

A CRITIQUE OF THE TRAFFICKING IN PERSONS (PROHIBITION) ENFORCEMENT AND ADMINISTRATION ACT (AMENDMENT) BILL, 2018 OF NIGERIA

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Abstract

This paper examines the provisions of the Trafficking in Persons (Prohibition) Enforcement and Administration Act (Amendment) Bill, 2018. The Bill seeks to amend the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015 of Nigeria amongst other things. This paper shows that the Bill does not address pertinent issues necessary for the elimination of trafficking in persons in Nigeria such as criminalization of corrupt practices of law enforcement agents, civil legal aid for victims and enforcement of mandatory reports from corporate bodies on steps taken to prevent the use of trafficked persons in their business chains. It concludes that until these issues amongst others are addressed, the Trafficking in Persons (Prohibition) Enforcement and Administration Act along with its amendment will remain defective and unable to significantly curb the menace of trafficking in persons in Nigeria.

Key Words: Trafficking, Enforcement, Corrupt Practices, Corporate Bodies.

1. Introduction

The Trafficking in Persons (Prohibition) Enforcement and Administration Act (Amendment) Bill, 2018 was sponsored by three members of the House of Representatives namely - Hon. Samuel Ikon, Hon. Isiaka Ibrahim and Hon. Alabi Mojeed. The Bill seeks to amend the Trafficking in Persons (Prohibition) Enforcement and Administration Act, 2015, establish a Specialised Human Trafficking Court, mandate an annual training on the subjects of human trafficking, modern-day slavery and protection of victims, expand the composition of the governing board of the National Agency for the Prohibition of Trafficking in Persons (NATIP), by including members from the Economic and Financial Crimes Commission (EFCC) and increase penalties under the Act.¹

Although, it is still a Bill, yet to be passed into law, it is important to examine its provisions to ascertain if the proposed amendments are adequate to stem the tide of trafficking in persons in Nigeria. This paper therefore, examines the amendments in the Bill with a view to identifying the drawbacks in it. It also makes recommendations on further amendments to be included in the Bill to make it comprehensive and effective in curbing the menace of trafficking in persons in Nigeria.

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Preamble to the Trafficking in Persons (Prohibition) Enforcement and Administration Act (Amendment) Bill, 2018.

Meaning of Trafficking in Persons

The internationally recognized definition of trafficking in persons (also known as human trafficking) is stated in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the Convention Against Transnational Organized Crime.² Article 3 of the Protocol defines trafficking in persons as - (a) 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 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; (b) the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used; (c) the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered as trafficking in persons even if this does not involve any of the means set forth in subparagraph (a) of the article; (d) child shall mean any person under eighteen years of age.

A similar definition exists under section 82 of the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015 of Nigeria which defines trafficking in persons as the recruitment, transportation, transfer, harbouring or receipt of persons by means of threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person, having control over another person or debt bondage for the purpose of placing or holding the person whether for or not in involuntary servitude (domestic, sexual or reproductive) in forced or bonded labour, or in slavery-like conditions, removal of organs or generally for exploitative purposes.³ Where any of the means set forth in the definition is used,

² Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the United Nations Convention Against Transnational Organized Crime was adopted on 15 November 2000 and entered into force on 25 December 2003, available at <<http://www.unhcr.org/refworld/docid/4720706c0.html>> (accessed 21 October 2019).

³ Section 82 of the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015 provides that exploitation includes at a minimum the exploitation of the prostitution of others or other forms of sexual exploitation, derivation of the offspring of any person, forced labour or services or practices similar to slavery, servitude or the removal of organs.

consent of the victim to the exploitation set forth in the definition of trafficking in persons in the Act, is irrelevant. In Nigeria, the common forms of exploitation are – labour exploitation, sexual exploitation, domestic servitude, begging for arms, organ removal/harvesting, sale of babies and involvement in armed conflict (by terrorist groups).⁴

Trafficking in persons takes place within Nigeria (domestic trafficking) and across her borders (international trafficking). Nigeria is on tier 2 Watch List of the United States Department of State Trafficking Report 2018.⁵ This means that the Government of Nigeria has not fully met the minimum standards for the elimination of trafficking in persons, but is making significant efforts to do so.⁶

Within Nigeria, people, in particular, children are trafficked from rural areas to cities such as Lagos, Abeokuta, Ibadan, Kano, Kaduna, Abuja and Port Harcourt.⁷ Trafficking in persons also takes place in internally displaced persons camps.⁸ This is due largely to the deplorable condition of the camps and lack of adequate food and care. As a result, displaced persons become desperate to leave.⁹ This situation makes them vulnerable to traffickers who pretend to offer solution to their problems by making false promises of better prospects elsewhere.

With respect to international trafficking, Nigeria is a source, transit and destination country.¹⁰ As a source country, Nigerians are trafficked to various countries in Europe, America, Asia and even Africa. Nigeria is a destination country for people trafficked from West African countries and it is a transit country for victims trafficked to Europe.¹¹ Victims are enslaved and subjected to various forms of exploitations which leave them traumatized and affected by various health challenges.

Analysis of the Provisions of the Trafficking in Persons (Prohibition)

⁴ G.U. Osimen, *et al*, “The Socio-Economic Effects of Human Trafficking in Nigeria” *Journal of Social Sciences and Human Research*, Vol. 3, Issue 8, (2018), p.122

⁵ United States Department of State “[2018 Trafficking in Persons Report: Nigeria](https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282722.htm)” available at <<https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282722.htm>> (accessed 14 October 2019).

⁶ *Ibid*.

⁷ E.E. Okodudu and O. Akpoghomei, “Effects of Socio-Economic Status of Trafficking in Persons on Incidence of Human Trafficking in Southern Nigeria” *Journal of Humanities and Social Sciences*, Vol.22, Issue 7, (2017), p. 72.

⁸ F. Agbugah, “Infographic Reveals How Children are Trafficked in IDP Camps Across Nigeria” available at <<http://venturesafrica.com/this-infographic-reveals-how-children-are-trafficked-in-idp-camps-across-nigeria/>> (accessed 2 October 2019).

⁹ “In north-eastern Nigeria, traffickers are preying on vulnerable children in IDP camps” available at <<https://www.equaltimes.org/in-north-eastern-nigeria?lang=en#.W6Cs6LgnbIU>> (accessed 13 September 2019).

¹⁰ G.U. Osimen, *et al*, “The Socio-Economic Effects of Human Trafficking in Nigeria” p. 123, *op cit*, note 4.

¹¹ United States Department of State “[2018 Trafficking in Persons Report: Nigeria](https://www.state.gov/j/tip/rls/tiprpt/countries/2018/282722.htm)” *op cit*, note 5.

Enforcement and Administration Act (Amendment) Bill, 2018

The Bill contains twenty amendments to the Principal Act - Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015. The proposed amendments were made in respect of the following sections of the Principal Act - sections 2, 3, 5, 11, 13, 14, 23, 29, 30, 32, 34, 35, 44, 47, 61, 62, 65, 67, 70 and 79. These amendments are examined below -

The Bill amends section 2 of the Principal Act by inserting a new subsection (3) which established a Specialised Human Trafficking Court (SHTC) saddled with the responsibility of determining cases on trafficking in persons involving - (i) case identification and assessment by officers of the Agency; (ii) trauma informed courtroom protocols that protect victims; (iii) linking victims to protective services; (iv) judges, prosecutors and courtroom staff who are trained in human trafficking and trauma informed care for victims; (v) single presiding judges and regularly assigned prosecutors per case; (vi) expedited cases that are concluded within one year; (vii) collaboration and capacity building via joint task forces and working groups; (viii) the creation of a publicised (electronic and print media) Human Trafficking database of convicted traffickers in English and varying domesticated languages; and (viii) evaluation and performance indicators to monitor the success of the SHTC.”¹² This amendment is laudable because it would ensure speedy trials of trafficking cases, since the court will only focus on trafficking offences. However, the creation of a Specialised Human Trafficking Court should be under a separate section and not a sub-section under the establishment of the National Agency for the Prohibition of Trafficking in Persons in section 2. The court should be independent of the Agency and as such should not be a subsection under the establishment of the Agency.

The Bill includes the Federal Ministry of Foreign Affairs and the Economic and Financial Crimes Commission (EFCC) as members of the Governing Board of the National Agency for the Prohibition of Trafficking in Persons by inserting new paragraphs (iv),¹³ and paragraph (viii) under section 3(2)(c) of the Principal Act.¹⁴ This will help reduce laundering of money by traffickers in order to finance the illegal business. Also, traffickers will be prevented from benefitting from the proceeds of the

¹² Trafficking in Persons (Prohibition) Enforcement and Administration Act (Amendment) Bill, 2018, section 2.

¹³ *Ibid*, section 3(a).

¹⁴ *Ibid*, section 3(b). The National Agency for the Prohibition of Trafficking in Persons is the body established for the eradication of trafficking in persons and protection of victims in Nigeria under section 5 of the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015.

crime.

The Bill amends some provisions of the Principal Act by inserting phrases to expand the scope of work of the National Agency for the Prohibition of Trafficking in Persons and increase penalties. For example, the functions of the Agency were extended through an amendment to section 5(r) of the Principal Act by inserting the words "including establishing a physical presence at all national borders". There appears to be a grammatical error in that phrase. The letter 'a' ought not to be in the phrase since the "national borders" is in plural form. The amendment should read as follows - "including establishing physical presence at all national borders". With the correction made to the amendment, section 5(r) of the Principal Act would read as follows – "establish and maintain a system for monitoring trans-border activities relating to trafficking in persons including establishing physical presence at all national borders immediately in order to identify suspicious movements and persons involved".¹⁵ This provision is very essential if effectively implemented. The Nigerian border is very wide and there are many entry and exit points which are illegal routes. Officers of the Agency and other law enforcement agents should be at all entry and exit points and routes to prevent trafficking of persons across the borders.

The Bill expands the scope of trafficking in persons under section 13(1) of the Principal Act by inserting the phrase "including virtual trafficking online via the internet, slavery, involuntary servitude and forced or compulsory labour".¹⁶ With this amendment, the provision reads as follows – "all acts of human trafficking including virtual trafficking online via the Internet, slavery, involuntary servitude and forced or compulsory labour are prohibited". This is a laudable provision for the purpose of prosecuting traffickers. This is because trafficked persons are now recruited via the internet.

Also, Bill amends paragraph (a) of section 13(4) of the Principal Act by inserting the words - " including but not limited to actions, ceremonies, rituals, etc. performed by traditional (native) doctors, pastors, imams or any other persons which require the taking or swearing of an oath to enforce an act of trafficking". The amended version thus, reads – "a person who in or outside Nigeria, directly or indirectly – (a) does or threatens any act preparatory to or in furtherance of an act of trafficking in persons including but not limited to actions, ceremonies, rituals, etc.

¹⁵ *Ibid*, section 4.

¹⁶ *Ibid*, section 6(a).

performed by traditional (native) doctors, pastors, imams or any other persons which require the taking or swearing of an oath to enforce an act of trafficking”. This amendment is indeed necessary in a country like Nigeria where spiritual powers are used to hypnotize and instil fear in victims to prevent them from escaping or reporting to law enforcement agents.

Before the word "participates" in Paragraph (e) of section 13(4) of the Principal Act, the Bill inserts the phrase - "knowingly purchases a sexual act from a victim of trafficking or otherwise", and after the word ‘accomplice’, it inserts - the words "aider and/or abettor". The amended version of section 13(4)(e) of the Principal Act would read as follows – “ a person who in or outside Nigeria directly or indirectly, knowingly purchases a sexual act from a victim of trafficking or otherwise participate as an accomplice, aider and/or abettor in the commission of an offence under this Act”. This amendment will broaden the scope of trafficking activities, aid prosecution and help prosecutors secure the conviction of traffickers.

In addition, the Bill contains an upward review of the penalty under section 13(4) of the Principal Act from an imprisonment term of not less than 5 years and a fine of not less than one million naira (N1,000,000) to – “a minimum of five (5) years up to and including life imprisonment and a fine of not less than one million naira (N1,000,000)”.¹⁷ However, the Bill erroneously stated that this new penalty was to be placed in the provisor, immediately after paragraph "(o)" of section 13(4) of the Principal Act. It is erroneous because section 13(4) does not have a paragraph “(o)”, the paragraphing stops at paragraph (f). Thus, the amendment should have stated that the new penalty should be put in the provisor immediately after paragraph “(f)” of section 13(4).

Similarly, the Bill extends the term of imprisonment under section 14(b) of the Principal Act to from an imprisonment term of not less than 5 years and a fine of not less than one million naira (N1,000,000) to – “a minimum of five (5) years, up to and including life imprisonment and a fine of not less than one million naira (N1,000,000).”¹⁸ This upward review of the imprisonment term under section 13(4) and 14(b) of the Principal Act from a minimum of five (5) years to “a minimum of five (5) years up to and including life imprisonment” is laudable because it would act as deterrence to potential traffickers, thereby preventing trafficking in persons in Nigeria.

¹⁷ *Ibid*, section 6(e)(iii).

¹⁸ *Ibid*, section 7.

The Bill increases the age at which a child can be used as a domestic servant from 12 years to 18 years under section 23(1) of the Principal Act.¹⁹ It increased the penalty for an attempt to commit a trafficking offence under section 29 of the Principal Act from “half” of the punishment to “full” of the punishment for committing the offence.²⁰ Similarly, there is an increase in the penalty under section 30(1) of the Principal Act from “half” of the punishment to “full” in a case where evidence establishes attempt to commit a trafficking offence.²¹ This upward review of the punishment makes it severe and act as deterrence.

Also, the Bill amends the punishment under section 32(1)(b) of the Principal Act for unlawfully obstructing the Agency or any authorized officer of the Agency in the exercise of any of the powers conferred on the Agency by the Act from “an imprisonment term not exceeding five years and a fine of two hundred and fifty thousand naira (N250,000) or to both”, - to “an imprisonment term not exceeding five years without an option of fine”.²² In addition, the penalty under section 34(b) of the Principal Act which is an imprisonment term not exceeding five years and a fine of two hundred and fifty thousand naira (N250,000) or to both was amended to “an imprisonment term not exceeding five years without an option of fine”.²³ The removal of an option of fine is commendable because it makes the punishments more severe.

To further protect witnesses, the Bill includes new paragraphs (d) and (e) under section 47(3) of the Principal Act as follows - “paragraph (d) issuing of restraining orders which place a wide range of restrictions on the behaviour and activities of a person who poses a risk of harm to the trafficking victim and/or his or her family, to the public, to particular members of the public so as to prevent them from committing additional slavery or trafficking offences; and paragraph (e) issuing of an order directing - (i) the victim or any members of his or her family, (ii) a witness or any members of his or her family; or (iii) any other person, including whistleblowers, requiring protection as deemed necessary by the Court, into protective custody by the Agency or any other government ministry or agency via a witness protection programme which can include security, immunity from criminal prosecution, housing, livelihood and travel expenses, medical benefits, education, and

¹⁹ *Ibid*, section 8.

²⁰ *Ibid*, section 9.

²¹ *Ibid*, section 10.

²² *Ibid*, section 11.

²³ *Ibid*, section 12.

vocational placement".²⁴ These proposed amendments were done with the aim of increasing the measures a court can take to further protect a witness or other persons in any proceeding before it.

There is an upward review of the penalty for contravening an order or direction of court on protection of witnesses under section 47(6) of the Principal Act from an imprisonment term of not less than 5 years, to - "an imprisonment term of not less than 5 years without the option of a fine".²⁵ Although, the Principal Act did not give an option of fine, the inclusion of the phrase "without an option of fine" makes the punishment more specific.

The Bill extends the provision on protection of the identity of a trafficked person under section 61(g) of the Principal Act, to include "victim's family, or any relevant witness or person, if and when necessary".²⁶ This amendment will go a long way in ensuring cooperation from witnesses during trial and reduce stigmatization.

With respect to treatment of trafficked persons and training of officers of the Agency, the Bill inserts new paragraphs (k), (l) and (m) under section 61 of the Principal Act as follows - "(k) the Agency shall ensure that at all times, at least one staff member at all Embassies or High Commissions is trained and is receiving annual training on human trafficking on Nigeria's legal framework on trafficking and on the protection of trafficking victims, as defined in the United Nations' Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, so as to ensure adequate treatment of and services to trafficking victims; (l) the Agency shall ensure that - at all times, a person who is a victim of trafficking who is temporarily sheltered in one of the Agency's shelters is not held against his or her will and is not forced to participate in the prosecution of a case against his or her trafficker, should he or she not choose to; and (m) the Agency shall ensure that - at all times, a person who is a victim of trafficking shall receive, at no cost to the victim, holistic, victim centered, human rights based and trauma informed rehabilitation and care, with the rights and best interests of the victim being paramount".²⁷ These provisions are laudable because they will help protect, rehabilitate and assist trafficked victims who have nowhere to go and no one to protect their interests.

Under section 62 of the Principal Act with regards to non –detention and non-

²⁴ *Ibid*, section 15(b).

²⁵ *Ibid*, section 15(c).

²⁶ *Ibid*, section 16(b).

²⁷ *Ibid*, section 16(c).

prosecution of trafficked victims for criminal activities, the Bill includes 'prostitution' as an absolute statutory defence to any criminal charge brought against a trafficked person committed as a result of being trafficked.²⁸ This proposed amendment is commendable because the most common form of exploitation is prostitution and with this defence, victims will not be prosecuted for engaging in it and other similar criminal acts.

On the issue compensation of victims, the Bill opens up other sources of compensation by inserting a new sub-section (5) under section 67 of the Principal Act which states that "should the Court fail to issue a compensation order in favour of the victim of trafficking at the time of sentencing of the convicted offender, a victim may apply for humanitarian, legal, financial aid or compensation from the Trust Fund, without the legal burden of establishing the criminal case against the offender".²⁹ This provision will greatly assist and provide relief for trafficked persons even where the court fails to grant compensation in their favour and with this money they can go for vocational training, education or set up a business.

Furthermore, the Bill amends section 70(1) of the Principal Act by inserting a new paragraph (c) to the effect that "the Minister may, on the recommendation of the Agency, make a request to any foreign State for extra-territorial jurisdiction so as to allow Nigeria to investigate any of her citizens within the said jurisdiction who is suspected of involvement in human trafficking abroad".³⁰ This is a laudable provision, but for it to be effective, there must be international cooperation and cordial relationship between Nigeria and other foreign States.

The Bill places a duty on relevant public authorities and ministries notify the Agency where it has reasonable grounds to believe that a person may be a victim of human trafficking. It does this by inserting new sub-section (3) under section 70 of the Principal Act as follows - "(3) A legal duty is imposed for any and all relevant public authorities and ministries within Nigeria's National Referral System, to immediately notify the Agency where it has reasonable grounds to believe that a person may be a victim of human trafficking, pursuant to the Guidelines on National Referral Mechanism for Protection and Assistance to Trafficked Persons in Nigeria (NRM) (2015)". This is a good provision that will enhance the rescue of trafficked persons in Nigeria. This is however, subject to the condition that the identity of the

²⁸ *Ibid*, section 17.

²⁹ *Ibid*, section 19.

³⁰ *Ibid*, section 20.

informant will be kept secret so that such persons are not exposed to attacks from traffickers and their agents. It is suggested that this suggestion should be included in the Amendment Bill.

There is also an amendment to section 70 of the Principal Act prescribing mandatory annual training for relevant officers of Embassies, High Commissions and other governmental Agencies through a new sub-section (4) which provides that – “(4) There is established a mandatory annual codified training on the subjects of human trafficking, modern-day slavery and protection of victims, the members include (a) representative of all Embassies and High Commissions with offices in Nigeria (b) two (2) senior representatives of – (i) Ministries responsible for Education, Information and Culture, Justice, Youth and Sports, and Foreign Affairs, (ii) all relevant law enforcement Agencies, (iii) National Orientation Agency, (iv) Joint Border Task Force, border control, (v) National Commission for Refugees, Migrants and Internally Displaced Persons, (vi) Small and Medium Enterprises Development Agency, (vii) National Emergency Management Agency, (viii) Office of the National Security Adviser, and (ix) Economic and Financial Crimes Commission, and all the institutions involved in Nigeria's National Referral Mechanism;³¹ (c) the Mandatory annual codified training on human trafficking and modern day slavery shall be responsible for training for all staff and sensitization of the general public on trafficking in person”.³² The proposed annual training is expedient in combating human trafficking, identification, rescue and protection of victims. This is because traffickers keep developing new ways of carrying out their activities in order to hold their victims captive, circumvent the law and avoid being caught.

Finally, the Bill extends the conditions under which an officer of the Agency would be indemnified under section 79 of the Principal Act. The amendment included the phrase "is not in violation of the Act, cannot be said to amount to official complicity and where the act or omission complained of is not an act of sabotage, complicity or other unlawful abuse of the privileges of official position".³³ In its amended form, section 79 reads as follows – “a member of the board, Director-General, officer or employee of the Agency shall be indemnified out of the assets of the Agency against any proceedings brought against him in his capacity as a member

³¹ *Ibid*, section 20(b).

³² *Ibid*.

³³ *Ibid*, section 21(a).

of the board, Director-General, officer or employee of the Agency where the act complained is not *ultra vires* his powers, is not in violation of the Act, cannot be said to amount to official complicity and where the act or omission complained of is not an act of sabotage, complicity or other unlawful abuse of the privileges of official position". This provision was well couched and would help protect officers of the Agency against unnecessary prosecutions.

The Bill prescribes the punishment for contravening the provisions on indemnity of officers of the Agency, by including a new sub-section (2) under section 79 of the Principal Act. It reads thus - "a person who contravene the provision of the section shall be liable on conviction to imprisonment for a term not exceeding two years or a fine not exceeding one million naira (N1,000,000) or both".³⁴

Defects in the Trafficking in Persons (Prohibition) Enforcement and Administration Act (Amendment) Bill, 2018

The Bill does not contain certain provisions which ought to have been included to improve upon and fill the lacuna in the Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015. This has thus, made this Bill defective. The defects are enumerated below.

(1) Specialised Human Trafficking Court

The Bill establishes Specialised Human Trafficking Court under section 2(3) of the Principal Act, which is the same section that established the National Agency for the Prohibition of Trafficking in Persons. The Specialised Human Trafficking Court should be established under a separate section. The court should be independent of the Agency and as such should not be a subsection under the establishment of the Agency.

(2) Review of Penalty

The Bill contains an upward review of the penalty under section 13(4) of the Principal Act from a term of not less than 5 years and a fine of not less than one million naira (N1,000,000) to – "a minimum of five (5) years up to and including life imprisonment and a fine of not less than one million naira (N1,000,000)".³⁵ However, the Bill erroneously stated that this new penalty was to be placed immediately after

³⁴ *Ibid*, section 21(b).

³⁵ *Ibid*, section 6(e)(iii).

paragraph "(o)" of section 13(4). Section 13(4) does not have a paragraph "(o)", the paragraphing stops at paragraph (f), therefore the amendment should have stated that the new penalty should be put immediately after paragraph "(f)" of section 13(4).

(3) **Legal Guardians for Child Victims**

The Bill does not provide for a legal guardian that would represent and act in the best interest of child victims. This provision is important because children are vulnerable and need more protection and attention. Also, bearing in mind that article 3(1) of the Convention on the Rights of the Child³⁶ provides that the best interests of a child must always be a primary consideration. In some developed jurisdictions such as the United Kingdom, there are legal provisions for independent child trafficking advocates. Section 48 of the Modern Slavery Act 2015³⁷ established the office of independent child trafficking advocates to represent the interest of child victims and give them necessary support and assistance.

In addition, article 4 of the UNICEF Guidelines on the Protection of Child Victims of Trafficking 2006 provides that a guardian should be appointed for unaccompanied children or situations in which the parents or guardians cannot act in the best interest of the child. Paragraph 4(2) of the UNICEF Guidelines highlights the responsibilities of a guardian as follows – (a) to ensure that all decisions taken are in the best interest of the child; (b) to ensure that the child has appropriate care, accommodation, health care provisions, psycho-social support, education and language support; (c) to ensure that the child has access to legal and other representation where necessary; (d) to consult with, advise and keep the child victim informed of his or her rights; (e) to contribute to the identification of a durable solution in the child's best interests; (f) to keep the child informed of all the proceedings; (g) to establish and maintain a link between the child and the various organizations which may provide services to the child; (h) to assist the child in family tracing; (i) to ensure that if repatriation or family reunification is possible, it is done in the best interests of the child; (j) to ensure that relevant paperwork is completed.

This law should serve as model for Nigeria. Appointment of legal guardian is important considering the vulnerability of children and the fact that they need special

³⁶ Convention on the Rights of the Child was adopted by the United Nations on 20 November, 1989 and entered into force 2 September 1990, available at <<http://www1.umn.edu/humanrts/instreet/k2crc.htm>> (accessed 19 October 2019).

³⁷ Modern Slavery Act 2015 (Chapter 30), available at <http://www.legislation.gov.uk/ukpga/2015/30/pdfs/ukpga_20150030_en.pdf> (accessed 20 October 2019).

care and protection which exceeds the general need of adult victims. The National Assembly of Nigeria should take a cue from these legal instruments by including the establishment of independent child trafficking advocates in the amendment Bill.

(4) Punishment for Corrupt Law Enforcement Agents

Neither the Amendment Bill nor the Principal Act (Trafficking in Persons (Prohibition) Enforcement and Administration Act 2015) criminalizes corrupt activities of officials of government agencies and security services in aiding and abetting trafficking in persons. The illegal business of trafficking in persons thrives in Nigeria because of the endemic corruption of some law enforcement agents, especially those that assist traffickers to cross national borders and those in the Internally Displaced Persons Camp. Such actions by law enforcement agents in Nigeria should be criminalized with severe penalties under the Bill.

(5) Civil Legal Aid for Victims of Trafficking in Persons

The Bill and the Principal Act do not provide for civil legal aid for victims of trafficking in persons to enable them bring civil actions against traffickers and other persons that have violated their rights in the course of being trafficked. This is necessary because victims cannot afford legal representation for civil actions and the wrong they have suffered should not be without a remedy.

(6) Law Mandating Corporate Entities to Report on Steps Taken to Prevent the Use of Trafficked Persons in Their Businesses

The amendment Bill and the Principal Act do not mandate corporate entities to ensure that trafficked persons are not used in their business and supply chains and to submit annual report on the measures taken by them in preventing trafficking in persons. This is now best corporate practice and should be introduced in Nigeria through the amendment Bill. This provision exists under the Modern Slavery Act 2015 of the United Kingdom. Section 54 of the Modern Slavery Act provides that - (1) a commercial organisation³⁸ within subsection (2) must prepare a slavery and human trafficking statement for each financial year of the organisation. Section 54(2) of the Act provides that commercial organisation is within this subsection if it - (a) supplies goods or services, and (b) has a total turnover of not less than an amount prescribed by regulations made by the Secretary of State. An organisation's total

³⁸ *Ibid*, section 54(12) defines a commercial organization as - (a) a body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom, or (b) a partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom.

turnover is to be determined in accordance with regulations made by the Secretary of State.³⁹

A slavery and human trafficking statement for a financial year is - (a) a statement of the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place - (i) in any of its supply chains, and (ii) in any part of its own business, or (b) a statement that the organisation has taken no such steps.⁴⁰ An organisation's slavery and human trafficking statement may include information about - (a) the organisation's structure, its business and its supply chains; (b) its policies in relation to slavery and human trafficking; (c) its due diligence processes in relation to slavery and human trafficking in its business and supply chains; (d) the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk; (e) its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate; (f) the training about slavery and human trafficking available to its staff.⁴¹

Section 54(6) of the Modern Slavery Act provides that a slavery and human trafficking statement - (a) if the organisation is a body corporate other than a limited liability partnership, must be approved by the board of directors (or equivalent management body) and signed by a director (or equivalent); (b) if the organisation is a limited liability partnership, must be approved by the members and signed by a designated member; (c) if the organisation is a limited partnership registered under the Limited Partnerships Act 1907, must be signed by a general partner; (d) if the organisation is any other kind of partnership, must be signed by a partner.

If the organisation has a website, it must - (a) publish the slavery and human trafficking statement on that website, and (b) include a link to the slavery and human trafficking statement in a prominent place on that website's homepage.⁴² If the organisation does not have a website, it must provide a copy of the slavery and human trafficking statement to anyone who makes a written request for one, and must do so before the end of the period of 30 days beginning with the day on which the request is received.⁴³ The duties imposed on commercial organisations by section 54 are

³⁹ *Ibid*, section 54(3).

⁴⁰ *Ibid*, section 54(4).

⁴¹ *Ibid*, section 54(5).

⁴² *Ibid*, section 54(7).

⁴³ *Ibid*, section 54(8).

enforceable by the Secretary of State bringing civil proceedings in the High Court for an injunction or, in Scotland, for specific performance of a statutory duty under section 45 of the Court of Session Act 1988.⁴⁴

This elaborate provision should be included in the amendment Bill, with severe punishment for non-compliance.

(7) **Law on Removal of Human Organ**

Removal of human organ is one of the exploitations trafficked persons are subjected to in Nigeria. However, the Bill does not contain any provision criminalizing the offence of removal of organ of trafficked persons. Also, the Principal Act does not contain elaborate provisions criminalizing removal of organ (also known as organ harvesting). In the United Kingdom for example, there is a whole Act (Human Tissue Act 2004) which criminalizes illegal removal of human organ. The Human Tissue Act 2004 prohibits the removal of the organ of a human being for any purpose without the consent of the owner and consent must not be obtained by force, threat or deception.⁴⁵ This law should serve as a model to Nigeria.

Conclusion

Trafficking in persons is a prevalent problem in Nigeria and its elimination has posed a great challenge to the Government. The Trafficking in Persons (Prohibition) Enforcement and Administration Act (Amendment) Bill, 2018 is fraught with defects which will create drawbacks in the effectiveness of the legal frameworks in eliminating trafficking in persons in Nigeria. It is therefore pertinent for the National Assembly of Nigeria to take a second look at the amendment Bill and include all necessary provisions in order to stem the tide of trafficking in persons in Nigeria and adequately protect and assist trafficked victims in order to prevent re-trafficking.

Recommendations

The Specialised Human Trafficking Court should be established under a separate section and not under section 2(3) of the Principal Act which established the National Agency for the Prohibition of Trafficking in Persons. The court should be independent of the Agency and as such should not be a subsection under the establishment of the Agency.

The grammatical error in the amendment to section 5(r) of the Principal Act

⁴⁴ *Ibid*, section 54(11).

⁴⁵ Section 32 of the Human Tissue Act 2004 of the United Kingdom, available at <http://www.legislation.gov.uk/ukpga/2004/30/pdfs/ukpga_20040030_en.pdf> (accessed 18 October 2019).

should be corrected. The amendment inserts the words "including establishing a physical presence at all national borders". The letter 'a' ought not to be in the phrase since "national borders" is in plural form. The amendment ought to read as follows - "including establishing physical presence at all national borders". The legislature should be concerned not only with making laws, but also with the grammatical construction of the laws. They should ensure that the provisions of the laws are grammatically correct.

The error in the amendment made to section 13(4) of the Principal Act should be corrected. The Bill erroneously stated that a new penalty should be placed in the provisor, immediately after paragraph '(o)' of section 13(4). Section 13(4) does not have a paragraph '(o)' the paragraphing stops at paragraph (f), therefore the amendment should have stated that the new penalty should be put immediately after paragraph '(f)' of section 13(4).

The Bill should provide for a legal guardian that would represent and act in the best interest of child victims and give them all necessary support and assistance. This provision is important because children are vulnerable and need more protection and attention.

The Bill should criminalize corrupt practices of law enforcement agents which facilitate trafficking in persons with severe penalties.

The Bill should provide for civil legal aid for trafficked victims to enable them bring civil actions against traffickers and other persons that have violated their rights in the course of being trafficked. This is necessary because victims cannot afford legal representation for civil actions against traffickers and other people who have violated their rights.

The Bill should mandate corporate entities to submit annual report on the measures taken to prevent trafficking in persons and the use of trafficked persons in their business chains. This provision exists under section 54(6) of the Modern Slavery Act 2015 and should serve as a model for Nigeria.

The Bill should be amended to comprehensively criminalize the offence of illegal removal of human organ also known as organ harvesting. On the other hand, a separate Bill may be brought before the legislature criminalizing illegal removal of human organ. The Human Tissue Act 2004 of the United Kingdom contains elaborate provisions criminalizing illegal removal of organ which can serve as a model for Nigeria.

