victims of trafficking and the prosecutorial difficulties encountered under the Nigerian criminal justice system.

## 6. Human Rights of Trafficked Persons

There is a close links between human rights and human trafficking. From its earliest days to the present, human rights law has unequivocally proclaimed the fundamental immorality and unlawfulness of one person appropriating the legal personality, labour or humanity of another. Human rights law has prohibited discrimination on the basis of race and sex; it has demanded equal or at least certain key rights for non-citizens; it has decried and outlawed arbitrary detention, forced labour, debt bondage, forced marriage, and the sexual exploitation of children and women; and it has championed freedom of movement and the right to leave and return to one's own country.<sup>23</sup>

The human rights most relevant to trafficking in person under domestic and international human rights law includes: The prohibition of discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. The right to life, liberty and security, the right not to be submitted to slavery, servitude, forced labour or bonded labour. The right not to be subjected to torture or cruel, inhuman, degrading treatment or punishment.<sup>24</sup>

The right extends to be free from gendered violence, the right to freedom of association and movement. The right to attain the highest attainable standard of physical and mental health, to just and favourable conditions of work, to an adequate standard of living, to social security and the right of children to special protection. Different human rights will be relevant at different points in the trafficking cycle. Some will be especially relevant to the causes of trafficking (for example, the right to an adequate standard of living); others to the actual process of trafficking (for example, the right to be free from slavery) and still others to the response to trafficking (for example, the right of suspects to a fair trial). Some rights are broadly applicable to each of these aspects.<sup>25</sup>

Victims who break free from their traffickers often find themselves in a situation of great insecurity and vulnerability. They may be physically injured as well as physically and/or emotionally

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<sup>22</sup>Ivana Yuko, (n 12).

<sup>23</sup>United Nations Office of the High Commissioner for Human Rights, 'Human Rights and Human Trafficking', Fact Sheet No.36 United Nations, New York and Geneva, 2014, 4-5

<sup>24</sup>*Ibid*

<sup>25</sup>*Ibid*



traumatized.<sup>26</sup> They may be afraid of retaliation. They are likely to have few, if any, means of subsistence. Unfortunately, the harm experienced by victims of trafficking does not necessarily cease when they come to the attention of the authorities. Mistreatment by public officials may result in a continuation of an exploitative situation or the emergence of a new one. The harm already done to victims can be compounded by failures to provide medical and other forms of support or by linking it to an obligation to cooperate that victims may not be willing or able to meet. The State in which a victim is located is responsible for providing that person with immediate protection and support.<sup>27</sup> This responsibility becomes operational when the State knows or should know that an individual within its jurisdiction is a victim of trafficking. The principle is applicable to all countries in whose territory the victim is located. It applies to all trafficked persons, whether victims of national or transnational trafficking. The first and most immediate obligation of that State is to ensure that the victim is protected from further exploitation and harm from those who have already exploited that person as well as from anyone else. What this means in practice will depend on the circumstances of each case. The standard of due diligence, certainly requires States to take reasonable measures to this end. In most situations, reasonable protection from harm requires.<sup>28</sup>

Once a victim of human trafficking has been identified, he or she should be provided access to variety of protective services. The most critical of these, grounded in international standards of human rights protection, may be identified in the following forms of rights that the victims of trafficking are entitled to. These are: right to safety, privacy, information, legal representation, right to be heard in court, right to compensation for damages, the right to assistance and seek for residence, right to return.<sup>29</sup>

#### **(a). Right to Safety**

The right to safety is not stated in the Constitution of Nigeria but it is embedded under the provisions on the right to life and dignity of the human person.<sup>30</sup> The victims of trafficking should be entitled to the right to safety. Because of the association for the crime of trafficking in persons with organized crime or the cultural sensitivity of the crime, victims of trafficking face serious safety concerns. Traffickers may target victims of trafficking to intimidate and threaten them or

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<sup>26</sup>United Nations Office of the High Commissioner for Human Rights (OHCHR) , ‘Human Rights and Human Trafficking’, Fact Sheet No.36 United Nations, New York and Geneva, 2014, 12-13 <[http://www.ohchr.org/Documents/Publications/FS36\\_en.pdf](http://www.ohchr.org/Documents/Publications/FS36_en.pdf)> accessed 14 June, 2022

<sup>27</sup> *Ibid*

<sup>28</sup> *Ibid*

<sup>29</sup>A.M Bachaka, ‘Human Trafficking, the Rights of Victims and Government Obligations under the International Laws’, (2017) (67)(34) *Journal of Law Policy and Globalization*, 36-39

<sup>30</sup>Constitution of the Federal Republic of Nigeria, 1999 (as amended), (hereinafter referred to as CFRN 1999), ss 33-34.

members of their family.<sup>31</sup> This will ultimately prevent them from testifying in court. Hence, the Office of the United Nations High Commissioner for Human Rights (OHCHR) recommended principles and guidelines provides that states should ensure that: .... Trafficked persons are effectively protected from harm, threats or intimidation by traffickers and associated persons. To this end, there should be no public disclosure of the identity of trafficking victims and their privacy should be respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial.<sup>32</sup>

### **(b). Right of Privacy**

Right to privacy is provided under Section 37 of the Constitution of Nigeria 1999.<sup>33</sup> The victims of human trafficking are entitled to the right of privacy. The Palermo Protocol<sup>34</sup> requires that measures must be taken by the states to protect the privacy and identity of victims such protection includes the confidentiality of legal proceedings to the extent that this is possible under domestic laws.<sup>35</sup> Procedural laws may then require amendment to ensure that courts have the authority to shield the identity or identities or otherwise protect the privacy of victims in appropriate cases.<sup>36</sup> There should be no public disclosure of the identity of trafficking victims and their privacy should be respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial. The State in which a trafficked person is located is also required to provide that person with physical and psychological care that is adequate to meet at least immediate needs. Importantly, the provision of such care has been widely acknowledged to be a non-negotiable right of the victim: a right that should be recognized and implemented irrespective of that person's capacity or willingness to cooperate with criminal justice authorities. There is growing recognition that separating protection and support from victim cooperation in this way is a fundamental part of a human rights approach to trafficking.<sup>37</sup>

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<sup>31</sup>United Nations Office on Drugs and Crime, 'Appropriate Legal Responses to Combating Trafficking in Persons in Afghanistan: Manual for Parliamentarians' United Nations Office on Drugs and Crime (UNODC) New York, July, 2008, 62.

<sup>32</sup>Office of the United Nations High Commissioner for Human Rights, Guideline 6 (5).

<sup>33</sup>CFRN 1999, s 37-Right to Privacy and Family Life. This sections provides that the privacy of the citizens their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.

<sup>34</sup>United Nations: Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children Supplementing the U.N Convention against Transnational and Organized Crime. Palermo-Italy. UN General Assembly, (UN. Doc. A/55/383 (2000) Annex II). Eleventh Session, adopted by Resolution 55/25, 12-15 December, 2000. It entered into force in 2003. (Hereinafter referred to as Palermo Protocol). Article 6(1).

<sup>35</sup> United Nations Office on Drugs and Crime, "Appropriate Legal Responses to Combating Trafficking in Persons in Afghanistan: Manual for Parliamentarians", United Nations Office on Drugs and Crime (UNODC) New York, July, 2008, p. 63

<sup>36</sup>Trafficking in Persons (Prohibition) Enforcement and Administration Act, No. 4. A 115 of 2015, (hereinafter referred to as NAPTIP Act, 2015), s 47.

<sup>37</sup>United Nations Office of the High Commissioner for Human Rights, "Human Rights and Human Trafficking", (Fact Sheet No.36 United Nations, New York and Geneva,) 2014, 14



### **(c). Right to Information**

Right to be informed of the crime committed by anyone is a procedural law under the Constitution of the Federal Republic of Nigeria and the Criminal Procedure Laws of Nigeria. The victims of human trafficking are entitled to the right of information, accordingly, the trafficking protocol provides that states parties should make available to victims of trafficking information on relevant court and administrative proceedings and counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand.<sup>38</sup> The victims of human trafficking need information in a language that they understand about the justice process and their own rights and responsibilities as participants in criminal proceedings. Access to information is an important starting point for the participation of victims of trafficking in the criminal process. It is of great significance to note that, the most extensive list of rights is of no practical use of victims if they are not informed of those rights. Information helps to prepare and familiarize victims with the criminal proceedings and to ease their psychological stress and anxiety. It is also a means of empowerment and enables victims to participate actively in the case and enforce their rights.

### **(d). Right to Legal Representation**

Under legal representation, the victims of human trafficking are entitled to be granted the right to legal representation in accordance with domestic and international human rights standards. Section 36(6)(c) of the Constitution of the federal Republic of Nigeria 1999, provides that, 'every person who is charged with a criminal offence shall defend himself in person or by legal practitioners of his own choice'.<sup>39</sup> Victims are often deterred from participating in various legal proceedings because of the fact that simple, accessible and timely legal advice or services are not available to them. Legal advice therefore should be made available as part of the integrated support offered by the state's victims assistance programme. This is because many victims of human trafficking are fearful of government and bureaucratic authorities, the provision of legal assistance and representation is generally essential in this regard.<sup>40</sup> The task of legal counsels is to inform the victims about their legal rights and roles in criminal proceedings and to accompany them throughout the process. They assist victims in expressing their views and enforcing their procedural rights. Legal counseling also prepares victims for the criminal proceedings and can as

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<sup>38</sup>United Nations Office on Drugs and Crime, 'Appropriate Legal Responses to Combating Trafficking in Persons in Afghanistan: Manual for Parliamentarians' United Nations Office on Drugs and Crime (UNODC) New York, July, 2008, 63. See Palermo Protocol). Article 6

<sup>39</sup>CFRN 1999, Section 36(6)(c). "Victims of trafficking will receive the following services: [...] Counseling and information regarding their legal rights, in a language that the victims of trafficking in person can understand." See the Law of the Republic of Bahrain-Law on the Prevention of Human Trafficking of 2007.

<sup>40</sup>Section 36(5) CRFN 1999 as amended, this section provides that "every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty. See also s 62(c) of the NAPTIP Act 2015 which provides that all victims are entitled to counseling and information as regarded their legal rights in a language that they can understand.

well reduce the risk of imposing further traumatizing experiences on the victims. It increases the chance of sound and coherent witness statements and contributes to the successful prosecution of the traffickers.<sup>41</sup> While all victims of trafficking may require legal advice and representation at some stage, this need is particularly acute for those who are involved in the criminal justice process including as witnesses. International law and policy confirms that trafficked persons should be provided with legal and other assistance in relation to criminal and other actions against traffickers or exploiters.<sup>42</sup>

#### **(e). Right to be Heard in Court**

The right of a trafficked person to be heard is guaranteed under the constitution of Nigeria 1999. Section 36(1) provides that; “in the determination of his civil rights and obligations, including any question or determination by or against any government or authority a person shall be entitled to fair hearing with a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality”.<sup>43</sup> The Palermo protocol provides that, state parties should provide victims of human trafficking with assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders.<sup>44</sup> For that purpose, victims of trafficking should be provided with information on relevant court and administrative proceedings and allowed to present concerns which could include either written submissions or oral statements. This is to be done in a manner not prejudicial to the rights of the defense.<sup>45</sup>

#### **(f). Right to Compensation for Damages**

Persons who suffered injuries whether physical or psychological has a right to receive compensation for the physical or mental harm suffered at the hands of the traffickers. Receiving compensation is important for victims of human trafficking not only because of the financial component but because it has a symbolic meaning, expressing an official acknowledgement that something illicit has been done to them and constituting a first step to overcoming the trauma inflicted by the abuses they suffered at the hands of the traffickers. In this regard the trafficking protocol provides: Each state party shall ensure that its domestic legal system containing measures that offer victims of trafficking in persons the possibility of obtaining compensation for damaged

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<sup>41</sup>United Nations Office on Drugs and Crime, ‘Appropriate Legal Responses to Combating Trafficking in Persons in Afghanistan: Manual for Parliamentarians’ United Nations Office on Drugs and Crime (UNODC) New York, July, 2008, 63.

<sup>42</sup>A.T Gallagher, and N.N Karlebach, “Prosecution of Trafficking in Persons Cases: Integrating a Human Rights-Based Approach in the Administration of Criminal Justice”, Background Paper, United Nations, Geneva, 4 July 2011, 12, See also Palermo Protocol, Article 6(2)(a); Council of Europe Convention on Action Against Trafficking, Warsaw, 16 May 2005, CETS 197, Article 12(1)(d).

<sup>43</sup>CFRN 1999 (as amended) s 36(1).

<sup>44</sup>Palermo Protocol, Article 6(2).

<sup>45</sup>United Nations Office on Drugs and Crime, ‘Appropriate Legal Responses to Combating Trafficking in Persons in Afghanistan: Manual for Parliamentarians’ United Nations Office on Drugs and Crime (UNODC) New York, July, 2008, 65.

suffered.<sup>46</sup> Under the recommended principles and guidelines it was stressed that: Trafficked persons as victims of human rights violations have an international legal right to adequate and appropriate remedies. This right is often not effectively available to trafficked persons as they frequently lack information on the possibilities and process for obtaining remedies, including compensation, for trafficking and related exploitation.<sup>47</sup> In order to overcome this problem, legal and other material assistance should be provided to trafficked persons to enable them to realize their right to adequate and appropriate remedies.

### **(g). Right to Assistance**

Victims of human trafficking are entitled to the right of assistance in the form of medical, psychological, legal and social aid. In this regard the United Nations Palermo Protocol provides: Each state party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons. The Palermo Protocol further states that the victims have the right to be granted: appropriate housing, counseling and information. In particular as regards their legal rights, in a language that the victims of trafficking in person can understand, medical, psychological and material assistance, and employment, educational and training opportunities. The most critical factor in the area of assistance and support programme is that they should be both comprehensive and integrated. Assistance in medical psychological, legal services,<sup>48</sup> accommodation, education and training will not exist satisfactorily in isolation. To plan and provide services in a coordinated and collaborative manner is in the best interest of victim.<sup>49</sup>

### **(h). Right to Seek Residence**

It is a common knowledge that the victims of trafficking reside unlawfully in a country and as such they may face special dangers and vulnerabilities as a result of their legal status. They may be vulnerable to further exploitation as well as intimidation and retaliation. They risk being prevented from participating effectively and meaningfully in legal proceedings against their traffickers. Without regularization of their status, victims also risk being detained in immigration facilities or

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<sup>46</sup> *Ibid*, Article 6.

<sup>47</sup> UN Office of the United Nations High Commissioner for Human Rights (OHCHR), "Recommended Principles and Guidelines on Human Rights at International Borders, Promotion and Protection of Human Rights: Human Rights, Questions including Alternative Approaches for Improving the Effective Enjoyments of Human Rights and Fundamental Freedoms", Sixty-Ninth Session, Item 69 of the Provisional Agenda, A/69/CRP.1, 23 July, 2014. Guidelines 1-10, 9, 1-24

<sup>48</sup> *Ibid*, CFRN 1999, s 36(6)(a)(b) and (e). In terms of assistance under the Constitution of the Federal Republic of Nigeria it is provided that "every person who is charged with a criminal offence shall be entitled to-(a) be informed promptly in the language that he understands and in detail of the nature of the offence. (b) be given adequate time and facilities for the presentation of his defense... (e) have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence. See *Umaru v. Federal Republic of Nigeria*, (2013) LPELR-20192(CA). It was stated that, inherent in the requirement of a valid arraignment is Section 36 (6) (e) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which makes it mandatory in all criminal trials that an accused person who is standing trial for an offence and do not understand the language of the court shall be entitled to have, without payment, the assistance of an interpreter.

<sup>49</sup> *Ibid*

shelters. In addition, they are liable to deportation at any time.<sup>50</sup> The expulsion and immediate repatriation of victims of trafficking does not encourage them to give evidence or testify against traffickers and goes against their basic rights as victims. Victims of human trafficking very often do not have a regular residence status in the state of destination, either because they have arrived illegally or because their residence permit has expired. However, the immediate return of the victims to their home countries may be unsatisfactory both for the victims and for the law enforcement authorities endeavoring to combat human trafficking. For the victims, it means that they or even their family or friends in the country of origin might be vulnerable to reprisals by the traffickers. For the law enforcement, if the victims continue to live clandestinely in the country or are removed immediately, they cannot give information to effectively combat trafficking. The more confident victim are that their rights and interest will be protected, the more likely they are to provide better information. In this regard the trafficking protocol provides: State parties shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.<sup>51</sup> The adoption of these measures has led to victims coming forward to testify against traffickers and Nongovernmental organizations (NGOs) encouraging, victims to whom they provide services to report incidents to the government.

#### **(i). Right to Return and Residence**

Under international human rights law is clear that all victims of human trafficking, either in children as well as adults, who are not residents of the country in which they find themselves are entitled to return to their country of origin. This right places an obligation on the part of the country of origin to receive its returning nationals without undue or unreasonable delay. This is likely to involve the State of origin quickly verifying whether the victim is indeed a national or has a right of permanent residence and, if so, ensuring that the individual is in possession of the papers required to travel to and re-enter its territory.<sup>52</sup> The act of compelling victims to remain for the duration of lengthy criminal proceedings can also constitute an interference with the right of return. In respect of each individual case, the State preventing the return must be able to show that its actions are in accordance with the law and are not arbitrary or unreasonable.<sup>53</sup>

Trafficked persons have the right to seek residence in the country to which they have been trafficked. They should also have the right to a dignified return to their country of origin. The

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<sup>50</sup>United Nations Office of the High Commissioner for Human Rights, 'Human Rights and Human Trafficking', (Fact Sheet No.36, United Nations, New York and Geneva, 2014) 16

<sup>51</sup>UNODC, "Assistance for the Implementation of the ECOWAS Plan of Action against Trafficking in Person "(UNODC),<sup>65</sup> <<http://www.unodc.org>>.accessed 15 July, 2022

<sup>52</sup>United Nations Office of the High Commissioner for Human Rights, "Human Rights and Human Trafficking", (Fact Sheet No.36, United Nations, New York and Geneva, 2014), 24

<sup>53</sup>United Nations Office on Drugs and Crime, 'Appropriate Legal Responses to Combating Trafficking in Persons in Afghanistan: Manual for Parliamentarians'(UNODC, New York, July, 2008) 68

United Nations Palermo Protocol provides that States of which victims of trafficking are nationals or residents, should facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay. The Protocol further provides that repatriation of victims shall be preferably voluntary and victims should be provided with all necessary assistance to ensure a dignified return. Upon a request of the receiving state, states of origin must verify whether the victim is a national or had the right to permanent residence at the time of entering the receiving state if the person has no proper, documentation, the state of origin must also issue the necessary travel or other documents to enable the person to travel and to reenter its territory States are generally obligated to guarantee that any return is with due regard both for the safety of the returnee and for the status of any legal proceedings related to the fact that the person is a victim of human trafficking king It is important to note that the returned victims may still be traumatized and suffering from medical and psychological problems as a result of the experience and still fear retribution from the traffickers. The essential elements to address these issues may be regulated through international or bilateral treaties between countries of origin and countries of destination.

## **7. The Challenges of Prosecuting Human Traffickers in Nigeria**

There are several challenges involved in the prosecution of human traffickers in Nigeria considering the development of the criminal justice system and the issues of cooperation with trafficking victims, the prosecutors and the judiciary itself. The National Agency for the Prohibition of Trafficking in Persons (NAPTIP), the government agency saddled with the responsibility of curbing human trafficking in Nigeria disclosed that it has so far secured 316 convictions against human traffickers in Nigeria but that there are serious challenges faced by the organization. NAPTIP had about 145 pending cases, and some of the challenges faced by the agency include: insufficient funds, clandestine nature of the crime, lack of requisite training by law enforcement officials to detect trafficking cases, lack of synergy among law enforcement agencies in tackling human trafficking crimes, unwillingness by victims to testify in court, victims horrible experiences and language difficulties, fear of visitation by the voodoo spirit and ritual oath repercussions and delay in the criminal justice administration in Nigeria. Others are porous borders, relationship ties, and tender age of victims.<sup>54</sup>

### **(a) Insufficient funds for the Prosecution**

One of the major challenges confronting NAPTIP and the criminal justice system in prosecuting human trafficking cases is the limited availability of funding and personnel resources on the part of law enforcement officers to investigate cases and gather evidence and on the part of prosecution to prepare for and prosecute cases. It's a major challenge for the Agency because when traffickers

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<sup>54</sup>Mudiaga Affe, "NAPTIP Convicts 316 Human Traffickers", *Punch Newspaper*, 23 February, 2017, <<http://punchng.com/naptip-convicts-316-human-traffickers-2/>> accessed 15 July, 2022

and victims are still outside the country as it is often too costly to send investigators to those countries and to get evidence from victims.<sup>55</sup> Again, the limitation on resources available to provide needed services to victims is also a challenge that has direct impact on the issue because unstable victims with psychological or emotional trauma are not able to effectively contribute to the prosecution of cases.<sup>56</sup>

### **(b) Clandestine Nature of the Crime**

Human trafficking is an underground criminal enterprise that is very difficult to unearth. Traffickers act under different guise and they continue to change their tactics and location. Their operations are very discrete and it is always difficult for law enforcement agents to track them down and bring them to justice. This is one of the major shortfalls in law enforcement approaches to the crime globally. Moreover members of human trafficking organization have a history of violence, and therefore, investigators are concerned that the months of surveillance required to gather sufficient evidence may result in serious harm to the victims.<sup>57</sup> The challenge faced by NAPTIP includes the fact that most of the victims when returned to the country hide the fact that they were trafficked and also refuse to give out the names of their traffickers. Because of this, gathering evidence from victims and getting victims to testify in the law courts has been a big problem.<sup>58</sup>

Furthermore, it has been identified that “the culture of police agencies and the perceptions of police officials about human trafficking do not support the identification of a broad range of human trafficking cases”.<sup>59</sup> For instance, trafficked women and men are usually seen as breaking prostitution or migration laws rather than as victims of trafficking, which makes them unwilling to bear witness against traffickers. Moreover, victims are afraid to testify due to lenient sentences as evidenced by the national legislations prior to 2015 NAPTIP Act.<sup>60</sup> These fears are

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<sup>55</sup>Bisi Olateru-Olagbegi and Anne Ikpeme, “Review of legislation and Policies in Nigeria on Human Trafficking and Forced Labour: *Review of Legislation on Trafficking and Forced Labour in Nigeria*”, ILO Working Paper, 1<sup>st</sup> January, 2006, 45 Available online at <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_083149.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_083149.pdf)>, accessed 26 July, 2022

<sup>56</sup>S.K Kigbu, “Challenges in Investigating and Prosecuting Trafficking in Persons’ Cases in Nigeria”, (2015) (38), *Journal of Law, Policy and Globalization*, 146-157, 153

<sup>57</sup>Kovid Kumar, “Considering the clandestine nature of human trafficking, how does law enforcement learn of potential cases to investigate?” <[https://www.researchgate.net/post/Considering\\_the\\_clandestine\\_nature\\_of\\_human\\_trafficking\\_how\\_does\\_law\\_enforcement\\_learn\\_of\\_potential\\_cases\\_to\\_investigate](https://www.researchgate.net/post/Considering_the_clandestine_nature_of_human_trafficking_how_does_law_enforcement_learn_of_potential_cases_to_investigate)>, accessed 20 July, 2022.

<sup>58</sup>Olateru-Olagbegi and Ikpeme, (n 55) 45

<sup>59</sup>D.F Haynes, “Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers”, (2004)(26)(2) *Human Rights Quarterly*, 221–272.

<sup>60</sup>B Limanowska, “The Victim-Perspective – A Neglected Dimension, in Sector Project Against Trafficking in Women”, *Challenging Trafficking in Persons: Theoretical Debate & Practical Approaches*, (Baden-Baden: Nomos, 2005) 27–31, 28; UNHCR, “Combating Human Trafficking: Overview of UNHCR Anti-Trafficking Activities in Europe”, Geneva: Bureau for Europe Policy Unit, United Nations High Commissioner for Refugees, 2005.



further reinforced by the fact that traffickers are not easily arrested or convicted as soon as possible.<sup>61</sup>

### **(c) Lack of Requisite Training By Law Enforcement Officials to Detect Trafficking Cases**

The police authorities who are at the centre of criminal justice administration with regards to human trafficking issues usually lack the necessary training required or even the manpower and technology to attack sophisticated organized crime networks, there are struggles with the identification and investigation of human trafficking offenses.<sup>62</sup> Police officials are uncertain about what constitutes the crime itself and they are often unable to distinguish between exploitive labour practices and poor working conditions, prostitution, and human trafficking.<sup>63</sup> The idea that human trafficking is primarily sex trafficking is impeding any real development in countering human trafficking for labour purposes which according to the International Labour Organization is the prevalent form of exploitation worldwide.<sup>64</sup> Human trafficking is a compound societal issue that involves the exploitation of humans for monetary gains or benefits. As a modern form of slavery, human trafficking violates human rights, presents a global public health concern, and is prevalent in both impoverished and wealthy nations: Victims range from domestic workers such as housekeepers and nannies, to labourers including factory, construction, mining, commercial fishing, food service and agricultural, sex workers, beggars and child soldiers.<sup>65</sup> Therefore training and awareness sessions should be undertaken by law enforcement as one way of identifying victims and criminal activities related to human trafficking. However, this is where partnerships and relationships with civil societies and NGO's becomes crucial in struggle against human trafficker and quest for justice.

### **(d) Lack of Synergy among Law Enforcement Agencies in Tackling Human Trafficking Crimes**

There is lack of synergy among government agencies that are charged with enforcing laws relating to human trafficking crimes in Nigeria. There appears to exist a lack of cohesion between immigration and the police as to which agency has jurisdiction in trafficking matters and who should handle repatriated or returnee victims. Each agency is doing its doing its utmost best to

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<sup>61</sup>Mariya Grozdanova, "Why is it so Difficult to Fight Human Trafficking?", 31 July, 2016, <<http://www.e-ir.info/2016/07/31/why-is-it-so-difficult-to-fight-human-trafficking/>>, accessed 22 July, 2022

<sup>62</sup>Amy Farrell, Jack McDevitt, and Stephanie Fahy, "Where are all the victims? Understanding the Determinants of Official Identification of Human Trafficking Incidents", (2010)(19)(2), *Criminology & Public Policy*, 201-233.

<sup>63</sup>A Callagher and P Holmes, "Developing an Effective Criminal Justice System Response to Human Trafficking: Lessons from the Front-line", (2008)(18)(3) *International Criminal Justice Review*, 318-343.

<sup>64</sup>D.A. Feingold, "Human Trafficking", *Foreign Policy*, (2005)(150) 26-32, available at: <<http://www.jstor.org/stable/30048506>>, accessed on 22 July, 2022.

<sup>65</sup>R Konrad, A.C. Trapp and K.L Maass, "Human Trafficking Analysis: Operations Research and similar Analytical Techniques have the Unique Potential to Address a Worldwide Problem", <<https://www.informs.org/ORMS-Today/Public-Articles/April-Volume-44-Number-2/Human-trafficking-analysis>>, accessed on 24 July, 2022

shield the other away from their operations and to hide information from each other. A lack of coordination among these agencies may lead to inadequate protection of the rights of victims of human trafficking. Due to the nature of the crime (human trafficking), there is need for these agencies to work together. There appears to be a lot of politics also in deciding who should be involved. For example, it has been observed that Interpol is no longer a member of the Task Force on Human Trafficking. There is also, very little collaboration between Nigerian law enforcement agencies and those of transit countries and destination countries.<sup>66</sup>

Nigerian Immigration Service (NIS) works with NAPTIP and other law enforcement agencies in the prevention of human trafficking in Nigeria. The NIS is concerned with the issuing of travel documents and controlling the country's borders. In 2003, the immigration service created anti trafficking units to help tackle the problem of trafficking in women and children, following the increasing number of cases of human trafficking involving Nigerians. While the Nigeria Police Force (NPF) is designated by Section 194 of the Constitution as the national police with exclusive jurisdiction throughout the country. The Police force carries out law enforcement responsibilities for the internal security of the country generally. It also supports the prison, immigration, and customs services and for performing military duties within or outside Nigeria as directed. The mandate of the police concerning human trafficking includes investigating, apprehending and prosecuting traffickers as well as enlightenment of the public about the phenomenon.<sup>67</sup>

#### **(e) Unwillingness by Victims to Testify in Court**

An important precondition for improving the prosecution of offences relating to human trafficking for the purpose of sexual exploitation is the promotion of victims' willingness to make a witness statement.<sup>68</sup> Victims are often reluctant to come forward because they fear retribution against themselves or their families back home and because they distrust the police, especially if they are from a country which suffers from a corrupt law enforcement system.<sup>69</sup>

In Nigeria, there is lack of willingness by victims to testify in human trafficking cases. Apart from the fact that Victim of human trafficking may not have adequate protection under the legal system as regards their identity. Trafficked victims feel ashamed to come out and testify about their ordeals

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<sup>66</sup>S.K Kigbu, "Challenges in Investigating and Prosecuting Trafficking in Persons' Cases in Nigeria", (2015)(38) *Journal of Law, Policy and Globalization*, 146-157, 151

<sup>67</sup>Olateru-Olagbegi and Ikpeme, (n 5) 38-39.

<sup>68</sup>Cornelia Helfferich, Barbara Kavemann and Heike Rabe, "Determinants of the willingness to make a statement of victims of human trafficking for the purpose of sexual exploitation in the triangle offender-police-victim", in *Trends in Organized Crime*, Springer Science+Business Media, LLC 2011, 2. Available online at [https://www.researchgate.net/publication/225448923\\_Determinants\\_of\\_the\\_willingness\\_to\\_make\\_a\\_statement\\_of\\_victims\\_of\\_human\\_trafficking\\_for\\_the\\_purpose\\_of\\_sexual\\_exploitation\\_in\\_the\\_triangle\\_offender-police-victim](https://www.researchgate.net/publication/225448923_Determinants_of_the_willingness_to_make_a_statement_of_victims_of_human_trafficking_for_the_purpose_of_sexual_exploitation_in_the_triangle_offender-police-victim), accessed 2 August, 2022.

<sup>69</sup>Konrad, Trapp and Maass, (n 65)

in the hands of their traffickers as that will ventilate their private life as prostitutes. Again the fear of the judges and nature of the court room decorum may prevent victims to come out and testify in court. Again most of them may not have the needed education and mental capacity to understand the complex nature of the questions posed to them by the prosecutors, lawyers and judges. Moreover the delay in the criminal justice system that requires series of adjournments may dissuade victims to come to the courts to testify on cases involving the prosecution of traffickers. Above all, the threats of violence and possibly used violence as a feature of offender systems as well as violence in the context of a personal relationship with an offender constitutes a major factor against testifying in courts thereby making the securing convictions<sup>70</sup> for human trafficking offences a daunting task considering the rule of evidence in criminal prosecution requiring victims to come to court for examination and cross examination purposes.

#### **(f) Victims Horrible Experiences and Language Difficulties**

The horrible experience of victims from the stage of procurement and chain of transportation from one place to the other before getting to the final destination together with the threats of violence and series of human exploitation many be too enormous, that the victims may be unwilling to face the audacious task of coming to court to narrate experiences against their traffickers in order to secure conviction. Again the language barriers of not being able to understand the language of the court coupled with the victim's unwillingness or inability to talk about their traumatic experiences may hamper investigation and prosecution of cases. Investigators who are fluent in the language of the person they are interviewing and have cultural affinity with the person may have more success. Investigators and prosecutors can gain the trust and cooperation of victims and witnesses by showing compassion and making them feel comfortable. Again despite the provision of interpreters by the courts to aid those victims who are not fluent in reading, writing and spoken English, such interpreter may also not be able to interpret the exact words in the local dialect of the victim.<sup>71</sup>

#### **(g) Fear of Visitation by the Voodoo Spirit and Ritual Oath Repercussions**

An important characteristic of the Nigerian trafficking system is the use by the traffickers of threats of voodoo curses to control Nigerian victims and force them into situations of prostitution. Voodoo spirit plays an important role in enslaving African women and girls particularly those from West African without making a distinction between all the supernatural forces involved in sex trafficking. "Voodoo is a religion (which includes ritual oaths in its practices), while a ritual oath is a seal placed on an agreement through rituals binding both parties to the terms of the agreement

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<sup>70</sup>R Boot, "Prosecutors Call for Human Trafficking Victims to Testify", *The Guardian Newspaper*, 29 July, 2010, available online at <<https://www.theguardian.com/law/2010/jul/29/human-trafficking-prosecutions-policy>>, accessed 4 August, 2022.

<sup>71</sup>S.K Kigbu, (n 66).

on pain of supernatural retaliation.” Voodoo is a religion based on the existence of an invisible world interconnected to the visible world. It originated in West Africa, where voodoo beliefs are still widespread, mainly in Nigeria, Benin, Togo and Ghana. Rituals oaths are a practice derived from this religion. These oaths seal the pact between women who want to move to Europe and traffickers. Traffickers commit to pay all costs of the journey, while the women promise to repay the money, be respectful to the traffickers and engage not to denounce the traffickers to the police.

Voodoo-referred to, locally as juju, is a traditional religion in West Africa where it has been practised for centuries. Spirits or gods are believed to govern the earth and every aspect of human existence. They may protect people or punish them. Juju and witchcraft is deeply ingrained in many Nigerians and they believe in it, regardless of social class or level of education. ... Ritual oaths (called juju by Nigerian women) became used in Nigerian human trafficking as a tool of coercion to control the victims. A juju oath works as a form of psychological control as the fear of consequences of breaking the oath, that is punishment by the gods, is extremely strong. The purpose of the oath is to prevent victims from revealing the identity of the traffickers or the details of the juju ritual and to ensure they pay their debt as agreed without creating problems. For their part, traffickers pledge to take the victims to their destination. Many traffickers require their victims to swear the oath of secrecy which is the climax of the trafficking deals before departure to the destination country. It is believed that breaking the oath can anger the deities, which may lead to severe illness, madness or death of the oath breaker or their relatives. This is further compounded by the witchcraft phenomenon which has links with voodoo and human trafficking<sup>72</sup> This is principally responsible for the lack of willingness of the victims to cooperate with the law enforcement agents in prosecution of the traffickers and forms one of the major challenges suffered by the NAPTIP and criminal justice system in bringing the traffickers to book.

### **(h) Delay in the Criminal Justice Administration in Nigeria**

One of the major shortfalls in criminal justice administration in Nigeria is delay in disposing of cases instituted in the courts. This also affects cases of human trafficking as well.<sup>73</sup> This problem is almost prevalent in all cases that come before the justice system whether criminal or civil of

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<sup>72</sup>UNHCR, “Voodoo, Witchcraft and Human Trafficking in Europe”, 6-7, October 2013, <[http://www.ecoi.net/file\\_upload/1930\\_1382531731\\_526664234.pdf](http://www.ecoi.net/file_upload/1930_1382531731_526664234.pdf)>, accessed 6 August, 2022. See also European Asylum Support Office (EASO) “Report, Nigeria: Sex Trafficking of Women”, Means of Recruitment for Sex Trafficking’, October 2015, <<https://coi.easo.europa.eu/administration/easo/PLib/BZ0415678ENN.pdf>> accessed 5 August, 2022. See UK Home Office, ‘Country Information and Guidance Nigeria: Trafficking of Women’, Version 1.0 August 2016, 19-20, <<https://www.justice.gov/eoir/file/887031/download>> accessed 7 August, 2022.

<sup>73</sup>In *Justice Akpor & Ors v. Ighorigo*, (1972), 2 SC, 115, the Supreme Court set aside the judgement because there was a delay of two years and nine months between conclusion of trial and judgement. In *Ekiri v. Kemiside & Ors*, (1976), NWLR145 the Supreme Court set aside a judgement which was about 16 months late. In *Joseph Ozoma & Ors v. M. Osanwuta* (1969), UHC/30/679, the judgement was given 17 years after the institution of the case. The Supreme Court ordered a retrial. In *Agiende Ayambi v. The State*, (1985), 6 NCLR, 141 Olatawura, held that a criminal trial which lasted for over two years could not be said to have been conducted within a reasonable time.

which human trafficking cases are also a part and parcel of. Delays are caused by frequent adjournments by the judges, securing evidence by the prosecutors, failure to get the witnesses to courts, administrative problems associated with prison officials in getting the offenders to court, logistics like functional prison vans for conveying the offenders and prison warders to court. The trials of accused persons, who are remanded in prison custody, are often adjourned due to either the lateness in the arrival or the non-arrival of such accused in court or dates fixed for trial. The lack of readily available vehicles with which to convey accused persons to court during trials account for such lateness or non-arrival of such accused persons in court. Delays are also caused by inadequate courtrooms and infrastructures facilities and poor working conditions.

Some of the judicial officers sometimes show indifference and lack of commitment in the performance of their duties. There are situations where judicial officers sit late and rise early thereby limiting the amount of cases attended to in a working day. There are situations where case was bedeviled with several adjournments and at the instance of defense Counsel, giving various reasons such as perfection of their brief or nonpayment of the charged fee, ill-health, trying to procure witnesses and having to travel out of jurisdiction, among other reasons that the court will have to consider and if not will serve as a veritable ground for the accused to appeal on the grounds that he was not granted fair hearing.<sup>74</sup> In Nigeria, under the criminal justice process, it is the State that prosecutes on behalf of the complainant that is the victim of human trafficking. Thus, whether a case would be disposed of timorously depends largely on the efforts of prosecuting counsel who represents that state in criminal cases involving traffickers and their victims. Furthermore, under the Nigerian Criminal Justice System, an accused person is presumed innocent until proven guilty. Consequently, the burden of proving his guilt rests on the prosecutor and not the accused to prove his innocence. The police, after conclusion of investigation of a case of trafficking, send the case file to the Director of Public Prosecution's office for advice. This is not usually because such case files sent are not usually treated with dispatch. When eventually the trial is commenced, the case may suffer incessant adjournments which prolong the case unduly, simply because sometimes, the Counsels are not ready with their evidence or that they lack required infrastructure or fund to prosecute the case.<sup>75</sup> In such situation the victims may become discouraged to come to court to give evidence against their trafficker, they may have forgotten some of the issues surrounding the matter, fear might set in, threats from the traffickers against the victims from coming up with facts about the crime. The victims might be persuaded or bribed from further attending court proceedings in order to destroy the line of thought needed by the prosecution. All the issues discussed under this sub-head are the problems impeding the effective prosecution of traffickers under the Nigerian criminal justice system.

<sup>74</sup>*Ndu v. The State*, (1990), 7 NWLR PT.164

<sup>75</sup>A John and A Musa, "Delay in the Administration of Criminal Justice in Nigeria: Issues from a Nigerian Viewpoint", (2014)(26) *Journal of Law, Policy and Globalization*, 130-138, 132-133.

## **8. Conclusion and Recommendations**

This article discussed the human rights implications for trafficked victims and the challenges faced by the criminal justice system in Nigeria to effectively bring the traffickers to book. It took a combined approach by looking at definition and concept of human trafficking, human trafficking in Nigeria, the theories that underlie human trafficking and basing the arguments in this article on the crime and human rights theory as propounded by Elizabeth Ivana Yuko. The article further examination deals with human rights of trafficked persons as there are established links between human rights violations and human trafficking crimes. The plethora of rights dealt with here includes: the right to: be safe, privacy, information, legal representation, to be heard in court, compensation for damages, assistance, residence, return and residence in victims home country. The challenges involved in prosecuting human trafficking in Nigeria is the other angle upon which this article was conceived and such challenges are: insufficient funds, clandestine nature of the crime, lack of requisite training by law enforcement officials to detect trafficking cases, lack of synergy among law enforcement agencies in tackling human trafficking crimes, unwillingness by victims to testify in court, victims horrible experiences and language difficulties, fear of visitation by the voodoo spirit and ritual oath repercussions and delay in the criminal justice administration in Nigeria with less serious challenges such as porous borders, relationship ties, and tender age of victims. It is recommended that the government of Nigeria should address these challenges so that the agencies responsible for dealing with human trafficking crimes will have the enabling environment to discharge their responsibility without encumbrance. Fulfilling this governmental obligation will enable them combat the menace of human trafficking in Nigeria and ensure that the citizens rights are not abused by traffickers who in their quest to make profit has reduced humanity to goods that can be traded, bought and sold at prices convenient to the traffickers and their accomplice.