

ACCESS to JUSTICE

for Trafficked Persons in NIGERIA



A Handbook for Legal Actors and Service Providers



Global Alliance Against Traffic in Women



ACCESS TO JUSTICE FOR TRAFFICKED PERSONS IN NIGERIA

A HANDBOOK FOR LEGAL ACTORS AND
ASSISTANCE PROVIDERS



Editors

Aye Olatunde, NAPTIP

Eleanor Taylor-Nicholson,
GAATW

Victoria Nwogu, UNIFEM Nigeria

Contributing Writers

Anne Ikpeme, American Bar
Association (ABA)

Aondona Orti, NAPTIP

Aye Olatunde, NAPTIP

Bisi Olateru-Olagbegi, WOCON

Eleanor Taylor-Nicholson,
GAATW

Godwin Iheabunike, Legal Aid
Council of Nigeria

Julia Utulu, Wali Uwais and Co.

Obi Aguisobo, NAPTIP

Veronica Umaru, WOTCLEF

Victoria Nwogu, UNIFEM Abuja

Yinka Lawal, American Bar
Association (ABA) Abuja

Layout and Design

Alfie Gordo, GAATW

Photo cover

UNIFEM

Donors

Global Alliance Against Traffic in
Women (GAATW)

National Agency for Prohibition
of Trafficking in Persons and
other related matters (NAPTIP)
Nigeria

United Nations Development
Fund for Women (UNIFEM)

Wali, Uwais and Co.

ACKNOWLEDGMENTS

This handbook is the result of a desire to leave practitioners and assistance providers working with trafficked persons in Nigeria with a tangible tool that will be a one stop reference on the rights of trafficked persons and their role to secure those rights. Its reality is the culmination of the effort and commitment of many persons along the way.

After the initial ideas and the level of commitment required to successfully implement this endeavour was agreed upon by NAPTIP, GAATW and UNIFEM, we set about finding the team of writers that would give life to the handbook. We wanted to find the right mix of practitioners from NGOs, law enforcement, and private legal practice. We wanted people who had sound experience on trafficking issues and a passion to protect the rights of trafficked persons; we wanted to ensure the perspective of trafficked persons was clearly reflected; we also wanted organizations that could foster ownership and acceptance of this handbook within their diverse sectors. We can proudly say we found this unique team.

This team was comprised of Victoria Nwogu and her team of UNIFEM Abuja who wrote Chapter 1, prepared the contacts lists and the glossary and assisted on Chapter 9; Ms. Bisi Olateru-Olagbegi of WOCON who wrote Chapter 2; Ms. Aondona Orti's contribution on Chapter 3; Ms. Aye Olatunde and Mr. Obi Aguisobo of NAPTIP, Abuja Office, who wrote Chapters 3 and 6; Ms. Julia Utulu of Wali Uwais and Co. who contributed her legal knowledge to Chapters 3 and 7; Mrs. Veronica Umaru of WOTCLEF who shared her long experience to prepare Chapter 9 and assist on Chapter 4; Ms. Anne Ikpeme and Mr. Yinka Lawal of the American Bar Association (ABA) in Abuja who wrote Chapters 4 and 5, and contributed to Chapter 2; and Mr. Godwin Iheabunike of the Legal Aid Council of Nigeria, who wrote Chapter 7 on civil remedies.

We must especially recognise the law firm of Wali Uwais and Co. who not only contributed their time to write a specific portion of the handbook but also made a cash contribution towards the conduct of the review workshop in September 2008.

Special gratitude is also in order to the participating organizations in the first consultation on Access to Justice in Nigeria which was held in May 2007 for heeding our call to come together again in September 2008 to review the draft product. After two days of rigorous and painstaking work, we were more confident to present this product to the wider world.

Anita Gohdes, from Germany was interning at UNIFEM when the idea for this handbook was borne, and she devoted time and passion to develop its initial structure. Christel Oomen from the Netherlands and Julia Tolulope Jemilawon from Nigeria were both also interning with UNIFEM in 2008 when the draft chapters were being put together. Their joint effort led to effective coordination between all the writers and compilation of initially individualised contributions into a coherent whole. Alfie Gordo of the GAATW International Secretariat painstakingly laid out the handbook in this interesting user-friendly form which we are confident will sustain readers' attention.

Three important people who supported and nurtured the seeds of this endeavour, but who have now moved on to other responsibilities, are worthy of mention here. They are Mrs. Carol Ndaguba OON, former Executive Secretary, NAPTIP; Mr. Shedrach Haruna, former Head of NAPTIP legal unit who has now moved on to the UNODC in Vienna; and Mrs. Florence Butegwa former Regional Programme Director, UNIFEM Anglophone West Africa.

Frans Nederstigt of Projecto Trama, Brazil and Dr. Nivedita Prasad of Ban Ying in Germany both took time to look over the draft and infuse their long-time experience in providing assistance to victims during the criminal justice process.

We regret if we have left out anyone who is worthy of specific mentions and so on behalf of UNIFEM, GAATW and NAPTIP we declare our profound gratitude to everyone who contributed in great or small measure to the eventual completion of this handbook.

TABLE OF CONTENTS

| | |
|---|----|
| ACKNOWLEDGEMENTS | 3 |
| FOREWARD | 6 |
| DEFINITIONS AND ACRONYMS | 7 |
| 1. INTRODUCTION | 9 |
| 1.1. Overview | 9 |
| 1.2. Access to Justice | 10 |
| 1.3. What is Access to Justice? | 10 |
| 1.4. Why is Access to Justice Important? | 11 |
| 1.5. Main Barriers to Access to Justice | 11 |
| 2. HUMAN TRAFFICKING | 12 |
| 2.1. What is Human Trafficking? | 12 |
| 2.2. What is the Magnitude of Human Trafficking? | 12 |
| 2.3. Where does Human Trafficking Happen? | 12 |
| 2.4. Why are people trafficked? | 13 |
| 2.5. Gender Dimensions of Human Trafficking | 13 |
| 2.6. Differentiating trafficking from related activities | 14 |
| 2.7. Human Trafficking in Nigeria | 16 |
| 3. THE LEGAL FRAMEWORK | 18 |
| 3.1. The Definition of Trafficking in Persons | 18 |
| 3.2. The Crime of Trafficking in Persons | 19 |
| 3.3. NAPTIP | 20 |
| 3.4. The Rights of Victims under the NAPTIP Act | 20 |
| 3.5. Other National and Sub - National Laws | 21 |
| 3.6. Regional Standards | 22 |
| 3.7. International Standards | 23 |
| 4. IDENTIFYING A TRAFFICKED PERSON | 24 |
| 4.1. A profile of trafficking victims | 24 |
| 4.2. Identification | 24 |
| 4.3. The situation of the victim when identified as a trafficked person | 26 |
| 4.4. Understanding Trauma | 28 |
| 4.5. Ethical Interviewing | 28 |
| 5. PROTECTION OF TRAFFICKED PERSONS POST-IDENTIFICATION | 30 |
| 5.1. Addressing immediate and long-term needs | 30 |
| 5.2. Possible health needs for trafficked persons | 31 |
| 5.3. Shelters | 31 |
| 5.4. Needs of specific categories of victims | 31 |
| 6. UNDERSTANDING THE JUSTICE SYSTEM AND ACCESS TO JUSTICE | 34 |
| 6.1. An Overview of the Criminal Justice Process | 34 |
| 6.2. Supporting and Assisting the Trafficked Person | 36 |
| 7. THE CIVIL PROCEDURE PROCESS | 39 |
| 7.1. Why File a Civil Lawsuit? | 39 |
| 7.2. What are the Barriers to filing a Civil Lawsuit? | 39 |
| 7.3. Parties in a Civil Suit | 40 |
| 7.4. Types of Civil Lawsuits | 40 |
| 7.5. Burden of Proof | 41 |
| 7.6. Compensation | 41 |
| 7.7. How to help your lawyer make the best of your case | 41 |
| 7.8. Rights of the trafficked person in a civil lawsuit | 42 |
| 8. SUMMARY OF KEY ROLES AND RESPONSIBILITIES AND RELEVANT CONTACT INFORMATION | 43 |
| 9. PARTICULAR CHALLENGES FOR ACCESS TO JUSTICE IN NIGERIA | 45 |

| | | |
|---|---|----|
| 9.1. | Ritual and other Oaths | 45 |
| 9.2. | Child Fostering and the Trafficking of Children | 46 |
| 9.3. | Close Community Networks | 47 |
| 9.4. | Trafficking versus Prostitution | 48 |
| ANNEX 1: The Crimes of Trafficking and Related Crimes | | 50 |
| ANNEX 2: Core Rights of Trafficked Persons in the Justice Process | | 52 |
| ANNEX 3: International Treaties | | 55 |
| GLOSSARY | | 56 |
| ADDITIONAL REFERENCES | | 58 |
| CONTACT INFORMATION | | 59 |

FOREWORD

The need for access to justice for victims of human trafficking cannot be over-emphasised. This handbook is another great stride in Nigeria's' efforts to combat the scourge of human trafficking. It could not have come at a better time as it compliments other efforts towards reform of the Justice Sector.

NAPTIP has since inception succeeded in putting over 40 human traffickers behind bars. However, though the Trafficking in Persons Law Enforcement and Administration Act provides for the victims of trafficking to take out civil actions for recovery against their traffickers, this is largely unexplored. There is still a lack of knowledge about how to access these rights and some conflict in interpretation of the roles of legal actors and law enforcement agents in the field of trafficking in persons. Hence this handbook is very timely.

This handbook is a practical 'how to' tool for all stakeholders in the fight against human trafficking. The step-by-step guideline provided in the handbook for all actors coming into contact with trafficked persons serves as a tangible platform for such trafficked persons to access their rights as victims. The enforceability of victims' rights will be easier as the handbook helps each actor identify and understand their role at each stage of intervention.

I will encourage every stakeholder to embrace the contents of this handbook in their individual and communal efforts in this fight.

May I especially commend the efforts of the United Nations Development Fund for Women (UNIFEM) and the Global Alliance Against Traffic in Women (GAATW) in their unending support and continued collaboration with NAPTIP in the fight against human trafficking and also all of the collaborating partners who put in their time and resources into making this handbook a reality.

Finally I will not forget the efforts of my predecessor Mrs. Carol. N. Ndaguba for all her efforts in this global fight against human trafficking and also as part of the initiators of this worthy cause.

Simon Chuzi Egede, Esq.

Executive Secretary

National Agency for Prohibition of Traffic In Persons and other Related Matters (NAPTIP)

DEFINITIONS AND ACRONYMS

| | |
|--------|---|
| ECCAS | Economic Community of Central African States |
| ECOWAS | Economic Community of West African States |
| GAATW | Global Alliance Against Traffic in Women |
| ILO | International Labour Organization |
| NAPTIP | National Agency for Prohibition of Trafficking in Persons and other related matters (Nigeria) |
| NGO | Non-Governmental Organization |
| UN | United Nations |
| UNDP | United Nations Development Programme |
| UNICEF | United Nations Children's Fund |
| UNIFEM | United Nations Development Fund for Women |
| UNODC | United Nations Office on Drugs and Crime |

1. INTRODUCTION

1.1. Overview

This handbook was inspired by a national consultation on access to justice convened by the National Agency for Prohibition of Trafficking in Persons and other related matters (NAPTIP), Global Alliance Against Trafficking in Women (GAATW) and the United Nations Development Fund for Women (UNIFEM) in Abuja in May 2007. The consultation, attended by members of law enforcement, prosecutors, judges, social workers and non-government organisation representatives concluded that many barriers prevented victims of trafficking from seeking justice. As a result most victims of the crime of trafficking were not receiving a remedy for the wrongs that had been done to them and the number of traffickers prosecuted was low. One challenge raised by participants was the continuing confusion among legal actors about the applicable laws and procedures for trafficking cases. There was also a lack of clarity about rights of victims, and the roles of the various players in preserving and promoting them. The consultation resolved that a handbook about the applicable laws and procedures could considerably improve access to justice in trafficking cases.

This handbook is intended to be a guide for taking trafficking cases through the legal system, from the moment of identification of a potentially trafficked person until the case is closed. It includes basic information to assist the user at each step, as well as helpful information about human trafficking in Nigeria and its complexities. It also contains a list of contacts for finding out more information about trafficking or getting help in a particular case.

Throughout this handbook, trafficking will be understood in Nigeria as both a human rights violation and a crime against persons (rather than against the state). Victims will be recognised as right-holders, whose rights must be protected and promoted during the criminal justice process. It will also shed

light on the civil aspects of the justice system (including the right to compensation) which has been largely ignored in Nigeria to date.

While this handbook is intended for actors in the justice system, including lawyers, prosecutors and judges, it may also be useful to police and immigration officials who are the first to identify trafficked persons, and to civil society groups that are seeking to assist trafficked persons realise their rights to justice.

In the end, it is hoped that using this handbook will ensure that victims of trafficking are empowered, not revictimised, by the justice process, and have more confidence and resources to start re-building their lives. If trafficked persons have more confidence in the justice system, they will be more likely to testify and the overall goals of reducing crime and ending impunity will be advanced.

The term trafficked person is used in this text to include all people who have been trafficked, regardless of whether they come into contact with the legal system or whether they wish to seek justice in their case. Trafficked persons can be men, women and children, either Nigerians trafficked within Nigeria or abroad, or citizens of other countries trafficked into Nigeria. All are joined by their hopes of a better life or their ability to support their family with higher earnings, and by their vulnerability after trafficking has occurred.

The word “victim” is used in this Handbook for those trafficked persons who are seeking redress through a legal procedure, or who are assisting the police and prosecutors with their inquiries. A victim, as mentioned above, has certain rights during the justice process, which are set out in more detail in the text and particularly in Annex 2.

1.2. Access to Justice

The information in this handbook is based on the international human rights framework, together with the Nigerian Constitution and the rights set out in Nigerian laws.

According to international human rights principles, which Nigeria has signed up to by virtue of its membership of the United Nations, all victims of human rights violations have the right to “an effective remedy” through the legal mechanisms of the state. Trafficking can involve a number of human rights abuses, such as slavery, torture, arbitrary detention, inhumane and degrading treatment and many more. Victims of trafficking, therefore, automatically have a right to all the remedies available in Nigeria. This is often referred to as the right to ‘access justice’.

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) sets this right out as follows:

Article 4: Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

1.3. What is Access to Justice?

The United Nations Development Programme (UNDP) defines access to justice as: “the ability of people to seek and receive a remedy through formal or informal institutions of justice, and in conformity with human rights standards.”¹

“Access”, for the purposes of this Handbook, means both the legal possibility (i.e. the laws and structures are in place to ensure that someone who has been wronged can seek justice) as well as the practical ability to access the system. Common practical barriers may be language, distance from the courts, discrimination, illiteracy, lack of knowledge about how to seek justice, as well as the costs associated with taking a case.

“Justice” includes both a just process and a just outcome. A fair remedy must be granted at the end, but if the process was clearly unfair, too long, or too expensive, then justice may still

not be served.

Access to justice is a fundamental human right, and as the above shows, a host of additional rights are involved to ensure the justice process is not exploitative or overly demanding of the victim. These rights include the right to information, right to translation, right to physical and emotional safety, right to privacy and confidentiality, and the right to compensation.

The Office of the High Commissioner for Human Rights (OHCHR) “Principles and Guidelines on Human Rights and Trafficking” (2002) explains the right to access justice in Guideline 9:

OHCHR “Principles and Guidelines on Human Rights and Human Trafficking”

Guideline 9: 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 processes for obtaining remedies, including compensation, for trafficking and related exploitation. 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.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Ensuring that victims of trafficking have an enforceable right to fair and adequate remedies, including the means for as full a rehabilitation as possible. These remedies may be criminal, civil or administrative in nature.
2. Providing information as well as legal and other assistance to enable trafficked persons to access remedies. The procedures for obtaining remedies should be clearly explained in a language that the trafficked person understands.
3. Making arrangements to enable trafficked persons to remain safely in the country in which the remedy is being sought for the duration of any criminal, civil or administrative proceedings.

1.4. Why is Access to Justice Important?

For the individual and those closest to the victim, access to justice can assist the process of recovery. It recognises in a public forum that a wrong was committed and by reducing fear of further harm. The outcome of the justice process, particularly a civil process, may also result in compensation or other financial assistance from the wrongdoer, which can assist the individual to continue his/her life.

The benefits to society are also manifold. Access to justice in trafficking cases gives the victims of trafficking a voice and a face, which might help society and networks of friends and family to understand the human rights violations involved, moving towards awareness and better prevention. It is a clear statement by the government about what is acceptable.

It also has the practical result of removing perpetrators from the streets and making the community safer for citizens, reducing impunity for crimes and thus having a deterrent effect for others, removing the need for retaliation (revenge) by individuals or their families who are angry about the crime, and contributing to poverty reduction. It is the poor and disadvantaged who usually fall victim to crimes such as trafficking, but also find it the hardest to seek a remedy.

1.5. Main Barriers to Access to Justice

Some barriers to access to justice in Nigeria, as identified at the May 2007 consultation, are:

- Gaps in the law or laws that unfairly disadvantage the victim or potential victims
- Discrimination or gender bias among law enforcement agencies and legal institutions
- Inadequate knowledge of rights among victims; they do not know where to seek justice
- Corruption of law enforcement agents or institutions
- Fear or risk of retaliation against victims of trafficking or those who help them, including intimidation, threats and

- violence
- Practical obstacles to administration of justice, including that the courts are located too far away, the victim does not have the financial resources to take a case (especially a civil case), or does not speak the language of the courts
- The influence or fear of supernatural retaliation through ritual oaths which prevent victims from reporting the crime.
- Absence of witness protection programmes in the justice system in Nigeria

Footnotes

¹ UNDP, *Programming for Justice: Access for All*, Bangkok, 2005 at p. 5.

2. HUMAN TRAFFICKING

2.1. What is Human Trafficking?

Human trafficking is a serious form of organised crime that involves the exploitation of people. The perpetrators usually work in a network of three or more people to arrange the recruitment, transport, and transfer (sometimes involving selling or buying) of individuals to undertake slave labour or be exploited in slave-like conditions. The victim is tricked with promises of lucrative jobs, marriage, study opportunities or other benefits into leaving his or her home environment and then, after arriving in an unfamiliar town or country, is delivered into some form of slavery - as highly underpaid or unpaid labour in a factory, farm, household or other location, as a sex worker, or even as a 'wife'. To prevent the victim from running away, the trafficked person is kept tightly controlled and often threatened with (physical or psychological) violence or violence against his or her family if s/he tries to leave.

2.2. What is the Magnitude of Human Trafficking?

It is very difficult to know the exact numbers of people who are trafficked each year and no country has exact statistics because of the hidden nature of the crime. A global estimate is also difficult because some countries do not keep accurate data, and because the legal definitions of trafficking between different countries are not the same. However, from criminal justice data collected by the United Nations Office on Drugs and Crime (UNODC) it is estimated that, 21,400 trafficking victims were identified across 111 countries in 2006.¹ Of these, 338 were identified in Nigeria. By 2007, NAPTIP had identified 994 victims, and it is likely that the numbers in other countries have also increased significantly as the understanding of and attention to human trafficking grows.²

2.3. Where does Human Trafficking Happen?

It is clear from the information that is available that trafficking happens in and between many countries and that people can be trafficked into

exploitation and abuse in many different sectors. In some cases trafficked persons are working in recognised economic activities, such as in manufacturing and food processing, restaurants and bars, agriculture and construction. In other cases people are trafficked into informal or grey areas of activity, such as begging, drug production, drug trafficking or the sex industry. Some trafficked persons can be used for a variety of activities, legal and illegal.

What makes all of these activities potential sites for trafficking is that they are difficult to monitor by authorities or the community. They are also a source of employment for low-skilled persons, particularly migrants, who may not have a local language, social networks in the community for support, or regularised immigration status, and so are vulnerable to exploitation.

Box 1: A trafficked person can be exploited in a number of ways...

Abimbola was 14 years old and from a very poor family. Because her family could not afford to pay for the education of all the children, her father decided to keep Abimbola and her sister at home while her two younger brothers went to a public school.

One day an aunt from Lagos visited and brought new clothes for each of the family members. This aunt was obviously wealthy. Abimbola was happy when her mother requested her aunt to take her to Lagos. Her aunt agreed and said that Abimbola could help in her restaurant during the day and attend school in the evenings.

Once they arrived in Lagos, Abimbola found that she had been deceived. Although she did work all day in the restaurant, she was not paid anything for her work. At night, instead of going to school, her aunt forced her to have sex with men that her aunt brought to the house. She was locked inside so that she could not escape, and if she refused to do as her aunt instructed, her aunt and the man who lived with her aunt beat her and threatened that they would hurt her family.

2.4. Why are people trafficked?

The reasons for trafficking are complex, and involve push factors (the reasons that drive people to leave their homes to seek better opportunities in other places), and pull factors (the factors that attract a person to a certain destination point), and that facilitate exploitation.

Push factors

In rare cases, trafficked persons are kidnapped without any knowledge of what is happening. Usually, however, trafficking begins with a courageous decision to leave one's home, in other words, to migrate, with the promise of a better future (but those promises are false or incomplete etc.).

It is important to note that all people have a right to migrate or leave their home communities (article 13 of the UN Declaration on Human Rights). Many people, children and adults, have ambitions to see other places, to earn money for their families or to gain different experiences. Each year millions of people migrate to other regions or countries to marry, travel or work. Most do not experience problems.

All migrants are pushed to leave to a certain extent, but some are pushed more than others by their circumstances. Common factors in Nigeria that push people to leave are:

- Low levels of education and skills
- Lack of suitable employment opportunities and low economic activity
- Low literacy, which limits employment opportunities
- Family poverty, break down of family structure or death of primary caregivers
- Family violence or abuse
- Lack of social welfare protections for the unemployed, single parents or the elderly
- Discrimination against women or against particular groups
- Poor governance and corruption
- Armed conflict or political instability.

Pull Factors

Migrants are 'pulled' to certain destination points where they see opportunities, or where they already have contacts. Some specific factors at the destination point can also facilitate trafficking:

- Insufficient attention to arresting,

prosecuting and punishing traffickers, so that trafficking becomes a low risk and high profit crime

- Insufficient sanction of employers that exploit workers, so that a market for trafficked people exists
- Lack of regulation and labour standards for certain sectors, (for example, domestic work) and lack of monitoring work places
- Cultural practices which sometimes support the exploitation of certain groups, for example children in child fostering or apprentice systems, or racial discrimination
- Isolation and denial of rights to migrants, particularly undocumented migrants, so that they are too afraid to report trafficking and exploitation
- Gender discrimination, which demands that women perform certain roles that are not economically valued, and thus not protected eg. domestic work, care-giving
- Corruption and collusion by authorities

Some factors that facilitate trafficking are common to both origin and destination areas, such as:

- Lack of public awareness of human trafficking, so that people do not recognize it and report it when they see it
- Ineffective law enforcement and poor collaboration among stakeholders
- Restrictive migration policies that make it difficult for Nigerians to travel abroad for work, forcing them into high-risk migration channels.

2.5. Gender Dimensions of Human Trafficking

Although men, women, boys and girls can be trafficked, the crime of trafficking is not gender neutral. Gender dimensions of trafficking are to be found throughout the trafficking process.

The push factors affect both men and women, but women and girls experience them disproportionately. For example, in respect to poverty and lack of economic opportunities, women generally have less economic means than men. They often cannot inherit property, do not own land or houses, and their work tends to earn less money. Single-income female heads of households have very little income security, which has been shown as a contributory factor to women migrating and in particular, being trafficked into the sex trade.

Men who are willing to migrate often have more access to social resources - families or villages often collect money to enable one person to migrate, which makes women and girls more dependent on strangers, who “help” them to migrate.

Societal attitudes make girls more vulnerable to exploitation. For example, the belief that girls do not need to be educated as much as their brothers means that it is harder for them to read and understand contracts or to negotiate for better wages. In Nigeria, a belief that girls should serve their father, brothers and husband means that they find it hard to object if their family wishes them to go abroad to work.

Women with low skills and education have fewer job opportunities than men and tend to do “women’s work” - cooking, caregiving, domestic cleaning and sex work. These kinds of work are not considered legitimate work in most countries. Domestic workers, for example, are not recognised in labour codes in most European countries and so workers have no right to a minimum wage or to days off and are at the mercy of their employer.

It is no surprise then that the UNODC has calculated that of all of the cases identified and prosecuted women and girls comprise 79% of trafficked victims globally:³

2.6. Differentiating trafficking from related activities

Human trafficking is a specific crime in Nigeria, but it has links with other activities: people smuggling, labour exploitation and prostitution.

It is important to understand the differences in these cases in order to ensure correct identification of a trafficked person. [Note that individuals who are not trafficked or do not wish to be identified as such may still have other rights and should be referred to the appropriate authorities or services.]

“Trafficking” versus “Smuggling”

Human trafficking and people smuggling sound similar and have some commonalities. Both involve the migration of a person from one place to another, and both normally involve poor or marginalised people who have few options. However they are two different activities.

Human Smuggling refers to the process of assisting a person to circumvent border regulations for a fee or other benefit. It is defined in international law as:

“the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”⁴

A person will hire a smuggler to enter another country to seek greater economic opportunity or to escape persecution in the home country, for example. Smuggling is usually a consensual one-off agreement between the smuggler and migrant.

Some of the key differences between people smuggling and human trafficking are:

Box 2: Trafficking versus smuggling

| | Smuggling | Trafficking |
|------------------|--|--|
| Consent | Done with the consent of the person (the migrant requests to be smuggled) | Never with consent; even if the trafficked person consents to leave her/his home, it is on the basis of lies and deception, so the consent is not genuine. |
| Exploitation | Not typically exploitative | A serious and ongoing human rights violation involving long term exploitation/taking advantage of the person. |
| Transnationality | Always transnational and always illegal entry into the destination State | May be internal within a country, as well as across borders. |
| Legality | Always illegal entry into a State | May be either illegal entry or legal entry into a State, for example with a valid tourist or student visa |
| Term | A one-off transaction; after the border is crossed, the smuggler and migrant part ways | After the movement, the trafficked person is not free but is forced to work/enslaved by the traffickers. |
| Motive | The smuggler makes money when the migrant pays for assistance in crossing the border. | The trafficker makes money by selling the victim to another, or selling the labour of the victim over a long period. |

Sometimes trafficked persons are smuggled during the trafficking process, but not always. Smuggling might occur if the trafficking case is cross-border and if the trafficker brings the person into the other country without going through border points of inspection or with falsified documents.

Trafficked and smuggled people might be arrested as irregular migrants, and (incorrectly) charged with violating immigration laws.⁵ It is, therefore, very important to screen irregular migrants to determine the circumstances of their movement. If they were smuggled, ask questions to identify whether the smugglers engaged in any behaviour that would make the case one of trafficking (for example coercion or deception, promising a job etc).

Box 3: Cases of trafficking and smuggling

“Trafficking” and “Labour exploitation”

Most trafficking cases have some elements of labour exploitation at the destination point or even while in transit, such as non-payment of wages or extremely low wages, unreasonable hours of work, unsafe conditions or lack of avenues for redress. Trafficking occurs in many industries where exploitation is also more likely to occur, such as construction, domestic labour, agriculture or in factories. According to the Nigerian definition of trafficking, labour exploitation only rises to the level of trafficking, however, if there was force, deception, coercion or debt bondage and if the conditions are so bad that it would be servitude or forced labour. In trafficking cases, unlike ordinary labour exploitation, the exploiter demonstrates ownership over the trafficking victim and controls her or his movements by creating a climate of fear.

A case of trafficking: Janet’s Story

Janet was 13 when she lost both parents in her village in Akwa, Ibadan State. She had only attended primary school up to Primary six.

She lived with her aunt for a short while, but had to leave her aunt’s place because of the objections to her stay by her aunt’s children. Her uncle then took her to live with him in Port Harcourt but mal-treated her and made her do all of the household chores.

Janet narrated her unhappy story to her friend Mary, a 15-year-old girl, who then introduced Janet to her sister “Joy”. Joy promised to assist Janet by sponsoring her education if she would go with her to Lagos. Janet was lured by this promise, and she followed her friend’s sister to Lagos, the commercial capital of Nigeria.

On arrival in Lagos Janet discovered that Joy was actually in prostitution and that she had no intention of sponsoring her education. Joy forced Janet into prostitution and informed her that she had to make a repayment fee of N100,000 (Naira) an equivalent of about \$830 US for her “transportation costs” from the village to Lagos and N15,000 (Naira) an equivalent of \$125 US) per month, as cost for her shelter and upkeep.

Janet was not allowed to go outside the brothel where she lived with Joy and she did not go to school or learn any vocation in Lagos. She had to give all of her earnings to Joy as repayment for the debts. In her quest to settle the debt quickly and regain her independence, Janet engaged in unprotected sex and was infected with various sexually transmitted diseases. She is currently living with HIV.

A case of smuggling: Toyin’s Story

At the age of 23, Toyin had been working in the city of Ibadan for about seven years. One day the city council demolished her workplace and Toyin became homeless.

An acquaintance of Toyin, Mike, approached her and asked if she would like to go to Spain where she would earn more money. He told her he could get her a visa and assist her to travel to Spain at a cost of N250,000. Toyin was asked to make a deposit of N20,000 and to pay the balance in foreign exchange four months after arrival.

Mike did not get a valid visa for Toyin so she could not travel by air. Instead, she was put in a container and loaded as cargo on a ship to Spain. On arrival in Spain, Toyin was assisted by Mike’s partner to enter Spain without documents. She has since paid her debt through her earnings and is living independently.

Because of the overlap, however, it is important to screen individuals that complain of labour abuses for evidence of trafficking.

“Trafficking” and “Prostitution”

Prostitution is a common industry in which trafficked persons are forced to work, and it often receives the most media attention. Sometimes it can be tempting to become side-tracked and discuss the rights or wrongs of prostitution, rather than the problem of trafficking. As with all trafficking cases, it is essential to look at the circumstances of the individual and determine whether there was force, deception or debt bondage and whether the conditions are so bad as to be considered servitude (see further details in Chapter 7).

2.7. Human trafficking in Nigeria

Nigeria has both internal and transnational trafficking but accurate statistics are not available.

According to a 2003 study by the ILO and the Nigerian Government (Federal Office for Statistics), it was estimated that about 15 million Nigerian children are working, of which up to 40% are at risk to be trafficked for forced labour, forced prostitution, entertainment, pornography and armed conflict.⁶

Internal Trafficking

Internal trafficking is usually of women and children, and usually takes place between the rural areas to cities like Lagos, Abuja and Port Harcourt. In these places victims are forced to work as domestic servants in slavery-like conditions, in prostitution in conditions of debt bondage or sexual servitude or in organised street begging. Men are also internally trafficked and forced to do agricultural work for little or no remuneration in different parts of the country.

A NAPTIP and UNICEF research study in 2005 revealed that most people trafficked internally are from poor border villages in Ogun State, Shaki in Oyo State, Cross-Rivers, Akwa-Ibom, Benue, Ebonyi, Kwara, Bayelsa, Imo, Edo, and Anambra States and often moved to the urban or city centers such as Lagos, Kano, Port Harcourt, Ibadan and Kaduna.

For children trafficked within Nigeria, most is into domestic labour, forced labour and prostitution. Prostitution is estimated to account

for 40% of the children trafficked, while domestic labour and forced labour account for about 25% and 20% respectively (NAPTIP/UNICEF 2005). Exploitation may also include illicit international adoption, child marriage, or recruitment as child soldiers, for use in sports (such as child camel jockeys or football players), or for religious cults.

External or cross-border trafficking

External or cross-border trafficking involves trafficking from one country to another. Nigeria is described by the US State Department as a source, transit and destination country. Nigerians are being recruited in Nigeria for trafficking to other countries, while at the same time citizens of other countries are exploited on Nigeria's own soil.

Nigeria receives trafficked persons:

- Most come from neighbouring countries Benin, Togo, Ghana and Niger.
- Children trafficked into Nigeria are from Benin (90%), Togo (6%), Cote d'Ivoire and Niger.
- Children have been as young as five-years-old (UNODC, 2006).
- Girl children are used for domestic service, street trading and commercial sexual exploitation, while boys are forced to work on plantations, commercial farming, construction, quarries and mines, “or engage in petty crimes and the drug trade.” (UNODC, 2006:12).

Other nationalities have been identified in Nigeria's commercial sex industry, namely from Eastern Europe and the Philippines.

Nigerian women and girls are trafficked out of Nigeria:

- Most victims of international trafficking are from Edo, Delta, Kwara, Kano and Kaduna States
- They go mainly to other parts of Africa (Gabon Burkina Faso, Togo, Cameroon, Ghana, Guinea, Morocco, Niger Republic, Mali, Libya Republic of Benin and South Africa), to Europe (Italy, Spain, United Kingdom Netherlands and Belgium), to the Middle East and to the United States.
- Most recorded cases of trafficking of women abroad are for commercial sex work and domestic work. Some have been sent to the United States as nannies.
- Victims repatriated by NAPTIP have usually been between 18 - 24 years old.
- Over half (60%) are female and around 40% male (NAPTIP/UNICEF 2005).
- Most of the victims who pass through

the NAPTIP shelters are between the ages of 15 - 25 years old and the majority of them are female (NAPTIP News Vol 1, No 3).

- Nigerian men are trafficked to South Africa to work in the construction industry.

Data on trafficking of children in Nigeria includes the following:

- Nigerian children are trafficked mainly into other West and Northern African countries such as Niger, Mali, Libya, Benin Republic or Italy (NAPTIP/UNICEF 2005).

- They are sent for such purposes as domestic work, child minding or baby-sitting, farm labour, sweatshop labour, mining, as child soldiers, drug couriers, criminal activities (armed robbery, gangsters), street hawking, and/or begging

- About 83% of child victims of international trafficking for domestic service are recruited from Akwa Ibom State while others come from Cross River, Rivers, Ebonyi, Kano and Kaduna (UNODC, 2006).

- The UNODC research study found that the majority of both adult and child victims in Nigeria are females.

Nigeria is also used as a transit country for trafficked victims recruited in other countries in sub-Saharan Africa including central Africa who are taken through Nigeria on their way to their final destination point.

Box 4: A peculiar form of trafficking in Northern Nigeria...

"Almajiri" -The Islamic practice that enjoins Muslim faithfuls to seek knowledge from outside their home is known as "almajiri" and has historically been empowering for children. In recent years, poor parents have been sending their children to different states, within and across Nigeria's borders, to Islamic tutors without adequate provision for their upkeep. Some of the religious tutors take more pupils than they can care for and then the children are made to beg to survive. Hundreds of the children are seen roaming the streets begging and sometimes engaging in criminal acts. Tutors then take the proceeds of the begging and other activities.

Begging in this form, in which the child is controlled and cannot leave, is exploitative. Also, as the child is transported and received by the tutors, and the parents were not aware of the situation that their children would find themselves in, this can be classified as a form of trafficking.

Footnotes

¹ United Nations Office on Drugs and Crime, Global Report on Human Trafficking, Vienna, February 2009, at p. 48.

² UNODC Global Report page 106.

³ UNODC, Global Report on Trafficking in Persons, 2009, Executive Summary, page 11, <http://www.unodc.org/unodc/en/human-trafficking/global-report-on-trafficking-in-persons.html>

⁴ United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime United Nations 2000

⁵ Note that under the UN Smuggling Protocol, smuggled migrants cannot be criminally prosecuted for being smuggled (Articles 5 and 6).

⁶ Report For The Wto General Council Review Of The Trade Policies Of Nigeria (Geneva, 11 and 13 May 2005) IRINNEWS, Nigeria: Fighting the many heads of the child trafficking beast, 31 March 2005, http://www.plusnews.org/report.asp?ReportID=46202&SelectRegion=West_Africa&SelectCountry=NIGERIA

3. THE LEGAL FRAMEWORK

The Constitution of Nigeria of 1999, Chapter II, section 14(2)(b) provides that “Security and Welfare of the people shall be the primary purpose of the Government”. As a result, the Government of Nigeria has taken a strong stand against trafficking and treated it as a priority criminal justice issue.

In July 2003, Nigeria passed the Trafficking In Persons (Prohibition) Law Enforcement And Administration Act most commonly known as the “NAPTIP Act”. The NAPTIP Act is now operational throughout the country.

The NAPTIP Act does three major things which are set out in more detail below:

- It defines trafficking
- It criminalises crimes that are connected to, or part of human trafficking.
- It establishes the National Agency for Prohibition of Traffic in Persons and other Related Matters (NAPTIP) which has specific responsibility for implementing the Act and tackling trafficking in persons.
- It sets out requirements for the protection of trafficked persons.

The NAPTIP Act is supplemented by other national and state laws, and by regional and international laws and agreements.

3.1. The definition of trafficking in persons

Nigerian law defines human trafficking as:

“All acts and attempted acts involved in the recruitment, transportation within or across Nigerian borders, purchases, sales, transfer, receipt or harbouring of a person involving the use of force, deception, coercion, 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 condition.”¹

The crime of trafficking thus has three constituent elements: the act, the means and the purpose. To prove trafficking, at least one action from each of the three columns must be proven. [See box below]

This definition is used by the police, prosecutors and the court system to identify who is a trafficking victim.

In difficult or borderline cases, legal actors may also turn to the international definition of trafficking in the UN Trafficking Protocol to seek clarity. This definition is slightly broader than the Nigerian legal definition. It includes a wider understanding of “means”, namely abuse of power or abuse of the vulnerability of the victim, which can also support a case of trafficking, even if there was not force or clear deception. The international definition also includes trafficking for the removal of organs.

Box 5: The Elements of Trafficking

| 1. ACT | + | 2. MEANS | + | 3. MOTIVE |
|---|---|--|---|---|
| Recruitment OR Transportation (within or across borders) OR Purchase OR Sale OR Transfer OR Receipt OR Harbouring of a person. | | Force OR Deception OR Coercion OR Debt Bondage. | | Involuntary Servitude : - Domestic servitude OR - Sexual servitude OR - Reproductive servitude OR Forced Labour OR Bonded Labour OR Slavery-like conditions |

See the international definition below:

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;

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.²

The international definition is also part of Nigerian law and can be used for the purposes of clarifying the terms of the Nigerian law. **See also Section 3 (“International Standards”)**

In some cases more than one of each element will be satisfied by the facts of the case. For example in Abimbola’s case in Box 1 above, it could be shown that she was recruited and transported to Lagos by her aunt, and then received in her Aunt’s house. Her Aunt used deception to convince her to travel with her - promising an education and not informing her that she would be forced to have sexual relations with strangers. Finally, she was variously held in domestic servitude, sexual servitude and used for forced labour, and possibly in slavery-like conditions.

The Definition of Child Trafficking

The Nigerian anti-trafficking law does not include a specific definition for trafficking of children. All three elements must be proved in child trafficking cases in Nigeria,

as is the case with adults.

Under the UN Trafficking Protocol proving the trafficking of children (a person under 18 years) is easier because it does not require proving any of the Means in Column B, such as force, coercion or fraud. Note that Abimbola’s case in Box 1 would be easier to prosecute using international law because she was a child when the crime took place. It would not be necessary to present evidence that she was deceived, only that she was recruited and ended up in an exploitative situation.

3.2. The crime of trafficking in persons

Trafficking is not defined as a single crime in the NAPTIP Act. Rather, it may be prosecuted with a range of charges related to the trafficking process, from forcing a person to move by deceptive means, to forcing a person to work in servitude or forcing a person to work in prostitution.

The law also provides for penalties, including monetary fines, imprisonment, deportation, forfeiture of assets and passport, and liability for compensation to victims in civil proceedings. Imprisonment terms range from 12 months to life. Fines range from 50,000 to 200,000 Naira.

The crimes and their penalties are set out in Annex 1.

Crimes related to the Trafficking of Children

A number of crimes in the NAPTIP Act specifically apply to persons under the age of 18 years (children). Several provisions prohibit the trafficking of children for sexual exploitation, including forcing or deceiving a child into prostitution or to have sexual relations with an adult, procuring, exporting or importing children for this purpose, allowing a child to work in a brothel or in prostitution, or buying, selling, hiring or letting a child for immoral purposes (Articles 11 - 18).

It is illegal under the Act to take a child away from his or her parents or guardians against their will or without their consent, or using force, fraud or enticement for the child to leave or the parents to part with

the child (Article 19).

Child labour is explicitly outlawed by the NAPTIP Act, including the use of a child as a domestic worker, in industry, in heavy lifting work or in any other place out of the home, unless it is “light work of an agricultural, horticultural or domestic nature”. (Article 22)

3.3. NAPTIP

NAPTIP is the focal point for the fight against human trafficking and child labour and for the rehabilitation of the victims of trafficking in Nigeria. NAPTIP’s remit includes coordinating laws related to the trafficking of persons, enforcement of the NAPTIP Act, and leading, supervising, controlling and coordinating efforts for rehabilitation of trafficked persons.

3.4. The rights of victims under the NAPTIP Act

Victim protection is central to combating trafficking effectively. The NAPTIP Act provides certain relief for victims of trafficking:

- *Section 50: The Agency shall ensure that:*

- a) a trafficked person is not subjected to discriminatory treatment in practice on account of race, colour, gender, sex, age, language, religion, political or other opinion, cultural beliefs or practices, national, ethnic or social origin, property, birth or other status, including his status as a victim of trafficking or having worked in the sex industry;*
- b) a trafficked person has access to adequate health and other social services during the period of temporary residence;*
- c) a trafficked person has access to the embassy or consulate of the country of which he is a citizen or where there is no*

Box 6: NAPTIP

| Establishment | Departments | Functions |
|--|---|--|
| Section 8 of the NAPTIP Act states that for the effective conduct of the functions of the Agency there shall be established four specialized departments | <i>Investigation/ Monitoring</i> | Section 9 (1) prevention and detection of offences in violation of the provisions of this Act; working in collaboration with the Immigration Service, Customs Service and other relevant security agencies |
| | <i>Legal/ Prosecution</i> | Section 9 (2) the legal department shall be responsible for prosecuting offenders under the Act, supporting the investigation department with legal advice and assistance whenever it is required, acting as secretariat to the Board, conducting such proceedings as may be necessary towards the recovery of any asset or properties forfeited under the Act and performing such other legal duties as the Agency may refer to it from time to time. |
| | <i>Public Enlightenment</i> | Section 9 (3) in collaboration with the Federal Ministries of Information and National Orientation Agency, Women and Youth Development, Employment, Labour and Productivity, have responsibility for campaigns, seminars and workshops aimed at educating the public on the problem of trafficking in persons, thereby stimulating interest in, and awareness about the problem. |
| | <i>Counselling & Rehabilitation</i> | Section 9 (4) in collaboration with the Federal Ministries of Women and Youth Development, Employment, Labour and Productivity and Culture and Tourism, be responsible for counselling, after care rehabilitation, social re-integration and education of trafficked persons; and - counselling and the promotion of the welfare of convicts |



embassy or consulate, ensure access to the diplomatic representative of the state that takes charge of the country's interest or any national to protect him;

d) a trafficked person is able to return home safely, if he so wishes and when he is able to do so;

e) a trafficked person is not denied temporary residence visas during the pendency of any criminal, civil or other legal actions;

f) investigation, detection, gathering and interpretation of evidence are conducted in such a manner as to minimize intrusion into the personal history of a trafficked person;

g) the identity of a person trafficked is protected;

h) the use of any person's history of being trafficked to discriminate or cause harm to any trafficked person, his family or his friends in any way whatsoever, particularly with regards to freedom of movement, marriage or search for gainful employment is not encouraged;

i) it takes steps to maintain and rehabilitate facilities provided for trafficked persons; and

j) a trafficked person and his family are protected from intimidation, threats, and reprisals from traffickers and their associates including reprisals from persons in position of authority.

Section 51: where the circumstances so justify, trafficked person shall not be detained, imprisoned or prosecuted for offences relating to being a victim of trafficking, including non-possession of valid travel stay or use of a false travel or other documents.

Section 52: a trafficked person, irrespective of his immigration status:

a) has the right to institute civil action against a trafficker and any other person including a public officer who has exploited or abused him; and

b) is entitled to compensation, restitution and recovery for economic, physical and psychological damages, to be met from the assets, if any, of the convicted trafficker, which has been forfeited and paid to the Victims of Trafficking Trust Fund.

3.5. Other National and Sub-National Laws

Other Nigerian laws can also be used to prosecute offences of trafficking and related offences. All of these laws derive their force from the 1999 Constitution of the Federal Republic of Nigeria, which by its sections 31, 34, 35, 41, 46 etc. has strongly prohibited the subjection of any person to slavery or servitude and has sought to safeguard the fundamental human rights of all citizens.

A table of relevant laws and the trafficking-related crimes they contain is set out in Annex 1.

The Child Rights Act of 2003

The Child Rights Act 2003 incorporates all the rights and responsibilities of children, and consolidates all laws relating to children into one single piece of legislation, as well as specifying the duties and obligations of government, parents and other authorities, organisations and bodies. Some States of Nigeria have also enacted their own State laws on Child Rights.

In addition to setting out a list of child related offences, including child marriage, child labour and child abuse, the Act provides for the establishment of "Family Courts". These courts operate at the High Court and Magistrate Court levels. They have jurisdiction to hear all cases in which the existence of a legal right, power, duty, liability, privilege, interest, obligation or claim in respect of a child is in issue, and any criminal proceeding relating thereto.

The Criminal and Penal Codes

These are jurisdictional legislations dealing with criminal offences in Nigeria. Whereas the Criminal Code is applicable to the southern part of Nigeria, the Penal Code applies to the Northern part of Nigeria. Though both codes preceded the NAPTIP Act, they do not specifically define trafficking. However, they do contain provisions which punish offences relating to human trafficking such as unlawful deprivation of liberty, slave dealing, forced labour and sexual offences, most of which the NAPTIP Act customised.

The Labour Act, 1990

The Labour Act is designed to regulate labour and industrial relations in the Country. It is largely a reflection of the British Law and as such the issues of forced labour or subjection to servitude and child labour, are of serious concern and are therefore punishable offences.

The Edo State Law of 2000

As a result of the high number of women trafficked from Edo State into prostitution overseas, Edo State amended the State Criminal Code to strengthen trafficking-related offences. Some have been concerned that the Act also criminalises prostitution (section 223) which has discouraged women trafficked into prostitution from coming forward to report the case. It also means that a person who is a victim of trafficking may be treated as a criminal because they were involved in prostitution. This could serve to further violate the rights of people who have been victims of trafficking. (See chapter 7 for more explanation on this).

3.6. Regional Standards

Apart from its own national legislation on human trafficking and other criminal laws, Nigeria is signatory to and has ratified a number of regional conventions which relate to human trafficking. These include:

The ECOWAS and ECCAS Multilateral Cooperation Agreement to Combat Trafficking in Persons, Especially Women and Children in West and Central Africa.

This is a regional agreement between West and Central African nations including Nigeria. It sets out common obligations and special obligations of origin, destination and transit countries, are well as common principles including:

“All identified victims of trafficking, be they nationals or foreigners, shall be treated with respect to their dignity without discrimination.” (Article 4)

Like other signatories, Nigeria is required to establish mechanisms for identification of trafficked persons and, “preserve the identity of the victim and the confidentiality of the information pertaining to the victim” and extradite traffickers and their accomplices at the request of contracting parties (Article 10).

Protocol to the African Charter on Human and People’s Rights On the Rights of Women in Africa

This Protocol applies to all African nations, and it has been ratified by the Nigerian parliament. It came into being as a result of the commitment of State parties to fully eliminate all forms of discrimination and harmful practices against women in Africa. The relevant sections are Articles 4(g) seeking to prevent and condemn trafficking in women and Article 8 guaranteeing effective access to women of judicial and legal services including legal aid.

3.7. International Standards

Finally, Nigeria has international obligations which influence its handling of human trafficking cases. International interest in combating human trafficking has reached unprecedented levels, and there is a growing spectrum of international measures in the fields of prevention, protection and prosecution with the common objective of eliminating trafficking in persons.

Nigeria has ratified a good number of these Conventions, but their application is limited by Section 12 of the Constitution, which stipulates that all treaties ratified by Nigeria must be passed into law by the National Assembly before they can have force of law in Nigeria.

Chief among these is *The Protocol to Prevent, Suppress and Punish Trafficking in Persons especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime* (known as the Palermo Protocol or UN Trafficking Protocol). The Nigerian NAPATIP Act is based largely on the UN Human Trafficking [See Definitions above].

Some key features of the UN Human Trafficking Protocol include the definition of trafficking in persons in Article 3 (see Chapter 2 of this handbook) and the injunction to state parties in Article 5 to adopt such legislative and other measures as may be necessary to establish as offences the conduct set forth in Article 3. The Protocol further provides specific recommendations for the protection of the rights of trafficked persons in sections 6, 7 and 8.

Article 6 (1) and (2) specifically relate to protection of the rights of trafficked persons within the justice system:

Article 6: Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

- a) Information on relevant court and administrative proceedings;
- b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

- a) Appropriate housing;
- b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
- c) Medical, psychological and material assistance; and
- d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

For the full text of the Palermo Protocol visit:

<http://untreaty.un.org/English/TreatyEvent2003/Texts/treaty2E.pdf>

Human Rights Guidelines

The provisions of the UN Trafficking Protocol have been further elaborated by the Office of the High Commissioner for Human Rights (OHCHR) in the 2002 *Principles and Guidelines on Human Rights and Trafficking*. This document does not have the force of international law, but is a useful guide for governments and law enforcement authorities to ensure that they are undertaking their activities in a manner that does not violate human rights. See <http://www1.umn.edu/humanrts/instreet/traffickingGuidelinesHCHR.html>

Of particular relevance here are Guideline 6(5), which emphasises that victims of trafficking should be given legal and other assistance to take criminal, civil and other cases against their traffickers, and Guideline 9 specifically relating to access to justice (see Chapter 1).

Other Important international treaties that Nigeria has signed and ratified contain many excellent provisions for the protection of the rights of trafficked persons are set out in Annex 3.

Footnotes

¹ Trafficking in Persons (prohibition) Law Enforcement and Administration Act, 2003 and 2005 (the TIP Act), Section 64

² United Nations Protocol for the Prevention, Suppression and Punishment of Trafficking in Persons, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000, G.A. Res. 25, annex II, U.N. GAOR, 55th Sess., Supp. No. 49, at 60, U.N. Doc. A/45/49 (Vol. I) (2001), entered into force Sept. 9, 2003, Article 3.

4. IDENTIFYING A TRAFFICKED PERSON

The first stage in providing access to justice for a trafficked person is correct identification.

Despite the international definition, identifying trafficked persons is difficult. Even if a possibly trafficked person comes to the attention of authorities (which is not common), learning about the facts of the case can be difficult as the victim is usually traumatised and afraid. The trafficked person might have violated the law (for example the immigration law, having worked in prostitution, or having left the country illegally), which makes it even more difficult for her to trust authorities or identify herself as a trafficked.

This chapter attempts to give some guidance on how to identify a (potentially and/or possible) trafficked person and what to expect after the identification takes place. Of course identifying such a person cannot be done by mathematical formula, but instead needs sensitive and well informed professionals, who can listen to the individual in his or her specific situation.

The aim of this chapter is also to give practitioners a deeper understanding of the position and needs of trafficked persons, so that they are better prepared to offer assistance, possibly obtaining cooperation and information so prosecutions of traffickers are more likely to succeed.

4.1. A profile of trafficking victims

While there is no absolute ‘profile’ of a trafficking victim (and unjust labelling and discrimination has to be prevented) they are usually drawn from social groups in the most vulnerable situations: like orphaned or abandoned children, women who have lost their husbands, people without homes, or women and children who have already

experienced violence.

Like in other countries in Africa and other regions of the world, a combination of individual and socio-economic circumstances (i.e., poverty, family violence, gender discrimination, conflict, decreased livelihood options, dependency (in the case of children), social unrest, a desire for better life) all serve to increase the vulnerabilities to being trafficked. Generally, victims of human trafficking have little or no formal education.

In Nigeria, victims are often from large families of between 5 and 25 people. UNODC reports that “children from smaller families were often those with a widowed mother and her children.” Several of the case studies in this Handbook reveal the importance of family context in creating vulnerability to trafficking.

More detail on the common forms of trafficking and factors that make victims susceptible to trafficking are referred to under “Push, Pull and Facilitating Factors” in Chapter two.

4.2. Identification

Box 7: WHO CAN IDENTIFY A VICTIM?

NAPTIP is responsible for identifying victims of trafficking, and thus all potential victims should be taken to a NAPTIP office. The NAPTIP investigator, after interviewing the potential victim, will decide whether the evidence suggests trafficking. If it does, the potentially trafficked person will be taken into NAPTIP care and the investigation will proceed. After investigation, the NAPTIP prosecutors will decide whether the evidence is sufficient to prosecute the trafficker.

Unlike some other countries, Nigeria does not have a formal process of ‘certifying’ a victim of human trafficking.

Identification is the first step in the justice process for the victim of trafficking. It is at this point that the authorities decide that the person may in fact be a trafficked person and that a legal process should move ahead. As well as the evidence, the other starting point is the wishes and decisions of the (potentially and/or possibly) trafficked persons, who, once identified, are right-holders.

Identification can happen in many ways and may depend on the type of exploitation that is being suffered by the victim. Initial identification can also be made by many different actors. The process of identification is determined by the purpose for which the victim was trafficked.

Box 8: Some possible examples of identification:

In some cases a victim escapes from the situation and will come to the police for help. It is the responsibility of the police to identify the case as trafficking and report it to NAPTIP

NGOs or members of the public might also bring suspicions of severe exploitation of another person to the police or NAPTIP. The police or NAPTIP will then investigate and take action. This occurs commonly in child labour cases

Border officials often identify victims as she/he is leaving the country, with or sometimes without the trafficker

In other cases, victims might have been deported from a destination country as an irregular migrant. Identification is usually made by the relevant immigration officer who will inform NAPTIP

It is important that a wide range of persons who may come into contact with trafficked persons are aware of the phenomenon and know the kinds of questions to ask potential victims and/or possible victims.

This is especially true for potentially and/or possibly trafficked persons that are, for some good reason, reluctant to identify themselves as a trafficking victim, but seek other kinds of help and assistance, e.g. wanting to return home or to receive medical assistance, and not wanting to prosecute the trafficker.

Box 9: Some sample questions for determining trafficking¹

RECRUITMENT

Who offered you the job?

What did they tell you about the kind of job you would be doing?

Did you sign any contract? If yes, where is it now?

Did you visit a priest or juju priest? Did you swear an oath? What did you say? Did you have to offer any personal items?

What kind of visa or other documents were promised to you

Was anyone paid to bring you into or out of Nigeria?

Were you sold?

Were you kidnapped?

TRANSPORT

How did you travel from your home to your final destination?

What route did you take? Did you pass through other countries?

Who organised your travel?

What did you have to pay to travel?

Who accompanied you? Did you know him/her/them before?

If other people came with you, do you know what has happened to them?

Were you able to keep your passport and visa with you? If not, who took them?

Were you told to tell any stories to the immigration officials? What were you told?

ARRIVAL

Where did you stay when you arrived in Nigeria or left Nigeria?

Were you allowed to keep your documents? If not, who took them?

Were you given a new contract when you arrived? If so, where is it?

How soon were you asked to begin work?

WORKING CONDITIONS

What work did you have to do?

Was it the same as you had expected? If not, how was it different?

What hours did you work?

Were you paid? How much? How often?

Were you living and working in the same place?

Could you leave?

Were you expected to pay off a debt or loan? How much?

Do you still owe money to your employer or someone else? How much?

Could you take time off from working? Could

you rest if you were sick?
 Were you allowed to contact your family and friends at home?
 Were you able to talk to other people working with you?
 Were you allowed to quit and go somewhere else if you wanted?
 Were you threatened with harm or violence at any time (before leaving, in transit, on arrival)?
 Were you ever beaten? Hit or kicked?
 Suffered sexual abuse or harassment?
 Were you ever locked up? Isolated from others?
 Were you denied medical care if you were sick or hurt?
 Were you denied food, clothing or other necessities? If not, was it easy for you to obtain them?

CURRENT SITUATION

Are you afraid? Of who or what?
 Do you have any debts?
 Do you have to fulfil any promise to anyone?
 Do you know where the person who promised you the job is? Do you know where the people that hurt you are?
 What would happen if you were to return home?

If a person is identified as a potential/possible victim during this transit phase s/he probably will not yet understand the danger she/he might be in. Usually, the recruiter/trafficker is a person that the victim already knows and trusts - a relative, friend or neighbour. Men, women or children identified as potential victims at this point may understandably resent law enforcement officers or NGO workers who intervene and are unlikely to believe that exploitation might await them. They will see such a person as interfering with their opportunity to enjoy a better life and are likely not to cooperate.

It is important to remember that telling a person that they may be potentially trafficked can be extremely upsetting. It requires the person to accept that she/he has been deceived by someone she/he trusts and that their hopes were false.

All persons should have a right not to cooperate in the investigation should they so choose. In order for the investigation to proceed, therefore, initial contact with the potential victim should be done with great sensitivity and care. Any intervention must include information about rights and safer migration options. If not, it is likely that the person will refuse to cooperate and as soon as s/he is released, will travel anyway.

4.3. The situation of the victim when identified as a trafficked person

Identification can also be challenging because the trafficked persons may not know or want to accept that trafficking has or is taking place. The perspective of the victim might be different at different stages of the process, which will impact on the type of intervention provided. Some might not want to be identified as trafficked. Identifying a Trafficked Person in the place of origin

A person, who is willing to migrate based on promises of a job etc, is most likely not yet in the position to judge, whether s/he is going to be trafficked or not. But if for example, there is evidence, that the debt, she is going to pay for her trip, is extremely high, plus will be deducted “automatically” from her future earnings, she might be in an extremely vulnerable position. Identifying a Trafficked Person during the transit phase

Identifying a Trafficked Person during or after exploitation

Identifying a possible or potential trafficked person after the exploitation has begun presents its own problems.

Trafficking has profound implications for the physical, mental, and social well-being of those affected. Various forms of abuse often occur, including physical, psychological and sexual. Victims may be beaten, repeatedly raped, subjected to hunger and thirst, and when travelling across the desert, buried alive in sandstorms. Some people die during transit. At the destination point, traffickers physically and mentally control the victims to prevent escape and to deter cooperation with law enforcement officials. Such control may be achieved by traffickers physically confining victims, confiscating travel documents and return airline tickets, telling the victims they are ‘illegal’ immigrants

subject to imprisonment if they go to the police, or threatening to harm the victims or their families if they report their situation. Sometimes the violence is very subtle, for example reminders of juju rituals or blackmailing women and children with photos of them working in prostitution.

These tactics present a challenge to gaining the trafficked person's trust and convincing him or her to speak out to implicate the traffickers. This is a process, making it necessary to understand the victim's point of view (see also next paragraph). Law enforcement officers and NGO workers should be aware that trafficked persons often have had bad experiences with the ones they trusted before and frequently taught to fear authorities and to lie about their age or conditions of work if asked.

Trafficking victims may be coerced to hide information and indicators of trafficking, such as confinement, debt bondage, or threats of violence against them and their families.

What to Do?

□ **Do not lie or promise things that cannot be fulfilled, since starting a relationship of confidence will surely be harmed by this.**

□ Conduct the initial interview with the possible trafficked persons away from the trafficker and away from the premises where the exploitation has occurred. It should be ideally done in a place that is not intimidating or overwhelming to the victim. In case translation is needed, ensure the translator is from a reliable source.

□ If the victim is a child or is clearly distressed, try and discern only basic biographical data during the first interview. Seeking information about the crime and the trafficking experience should be delayed until the victim is in a stable condition and safe environment. The person might need fresh and comfortable clothes, food and water, and time to rest before a full interview is conducted.

□ Recognise that the person may not act as you would expect a 'victim' of a terrible crime to behave. Even in cases

where exploitation appears clear to those intervening, the victim probably will not know the term 'trafficking' and will not self-identify as a trafficked person. They might not wish to return home or escape the situation, either out of fear, shame or a belief that nothing good awaits them at home. Trauma might also impact on their abilities to explain their experiences clearly (see below).

□ **Sensitive and ethical interviewing is required regardless of the person's stage in the trafficking process. It is very unlikely, that the trafficked person approaches you and tells you everything straight ahead, It is more likely, that she might not tell you the full truth in the beginning. Many trafficked women are told, that the police are corrupt and a part of the traffickers network!**

Do not treat the person as a criminal or someone who has done something shameful and do not detain the person even if the person is discovered to be in the country without appropriate documents. Treatment in this way is harmful and abusive. It is important to act with genuine kindness and empathy, and respect the dignity and rights of the person

□ If the victim is intercepted at a border post or on the road, the person should immediately be separated from the suspected trafficker and be informed about what is happening to them and why. The state will take temporary custody of these suspected victims, as victims or witnesses of serious crimes. Custody of these individuals, though should be exercised in a sheltered environment and should be for a short period of clearly limited duration. Under no circumstances should trafficked persons be held indefinitely. It should be guaranteed, that the right to freedom of movement is respected, also in shelters.

□ Victims of human trafficking may be more likely to tell of their experiences with additional supportive services. Other emergency needs include food, clothing, crisis counselling (for some cases), physical health services, and, for international victims, translation services to avoid feelings of isolation and to facilitate communication regarding other needs. If possible, a trafficked person should be given

the opportunity to contact her family and children.

4.4. Understanding Trauma

Trafficking can expose victims to numerous traumatic events.² The physical and psychological consequences of violence, control and abuse inherent to trafficking cases are extremely serious, regardless of the sector into which trafficking occurs.

It can take many people a long time to recover from these events and be able to remember their experiences without pain or anxiety. While not all trafficked people are traumatised by their experience, it is likely that they have been psychologically affected and will show some psychological difficulties. This is usually known as Post-Traumatic Stress Disorder. For trafficked persons, the pressures can be even greater if there is continuing stress, such as threats from the traffickers or the prospect of a court case. Therefore, it is best to expect trafficked persons to be displaying signs of psycho-social distress, trauma and/or shock after being removed from the trafficking situation.

Signs may include:

- Withdrawal or depression
- Confusion, anger and aggression
- self-blame
- Loss of control, anxiety and fear
- Nightmares or flashbacks, sleep disturbances
- memory problems (“black-out” and/or denial of crucial or extremely hard experiences)
- Physical symptoms (headaches, stomach problems, fainting, etc.)
- Suicidal thoughts or attempts at suicide.
- Identification with the perpetrator (Stockholm syndrome)
- Drug abuse

Some of the impacts of trauma might be very confusing for police or criminal justice agents such as (UNDP, 2003):

- A traumatised person might deny that she/he was trafficked, even in the

face of overwhelming evidence to the contrary

- She/he is likely to have difficulty in providing a clear and consistent statement to investigators
- She/he may have difficulty remembering what actually happened
- As she/he may not understand why she/he is unable to remember traumatic events, the trafficked person may have a tendency to fill in the blanks of his/her memory by making up plausible elements of the traumatic situation

Of the 962 victims who had passed through NAPTIP shelters as of 31 March 2007, memory impairments were reported by nearly two-thirds of the women. This has significant implications for women’s participation in administrative and legal procedures. If these signs are encountered, it is important that psychological assistance or crisis counselling be provided before interviews are conducted to avoid the risk of re-traumatizing the person.

4.5. Ethical Interviewing

It is essential that the investigator is patient with a victim, and that the victim is reassured and encouraged. A victim should be treated as a victim and a witness, and not as a suspect or offender.

Under no circumstances should the police officer or social worker raise their voice, lecture the victim, or tell the victim that she/he has made mistakes. The privacy of the victim should be ensured, and it should be made clear that what the victim tells the social worker is kept in confidence.

If possible a female victims should be interviewed and assisted by people of the same sex, since shame and sense of hierarchy might prevent women from speaking out. In case translation is needed, female victims should be assisted by female translators.

The World Health Organisation has set out 10 Principles for Ethical Interviewing:³

1. Do no Harm: do not carry out an interview if you think that it will make the victim's position worse either immediately or in the long term.
2. Know your subject (trafficking) and assess the risks for the person as much as possible before conducting the interview.
3. Be able to refer or describe in his or her native language all services that the victim could receive, including medical, legal, accommodation and psychological. Do not make promises that cannot be fulfilled.
4. Adequately select and prepare interpreters and co-workers before doing the interview and develop systems for screening and training them.
5. Ensure anonymity and confidentiality from the moment of the first interview until the case is made public. Explain this at the outset of the interview.
6. Get informed consent. Ensure that the person understands the content and purpose of the interview and what the information will be used for. Explain the potential benefits and risks of the interview clearly and systematically.
7. Listen to and respect each victim's assessment of his or her situation and risks to his or her safety. Each person will have different fears, and they may be different to what outsiders perceive. Respect a decision, even not to receive any help and do not push unwanted services on a person.
8. Do not retraumatise a victim by asking insensitive or unnecessarily distressing questions, or by implying any negative judgement of the person's choices or actions.
9. Be prepared to offer immediate emergency assistance, such as shelter or witness protection, if it is requested at the interview.
10. Use the information from the interview in an ethical way to help, the victim or for ethical policy making, but not to sensationalise the case or the issue of trafficking.

Footnotes

¹ Adapted from the NY Anti-Trafficking Network Legal Subcommittee, Identification and Legal Advocacy for Trafficking Survivors, 3rd Ed, Dechert LLP, New York, January 2009, Page B-17

² A traumatic event, or stressor, is defined medically as an event in which a person: "experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others," and that the person responded "with intense fear, helplessness, or horror." American Psychiatric Association (1994). Diagnostic and statistical manual of mental disorders: DSM-IV. Washington, DC: American Psychiatric Association.

³ Adapted from Zimmerman and Watts, WHO ethical and safety recommendations for interviewing trafficked women, World Health Organisation, Geneva, 2003

5. PROTECTION OF TRAFFICKED PERSONS POST-IDENTIFICATION

Protection of trafficked persons is one of the three core strategies for combating trafficking in persons successfully. It is recognised that this is essential not only for human rights reasons, but also to make law enforcement more effective.

Nigeria has a National Policy on Protection and Assistance to Trafficked Persons in Nigeria (the National Policy), prepared by the Counselling and Rehabilitation Department of NAPTIP, as a guide for social workers and other professionals who assist trafficked persons.

At present, NAPTIP provides most essential services including medical and counselling services in the shelter (see Chapter 5 above). Other organisations, however, can also provide shelter or other services such as education, training or specific medical attention.

Basic principles for protection

The NAPTIP Act provides for humane treatment, protection and non-discrimination practices towards victims of trafficking. All victims of human trafficking have the right to:

- not be subjected to discriminatory treatment on account of race, colour, gender, sex, age, language, religion, political or other opinion, cultural beliefs or practices, national, ethnic or social origin, property, birth or other status;
- to receive adequate health and social services during the period of temporary residence (in a shelter);
- to minimal intrusion into the victim's personal history;
- to protect his/her identity;
- to protection from intimidation, threats, and reprisals from traffickers; right

to institute civil action against a trafficker and others.

1.1. Addressing immediate and long-term needs

After a person is identified as potentially trafficked, two things must happen:

- Her or his immediate needs must be catered to, including the need for shelter, food, clothing, medical assistance, and initial counselling. The person will usually be taken to a NAPTIP shelter or any other shelter where such cases can be handled.
- Information about the situation must be given to the victim. The information required is set out in Annex 2. It will usually include a basic explanation of what is happening, what will happen next, and what the person's choices are.

Needs of victims of human trafficking might include:¹

Emergency

- Safety
- Housing
- Food/Clothing
- Medical care
- Contact to her family, in order to make sure, they are safe
- Translation
- Legal guardianship (if a child)

Short-/Long-term

- Transitional housing
- Long-term housing
- Legal assistance
- Advocacy
- Translation
- Medical care
- Mental health/counselling

- Substance abuse treatment
- Transportation
- Life skills
- Education
- Financial assistance/management
- Job training/employment
- Child care
- Reunification/repatriation

5.2. Possible health needs for trafficked persons

Trafficked persons may have both immediate and long term physical and mental health needs as a result of their experiences. A small proportion may have children or have very serious health conditions such as HIV however in Nigeria the numbers so far have not been significant. Of the 962 victims who had passed through NAPTIP shelters as at 31 March 2007, 5% of the female victims were pregnant on arrival. Nine of them tested HIV positive (less than 1%).

Police or other law enforcement bodies should ensure that immediate health care is available to trafficked persons. Testing for pregnancy and HIV should also be made available but must not be compulsory.

The National Policy urges service providers to “Link shelters with government endorsed health care facilities, providing treatment for tuberculosis, HIV/AIDS, sexually transmitted infections, mental health services and other services as appropriate. It also suggests engaging with alternative medical practitioners and traditional healers (section 2.4).

5.3. Shelters

As stated in the National Policy, “there is need to provide immediate shelter and rest” for trafficked persons. “The shelter offers protection ... in regaining self-esteem, and provides the opportunity to face future challenges.”

The policy also notes that victims should never be compelled to stay in a shelter, and should not be abused in any form while undergoing rehabilitation and reintegration (section 3.1)

It cannot be an automatic decision to keep

all victims of trafficking in a closed shelter (in which the victim cannot come and go), as all people have an inherent right to freedom of movement. Closed shelters can be highly stressful places for victims as they are kept away from their families and support networks, and they may resist the control of their activities that necessarily occurs in a closed shelter. Such people are less likely to make good witnesses or are less willing to cooperate effectively with law enforcement.

To accord with international law, ensure, before the decision to keep someone in a closed shelter is made, that:

- *every case* is considered on a case by case basis and the risk is fairly assessed
- no other option for the protection of the victim is possible
- restriction of the person’s movement is proportional to the risk that is faced
- family and friends can visit at designated times
- the trafficked person is told why she/he must stay in the shelter and the expected duration of the stay. Stay in a shelter should not be indefinite or unreasonably prolonged
- the trafficked person has a right to challenge their detention (in a closed shelter or elsewhere) in a court of law²

5.4. Needs of specific categories of victims

Adults

For all intents and purposes, an adult is treated as a person of full capacity under the law who is able to make informed decisions. She/he should be adequately informed of his/her rights and allowed to make his/her decisions. Women victims, victims with intellectual or physical disabilities and victims who are pregnant or ill should be supported with their individual basic needs.

Children

Children have specific needs additional to the needs and rights of adults.

Nigeria has ratified the Convention on the Rights of the Child and also has passed the *Child Rights Act 2003*. The international standards for protection of children are

based on the fundamental principle of ‘**the best interests of the child**’. This means that, in the case of children, all other interests including of law enforcement, should be seen in light of what is best for the child.

Family tracing and reunification: As soon as a child comes to the attention of the authorities and is not in the care of his or her parents or guardian, immediate efforts should be made to trace the family of the child and reunite the child with his/her parents. However, the child’s safety should always be the first priority.

If the family can be involved, they will also be informed about the case along with the child. NAPTIP will organise a pre-trial conference between the child, his or her family, the prosecutor, the investigator and a counsellor to explain the legal process and what to expect at the trial.

If parents or other family members cannot be traced immediately, a guardian should be appointed to care for the child, to ensure that the child is provided with appropriate care, to keep the child informed about the process, and to advocate on the child’s behalf with authorities. The Guardian should ideally be an external person to NAPTIP or other agencies.

Education: If a child is of school age, efforts should be made to continue (or begin) the child’s education in an appropriate way.

Protection: Children should be kept in an environment that is as safe and supportive as possible. This should be the family, if that is a suitable environment, or within the child’s network of support persons. Only if a child is without any other support network, or the child is at serious risk of harm from the traffickers or other groups, should the child be kept in a (closed) shelter.

Decision-making: Decisions have to be made on behalf of a child because she/he is legally incapable of making independent decisions. But children have the right to express their wishes and needs. Always ask a child what it is that she/he wants and take this into account in deciding what is in the best interests of the child.

Information: Children, as well as adults, should be kept informed about their situation, particularly if they are participating in a case.

Migrants

As mentioned in Chapter 1, Nigeria is also a receiving country for trafficked persons, and thus the victims are migrants in Nigeria. Specific protections and processes apply to migrants.

Regularising status: The status and rights of a migrant person identified as trafficked will depend first on whether she/he has correct documents. Many trafficked persons have their documents taken from them, or their visas are allowed to expire and are not renewed. Under the NAPTIP Act, trafficked persons should never be prosecuted for infringements of immigration laws that arose from the trafficked status (Section 51).

A non-Nigerian victim of trafficking must, under the NAPTIP Act, be granted temporary residence permit for the duration of any legal action in Nigeria (section 50(e)).

NAPTIP is responsible for seeking a visa for non-nationals remaining in Nigeria. Trafficked persons have not been allocated a specific visa, but rather have access to visas for other non-nationals. To date, all non-nationals trafficked into Nigeria have been from other West Africa States and have been issued with an ECOWAS Residence Card, which gives an unlimited right to stay in the country.

Embassy contact: A trafficked person from outside Nigeria has the right to access the embassy or consulate of her or his country. If there is no embassy or consulate in Nigeria, another diplomatic representative “of the state that takes charge of the country’s interest or any national to protect him” should be contacted.

After identification, NAPTIP will contact the embassy of the trafficking victim. This is mandatory according to NAPTIP policy. NAPTIP will explain the right to contact the embassy, and facilitate follow-up contacts if the person wishes.

Repatriation: States are obligated to facilitate and accept repatriation of a victim who is a national of that state or who has a right of permanent residence in that country at the time the victims enters Nigeria. Repatriation should preferably be voluntary and take into consideration of any on-going legal procedures involving the victim as such.

The Counselling and Rehabilitation Section of NAPTIP will assist in cases which NAPTIP is handling. If the victim is a child, it will contact the family of the victim through the embassy, and arrange for reunification. If the home situation is judged unsafe for the victim to return, the victim will remain at the NAPTIP shelter until a suitable alternative is found.

If the victim does not wish to be repatriated out of fear of persecution in the home country, information should be provided for the victim to make a claim for asylum in Nigeria.

Trafficking victims as accused persons

Trafficking is a criminal activity and, in the course of the trafficking, the trafficked persons may also be forced to commit crimes. Such crimes might include using forged identity or travel documents, involvement in an illegal industry such as illegal mining, drug production, drug trafficking or soliciting for prostitution, robbery or other crimes. Before identification takes place, the trafficking victim might be arrested for and charged with these offences.

Under the NAPTIP Act, if the circumstances justify, a victim of trafficking “shall not be detained, imprisoned or prosecuted for offences relating to being a victim of trafficking”. Thus, if a trafficked person is identified in an immigration detention centre or in a prison, efforts should immediately be made to remove the person from that environment and begin providing assistance. And if the trafficking victim indicted and/or prosecuted the case against him/her should be dropped.

Footnotes

¹ This list has been adapted for Nigerian circumstances from Heather J. Clawson and Nicole Dutch, ‘Addressing the Needs of Victims of Human Trafficking: Challenges, Barriers, and Promising Practices’, August 2008. <http://aspe.hhs.gov/hsp/07/HumanTrafficking/Needs/ib.shtml>

² For more information see, Pearson and Gallagher, Detention of Trafficked Persons in Shelters: A Legal and Policy Analysis, ARTIP, Australia, August 2008

6. UNDERSTANDING THE JUSTICE SYSTEM AND ACCESS TO JUSTICE

Once the trafficked person is identified and the authorities made aware of the case, the legal procedure has begun. It should not be assumed, however, that participating in a criminal trial automatically equates to 'Access to Justice'. For the process to genuinely provide justice to the victim, it must be done in a fair, empowering, respectful and non-discriminatory manner.

The following section offers those unfamiliar with the criminal justice process an overview of the different steps. It then sets out some of the ways in which access to justice can be enhanced for the victims and the prosecutions given the best chance of being successful.

6.1. An Overview of the Criminal Justice Process

The justice process in trafficking cases:

1. Identification of victims

Victims are normally identified through interception by the police and/or through repatriation from countries of destination (see Chapter 3 above).

2. Investigation

Once identified, trafficked persons are sent to a shelter, part of the NAPTIP's rehabilitation department, while investigators (from NAPTIP, the police and the immigration department) conduct joint investigations. If the person does not stay at the shelter, other forms of witness protection should be considered.

The investigation is to gather the evidence that will prove the suspect guilty. Usually, it relies on the testimony of the victim and possible witnesses, but also on questioning of the perpetrator (if she/he has been

apprehended), visits to places and interrogation of other persons involved, such as juju priests. Efforts should be made to gather additional evidence (using photographs, telephone records and other documentary evidence, etc.), such as that of laundering money and other related crimes, so one has not to depend totally on the victims/witnesses testimony.

Where the suspected trafficker named by the victim is not already in custody, she/he will be invited, interrogated and a statement taken down. Where the need arises (e.g. when there is no court within 40 km, or more time is needed on consideration of the court - section 35 (4 and 5) of the Constitution) the suspect is detained for a period not exceeding 48 hours as is required by law.

The police or NAPTIP should also be investigating the assets of the trafficker and confiscating whatever is found. Records of the victim's material losses should be kept and evidence found for submitting to the court during the trial.

Suspected criminals also have rights that must be protected during this process, and they also have lawyers representing their interests. The accused person may be granted bail upon fulfilling certain conditions. However, where there is a possibility that releasing the accused person will lead to a tampering or destruction of the evidence, or that the accused will escape justice, or that there is a risk to the victim or to another person, an application can be made to the court for an order to remand him in prison custody. The authorities should inform the victim about the whereabouts of the trafficker throughout this period, especially if the

trafficker is released on bail.

If NAPTIP considers that crimes may have been committed other than those covered by the NAPTIP Act, the prosecutor can transfer the case to the appropriate authority for further investigation.

3. Post-investigation

After the investigation has been completed, the case file is sent to the NAPTIP legal department, which can request further investigation if there are gaps in the evidence, and then advises whether the case is strong enough to charge the suspect. It is important noting, that it at this point of the process that victims are informed in detail about their case. Once the case is sent to the Court it moves from the domain of NAPTIP to the court and the judge has full responsibility.

At this stage the prosecutor has a conference with her or his witnesses to prepare them for what to expect in court. She/he will go over all the questions that she/he intends to ask each witness in court. This is so that the witnesses are not caught by surprise and have time to prepare themselves. The testimonies of the witnesses are usually the most important evidence for proving the case and thus it is important that the witnesses feel comfortable and secure to explain what happened to them.

4. Trial

The trial of the accused begins with a public reading of the charges to which the accused responds by pleading guilty or innocent to each count.

In the event that the accused person pleads “guilty”, she/he is convicted immediately and the court will decide a sentence.

If the accused person pleads “not guilty”, the trial will proceed - usually on a future date set by the court. On this date, the prosecutor is called on to prove that trafficking and other charges did in fact occur beyond a reasonable doubt. The suspects are presumed innocent until proven guilty. The prosecutor calls witnesses to testify, and may also introduce other evidence such as photographs, documents or telephone records or other item that supports the prosecutors case. It is also the

prosecutor’s responsibility to alert the court if there is any evidence that might *disprove* the case.

The victim gives testimony and can be cross-examined by the defendant’s lawyer. Other evidence, documents and witnesses are presented at this stage both by prosecutors and defendants’ lawyers.

After each witness has testified about what s/he saw or experienced, the defence counsel cross-examines them in an effort to show that their evidence is not reliable. Finally, the prosecutor has a chance to re-examine the witness in case there were any ambiguities or uncertainties that emerged during the cross-examination.

When the prosecution has introduced all of its evidence, it closes its case and the defence opens its case. The defence will try to prove that the prosecution’s evidence is insufficient or unclear. As is the case with the prosecution, the defence calls its witnesses who are cross-examined by the prosecution and where need be the defence re-examines. When all the witnesses have been called, defence also closes its case.

Based on the evidence led by both parties, they are given the opportunity to address the court. The prosecution in their address will try to show how they have been able to prove the charges against the accused based on the testimonies of their witnesses and whatever evidence they might have led in court. The defence on the other hand will try to show why based on the evidence they have led and witnesses they called, the accused person should be discharged and acquitted. The judge will after listening to both parties reserve a date for judgement.

The length of trial depends on the trial judge. Some cases have taken up to two years while others have taken only one or two months to reach conclusion.

5. Decision by the Court

The judge will carefully study all the evidence before him before writing his judgement. On the date reserved for judgement, the judge will make a pronouncement of “guilty” or “not guilty”. Where he makes a pronouncement of “not guilty”, the accused person is discharged

and acquitted. However, where the accused person is pronounced “guilty” the judge will give an appropriate punishment which can be a jail term, an option of fine, or both depending on the gravity of the offence. The victim or witness can be present in the court when the judge announces the decision if she/he wishes. The counsellor and prosecutor should make every effort to explain to the person what is taking place, and the technical language that is being used by the court. The victim should also be given a copy of the Judge’s decision and the contents explained to him or her.

6. Enforcement

Where the punishment is a jail term, the court bailiff immediately handcuffs the accused person and takes them into prison custody. Where it is an option of fine, the accused person is remanded in prison custody pending the payment of the fine

6.2. Supporting and Assisting the Trafficked Person Protection

One of the biggest obstacles for victims and witnesses being willing to come forward to testify is fear for their personal safety.

After identification, the investigators and social workers will conduct a risk assessment for the potential trafficked person. If there is a significant risk of retribution by the trafficker or the trafficker’s group against the victim, then it may be decided that the victim should remain in the NAPTIP shelter. The victim’s own opinion should always be asked however. If the victim is an adult, then his or her preference should be the main guide in what protection is given. If the victim is a child, then NAPTIP and/or the family will have the final decision, but the child’s wishes and needs may be taken into account.

Information

Throughout the legal process, victims should be kept as informed and involved as possible. In the beginning this may be difficult as the victim could be afraid, angry, traumatised or not trust the NAPTIP officers. All efforts should be made to calm and reassure the victim and build a relationship of respected confidentiality.

As further statements are taken and the victim might become more relaxed, more information about the future and the person’s options should be given. Explain to the victim the process that is going on, and also her rights and possible options and choices to be made by him/her. The goal is that the victim should feel comfortable and not afraid or angry, and as much as possible in control of the situation. If the information is given in a patient and supportive way and in a language and style that the person understands, this experience will empower the victim.

Types of information that must be given to the victim:

- All of his/her legal rights, including possible requests for repair damages and compensation, cases of labour violations, and immigration issues if relevant.
- The whereabouts of the victim’s property and when it will be returned
- All information about the cases that she/he is involved in, including cases in the court and administrative matters such as visa applications; This should include the scope of the case (what is being sought), how long it is expected that the case/matter will take and what steps will happen along the way, the progress so far, and her/his role in the case
- All court dates and any changes to the dates
- the court’s decision about the case and any sentence given to the trafficker
- The whereabouts of the trafficker, including the prison that the trafficker will be held in, the date that the trafficker is scheduled for release, and the date that the trafficker actually is released.
- The health, education, counselling or other services that the victim could access
- All of the rights that are set out in Annex 2.

Informing the victim can also take the form of familiarising her or him with the court and the roles of different court actors before the trial. This makes it more likely that the victim/witness will remain confident on the stand and be able to give her/his testimony clearly. If possible, she could sit in the audience during another court case, so that she has seen a court before. It might be helpful to make her

familiar with tactics of defence lawyers, so that she does not feel humiliated by questions she will have to answer, His/her testimony will gain reliability.

The prosecutors can also help the victim make a longer-term plan for their future, including the choice to make a separate claim for civil compensation.

Translation

If the victim requires a translator, care should be taken to:

- Choosing a translator who understands trafficking and the legal process, is not acquainted with the victim or her family
- Explain to the translator exactly what is expected.
- Ensure that the translator is sympathetic to the victim and does not make her or him feel uncomfortable.
- Ensure the translator explains every word to and from the victim exactly and not add, subtract or summarize, including everything that is being said around the victim as much as possible, so that the victim understands the situation and feels in control.
- In court, try and ensure another person who speaks both languages is in the court, to make sure the translator is translating correctly.

Protection during the trial

The trial can be very long and taxing for the victim and/or witness. The defence counsel may often ask personal questions to the witness and imply things about the witness that may be embarrassing or unfair, in order to defend his or her client. The prosecution should challenge these questions if they arise, but they can be upsetting.

If the trafficker is in court, the witness may also be afraid and find it difficult to speak strongly against him or her. The counsellor should prepare the witness for all of these eventualities, and assure him or her of their safety and support. The trafficker's family and friends might also be in the audience and their presence can make the trafficking victim uncomfortable. If possible (and only with the consent of the trafficked women), the police can arrange for other supportive persons, such as friends, family members

or the social worker, to attend and sit in the audience.

Finally, ensure, that the trafficked women, does not come to or enter the court alone or wait outside the courtroom alone, as this is an opportunity for the trafficker's associates to make threats or other complications.

Where the victim is a child the prosecutor can make an application to the judge so that the courtroom is cleared or the testimony taken in the judges' chambers. This will protect the child from media scrutiny or from facing his/her trafficker.

The Media

If the victim is an adult, the media is allowed into the courtroom and can report on the case. However, under section 50 of the NAPTIP ACT, the identity of the victim and the history of the victim and his or her family must be protected.

If this is not respected by the media, a complaint can be made to NAPTIP, the police, or the human rights commission and it will be investigated

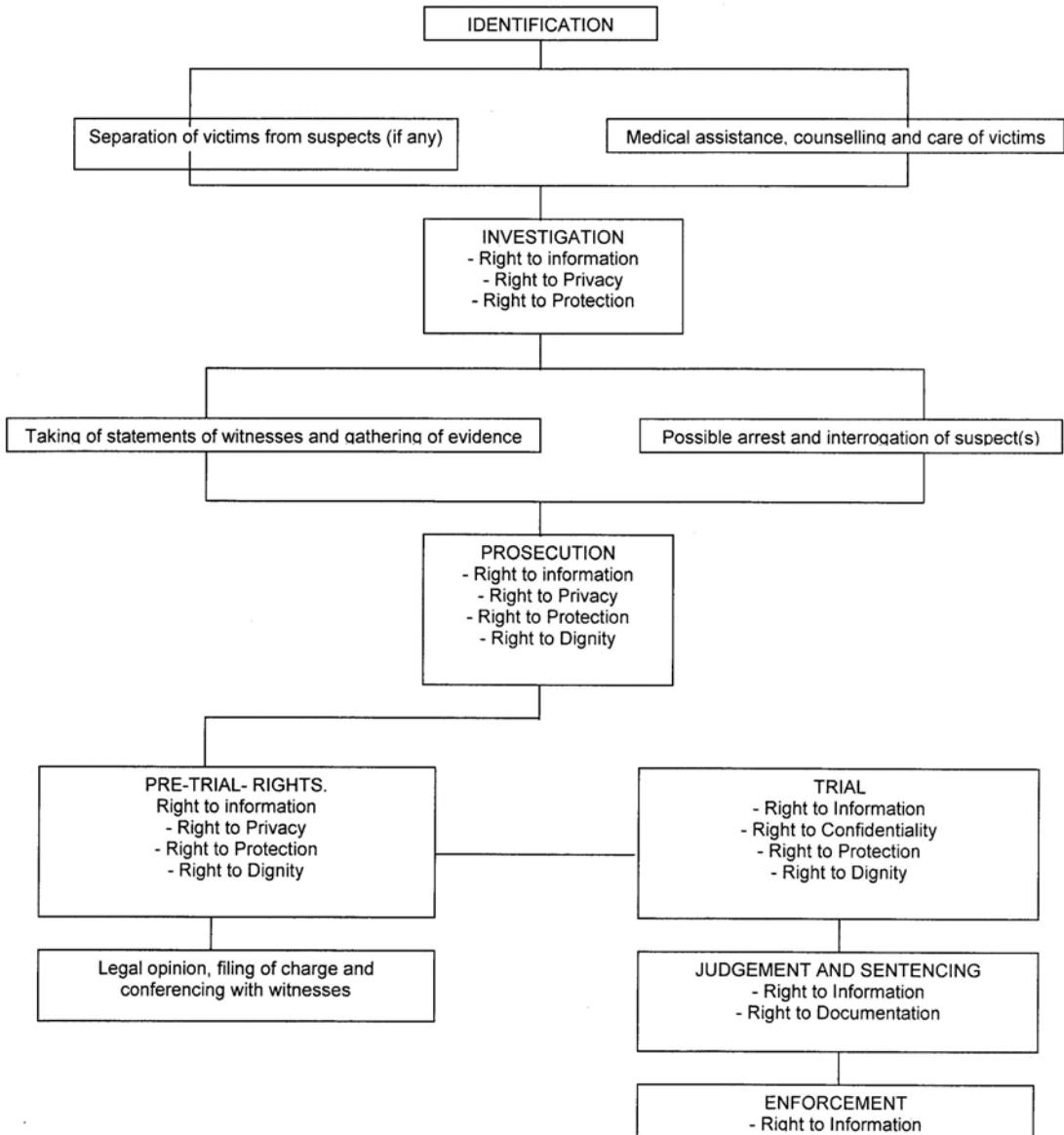
What happens if a trafficked person does not wish to testify?

Many trafficked persons do not want to be involved in police investigations or act as witnesses in trials due to:

- the risk of reprisal against them or their families
- the sometimes inappropriate attitude of the law enforcement agencies towards them
- the lack of adequate and effective witness protection measures.

Try to resolve some of the victim's concerns, but if finally she makes the decision not to testify, then this is her right. Look for other evidence that can be used to support the case, such as other victims/witnesses, the juju priest or documentary evidence.

SUMMARY OF THE PROCESS AND STEPS FOR VICTIM PROTECTION



7. THE CIVIL PROCEDURE PROCESS

When considering Access to Justice, it is commonly assumed that catching and punishing the perpetrator is the only path to justice and that this benefits the whole of society. However, in many criminal cases the criminal law system does not provide practical redress for the victim.

Both restitution and compensation often do not cover a victim's full economic losses, and neither source pays anything for hard-to-quantify damages such as pain and suffering.

In appropriate cases, victims of crimes ought to have compensation as well as, or in lieu of the imprisonment of the offenders. To date this has not been used in trafficking cases. The following section outlines the features of the civil system and how it could be used by a trafficking victim.

While taking civil cases requires much more resources from the victim than a criminal trial, it might be possible to arrange pro bono assistance in certain cases.

7.1. Why File a Civil Lawsuit?

Unlike the criminal system, the civil justice system does not attempt to determine the innocence or guilt of an offender. Offenders are also not put in prison. Rather, civil courts attempt to determine whether an offender or a third party is liable for the injuries sustained as a result of the wrong that was committed. A civil court's finding of liability usually means that the defendant must pay the victim, or the victim's family, money (known as **damages**).

Every crime victim has the right to file a civil lawsuit seeking financial compensation from the perpetrator or from other parties whose unreasonable conduct gave rise to conditions which allowed the crime to occur. Some of the benefits of civil actions may include:

Control of the Case - Victims have greater control in a civil lawsuit than in a criminal case because they are a party to the civil case. They cannot be excluded from the courtroom. They also have the final decision about whether to accept an amount offered by the defendant to settle the case before the trial begins.

Compensation - Civil actions can provide greater compensation for victims for the monetary damages they suffered, such as medical expenses and lost income. Civil actions can also compensate victims for the emotional damage they have suffered.

Justice and Accountability - Civil suits can hold offenders directly accountable to victims. These suits might give victims some justice regardless of whether there was a criminal conviction or any prosecution at all. Asking the perpetrator to pay, also hurts the perpetrator in a different way than a prison sentence.

Crime Prevention - In addition to suing perpetrators, victims can often sue other (co-)responsible parties. Civil actions provide economic incentives for crime prevention.

7.2. What are the Barriers to filing a Civil Lawsuit?

The barriers to a civil lawsuit can be many, and it is important for any potential plaintiff (the title of the victim in the civil case) to understand them before proceeding. They include:

- **Expense** - unlike in a criminal trial, the expense of a civil trial must be borne by each side. Costs can include legal fees, copying of documents, court fees, travelling to and from the court, and others. If the case is successful, the defendant will have

to pay the plaintiff a proportion of the costs. However, conversely, if the case is not successful the plaintiff will have to pay the costs of the defendant. Legal services for women are available in some cities in Nigeria and may be able to provide pro bono assistance.

- **Time** - civil lawsuits can take a long time to be processed, and enforcing the decision may take even longer, five years is not uncommon. This time can be draining on the victim if she or he is not emotionally prepared.

- **Accessing a Lawyer** - While some legal aid lawyers are available, it is not always easy for a person from a rural community or who does not have strong literacy skills to find them. NAPTIP may be able to assist in identifying a suitable lawyer.

- **Protection** - unlike in criminal cases, plaintiffs in civil cases are not accorded witness protection. Thus if the victim considers that he or she is at personal risk, this will have to be discussed with her or his lawyer.

- **Difficulties with Enforcement** - while a large amount of compensation might be awarded to the victim, in reality it is often difficult to recover this money from the defendant.

7.3. Parties in a Civil Suit:

The main parties in a civil suit are called plaintiffs and defendants.

Plaintiffs: Plaintiffs are the individuals who file the suit eg. the victim, survivors of the victim, or persons responsible for the victim. Family members who might bring a civil suit include the parents, spouse, children, or siblings of the victim.

Defendants: The defendants are the parties against whom civil actions are brought eg. the perpetrators, individuals who have assisted the perpetrators, or individuals or organizations whose negligence has in some way contributed to the commission of the crime (third parties).

Third Parties: In some civil cases, a “third-

party” defendant may be held liable. Third-party defendants are not the persons who actually committed the crimes, but instead are those parties who may have contributed to or facilitated the crimes. A few examples of possible third-party defendants in a victim’s case include native doctors who prepare charms for traffickers or make the victim take oaths of secrecy, middle persons or corrupt officials who facilitate the movement of the victim from one location to another especially those who use force to compel the victim to submit.

7.4. Types of Civil Lawsuits:

There are numerous claims under which civil actions might be brought. They include wrongful death, assault and battery, intentional or negligent infliction of emotional distress and negligence. Some of these actions are described below. In civil cases, the crime or wrongful act is referred to as a tort. ‘Victims of human trafficking may sue for compensation for loss of earnings. Actions that may be considered by the victims are:

Assault - putting the victim in fear of immediate injury while the perpetrator has the ability to inflict that injury

Battery - intentional physical contact with a person without that person’s consent; battery includes the crimes of sexual battery, rape, molestation, fondling, forcible sodomy, malicious wounding, and attempted murder

Wrongful death - a death caused by another person which occurs without justification or excuse, including murder, manslaughter and vehicular homicide

False Imprisonment - holding a victim against his or her will for any amount of time, no matter how brief. This often occurs in rape, kidnapping and trafficking situations

Intentional or Reckless Infliction of Emotional Distress - causing a victim emotional distress or anxiety through extreme and offensive conduct

Fraud - an intentional misrepresentation of facts made to deceive the victim, resulting

in damages or distress (e.g. using deceit to procure a person to travel abroad for forced prostitution)

Conversion - the theft or destruction of personal property or money; This includes larceny, concealment, and embezzlement

Negligence - the failure to use such care as a reasonably prudent person would use under similar circumstances, when such failure is the cause of the plaintiff's injury. Examples include negligent security and negligent hiring

7.5. Burden of Proof:

In the civil justice system, liability must be proven by one side's evidence being more persuasive than the other's. In other words, the plaintiff must prove there is a fifty-one percent or greater chance that the defendant committed all the elements of the wrong. This standard is far lower than the "proof beyond a reasonable doubt" required for a conviction in the criminal justice system. Therefore, it is sometimes possible to find the defendant liable in a civil case even though a verdict of "not guilty" was rendered in the criminal case. A civil case can also be successful even if the offender was never prosecuted.

7.6. Compensation:

A civil court's finding of liability usually means that the defendant must pay the victim or the victim's family monetary damages or compensation. This gives the victims and their families resources to rebuild their lives, provide a sense of justice and/or holds the defendants who are found liable directly accountable to their victims. The consequences of crime frequently extend far beyond the criminal act. All too often, victims are left with expenses for medical procedures, physical rehabilitation, counselling, lost wages and property damage. The civil justice system offers victims of crime another opportunity to secure justice.

Regardless of whether there was a successful criminal prosecution or any prosecution at all, victims can bring their claims before the court and ask to have the responsible parties held accountable.

A great number of victims of trafficking in Nigeria are women and children. Underlying the problem are issues of class, gender, immigration policy in the sending and receiving countries and economic exploitation. Civil lawsuits can be used to effect or achieve substantial monetary relief for victims. Compensation is not concerned with recovering ill-gotten gains per se, but with relieving the victim of a crime of any loss the victim might have suffered physically, emotionally or financially.

7.7. How to help your lawyer make the best of your case

A productive civil case is based on the ability of the plaintiff and their lawyer to fully and effectively work with each other. Some important points to guide the lawyer-client relationship include the following:

- Although relating sensitive details can be difficult for crime victims, they should feel as comfortable as possible in fully disclosing all details and information to their lawyers.

- Lawyers should be able to explain all aspects of legal process to victims and be responsive to victims' needs and requests.

- Victims should fully understand any retainer agreement (contract to hire the lawyer) before signing it. If they have questions, they should feel comfortable discussing them with their lawyers. If questions persist, local bar association personnel may be able to explain laws, regulations, and common practices pertaining to contracts with lawyers.

- Victims should be clear about what they wish their lawyers to do and lawyers should be clear about what services they are providing. Understanding each other's expectations as well as avoiding unrealistic expectations can minimize disappointments and frustrations.

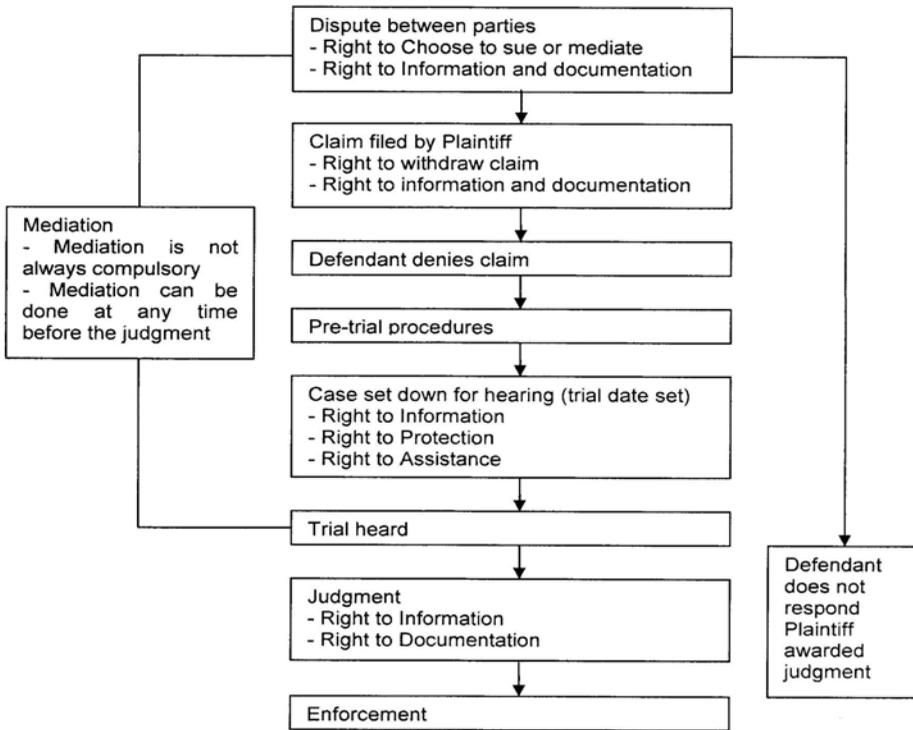
- Victims should feel free to consult with several lawyers before selecting one. Lawyers are professionals and it is good consumer practice to obtain a second opinion in selecting professional legal counsel. Victims should cooperate, as fully as possible, with their lawyers. Such cooperation is necessary for successful representation of their interests. By the same token, victims have the right to expect

their lawyers to be understanding, respectful and responsive to their needs.

Lawyers have the right to expect their clients to be honest and willing to participate in building their own cases. They should be prepared to answer detailed questions about the case that will allow the lawyer to conduct a proper evaluation.

7.8. Rights of the Trafficked person in a civil lawsuit:

A significant difference between the criminal and civil systems is that in a civil case, the victim controls essential decisions shaping the case.



Note: where the claim of the victim is for a liquidated money demand, the claim may be brought under the summary trial procedure, otherwise known as undefended list. Where the claim is not for a liquidated money demand, the case may be brought under the Fundamental Human Rights Enforcement Rules 2008.

8. SUMMARY OF KEY ROLES AND RESPONSIBILITIES AND RELEVANT CONTACT INFORMATION

| Actor | Responsibilities |
|---|---|
| Police Officer | <ul style="list-style-type: none"> - Inform the trafficked person immediately of his/her legal situation and rights in a language she understands - Attend to immediate shelter, medical and food needs - Ensure access to the relevant embassy, if the victim is a non-national - Work with the prosecutor to gather evidence of possible financial loss - At the point of identification, a police officer should establish contact with NAPTIP as soon as possible |
| Immigration Officer | <ul style="list-style-type: none"> - Inform the trafficked person immediately of his/her legal situation and his/her rights in Nigeria (or the State if different) - Attend to immediate shelter, medical and food needs - Ensure access to the relevant embassy, if the victim is a non-national - At the point of identification, a police officer should establish contact with NAPTIP as soon as possible so that NAPTIP officers can begin the investigation - Ensure protection and safe custody of the trafficked person's travel documents, if any |
| Social Worker/ NGO support person/ Women Affairs Ministry | <ul style="list-style-type: none"> - Always ask the victim what it is that he/she wants or needs before making decisions and acting as an advocate for the victim - Ensure that the victim feels safe and secure, and that he/she understands that whatever she/he tells you is kept in complete confidence - Speak kindly at all times. At no time blame the victim for the experience - Ensure that the victim is clear about his/her legal rights and options that have been presented by the police/prosecutor - Ensure the victim understands the legal process and what will occur in court - Explore other services or options for the victim, including training, specialised medical services and housing services - Act as a referral to other services - Ensure that the victim can answer questions coherently and be in the right state of mind before being subjected to questioning in court - Ensure the confidentiality of the victim. Information gathered from you should not be shared with the police or prosecution. |
| Prosecutor | <ul style="list-style-type: none"> - Request adequate witness protection from the court, in particular, methods of testifying that will not invade the victims privacy - If the victim is a child, ensure the court is cleared and other protective measures are taken - Ensure the trafficked person understands the process, in particular the trial - Ensure, if necessary, the presence of a qualified translator - Work with police to gather evidence of financial loss, for a possible compensation claim - Advocate and take action for the confiscation/freezing traffickers' assets - Timely filing of process/ filing in court - Ensure that the victims who are potential witnesses of trafficking are adequately prepared before the trial - Work hand-in-hand with the investigators to ensure that only legally admissible evidence is gathered during the investigation |
| Lawyer | <ul style="list-style-type: none"> - Keep the trafficked person informed at all times of his/her legal situation, legal options and upcoming dates or events - Explore a diverse range of remedies for the trafficked person, including compensation, civil actions, administrative remedies or other??? - Advocate for the rights of the trafficked person during the criminal justice process - Advocate and take action for the confiscation or freezing of assets of traffickers |

| | |
|------------------|---|
| | <ul style="list-style-type: none"> - Maintain the confidentiality of the client-lawyer relationship |
| Judge | <ul style="list-style-type: none"> - Ensure the victim has a translator that understands the rules of court - Ensure the victim has been properly informed of his/her rights - Assess the need for victim protection measures, taking into account the likely trauma of the victim - Keep in mind that a trafficked person is most likely not very familiar with the court proceedings. - Ensure that questions to the victim are not invasive or humiliating, for example questions about the victim's sexual history or whether he/she previously worked as a sex worker. In case you do need to ask these question please explain to the victim why you need to ask these questions. - Ensure that both parties have an equal opportunity to present their case, regardless of their different financial means - Allow, where possible, victim impact statements during sentencing - Allow, where possible, the use of expert evidence to shed light on the psychological status of trafficking victims, and how this might affect testimony |
| Prison officials | <ul style="list-style-type: none"> - Protect the victim from contact with the trafficker and his or her family and associates while in court |
| NAPTIP | <ul style="list-style-type: none"> - Ensure that a trafficked person is not subjected to any discriminatory treatment with regards to his/her person - Counsellors should ensure that a trafficked person has access to adequate health and other social services during the period of temporary residence - Ensure that a person has access to the embassy or consulate and advocate on behalf of the person with their embassy if necessary - Ensure that a trafficked person is not denied temporary residence visas during the pendency of a court action - Protect the personal history of a trafficked person during investigation, gathering and interpretation of evidence - Protect the trafficked person from reprisal attacks and threats from traffickers and their associates - inform the trafficked person of his/her right to institute a civil action against a trafficker for economic, physical and psychological damages - Officials should ensure that victims of trafficking are adequately rehabilitated by the provision of skill acquisition programmes and thereafter reintegration |

9. PARTICULAR CHALLENGES FOR ACCESS TO JUSTICE IN NIGERIA

This section explains certain patterns or practices that are characteristic to Nigeria, which may pose challenges to improving access to justice for victims successfully prosecuting cases.

9.1. Ritual and other oaths

In some parts of Nigeria, the traditional or juju priest plays a significant role in trafficking recruitment. The traffickers take the recruited person to a juju shrine before departure from Nigeria and she or he is made to swear an oath of loyalty to the trafficker. The oath is usually accompanied by ritual practices, for example wrapping up personal items from the victim, such as head or pubic hair, nail clippings, clothing or underwear, or even blood, chanting incantations and preparing a concoction for the person to drink. Because of strong traditional beliefs in many communities, the trafficked person believes that the oath will continue to have power for all time and anywhere. In this way the trafficked person is kept in perpetual fear and bondage and is unwilling to speak out against the trafficker.

Psychological manipulation of the trafficked person in this way has also reportedly been done by priests from other religious communities. Lawyers (or individuals posing as lawyers) have also been called on to draft a false contract in which the trafficked person agrees to pay a certain amount of money to the trafficker for facilitating her or his travel out of Nigeria. Often this contract is taken then to the juju shrine for rituals signifying ‘approval’ of the contract, binding the trafficked person to

the contract with fear for his/her life. In all cases, the juju or other priest, or the lawyer, receive a sum of money from the trafficker for their services.

Ritual oaths make access to justice for trafficked persons more difficult. They are unwilling to speak against their traffickers in the belief that the powers of the supernatural will catch them wherever they are. Care providers and law enforcement agents often find the control mechanism of ritual oaths difficult to understand because it is mental in nature; the trafficker or madam does not need physical control mechanisms such as locked doors or buildings because they are confident that the victims will not try to escape. It can be difficult to prove the slavery or control element required to make out a charge of trafficking in these cases.

What to do if a ritual oath has been made

- Show empathy and do not put pressure on the trafficked person to testify in court
- Help the trafficked person seek spiritual/psychological counsel where she/he requests this
- Provide as much physical protection as possible
- Employ the help of an expert witness to emphasize the effects of ritual oaths in a case
- Prosecute the priests or others who administered the oath where possible
- Provide information to the trafficked person on his/her rights under law, and the legal effect of any false contract that might have been signed.

Mary's Story

Mary is 18 years old and is the third in a family of nine children. She completed her senior secondary school education but did not make the required credits to get into a tertiary institution. Moreover, because of the poor economic situation of her family, Mary was unable to re-register and repeat the senior secondary school examination. She therefore found employment in a restaurant very close to her house. It was here that Richard, one of the regular customers to the restaurant, approached her and told her he liked the way she worked. He offered to take her to France where he claimed his sister had an African restaurant and would employ her for better wages. Mary was excited and agreed to go.

She also agreed to swear an oath of allegiance to Richard and his sister and so he took her to a 'juju' shrine. Four other girls waited there as well. The 'juju' priest took some clippings of their nails, some pubic hair, as well as hair from their heads and armpits. Each girl gave one pair of her used underpants to the priest who tied them together for each girl. He then made them each swallow the heart of a cock and to swear that they would follow Richard to France, would be loyal to him and his sister, and would not divulge any information to anybody.

1.2. Child fostering and the trafficking of children

The practice of entrusting or fostering a child to a wealthy relative or prominent person is widespread among several ethnic groups in Nigeria, as in much of Africa. The foster parents traditionally assumed the rights and duties of parenthood and ensured the foster children received training or education, while contributing to household tasks. Many Nigerians have benefited from this traditionally benevolent practice. A strong cultural belief in the value of the fostering tradition for alleviating poverty remains, although The Child Rights Act, the Labour Act and the revised NAFTIP Act as amended now prescribe punishments for employment of children outside their own home (see Chapter 5: Legal Framework). Most homes still have child servants believing that however bad the conditions, they must be better than the child's home situation.

Traffickers are now taking advantage of this fostering tradition to convince parents to part with their children (sometimes in exchange for a small amount of money) with promises of education or other opportunities. The children are sold to urban families to work as domestic servants, or to businesses as attendants in restaurants, bars or brothels, street hawkers, load carriers, farm hands etc. While some children might still benefit from the practice, others find themselves exploited, unpaid and discriminated against compared to other children in the household. Promises of education and a better life are often not fulfilled, and many children are denied their basic needs and rights to good nutrition, health, education, and play. In some cases, serious physical abuse has been reported.

However, because of the traditional aspect to this practice, it is a challenge for human rights advocates to raise illegal employment of children with the employers. Parents may also be unwilling to raise the case with authorities for fear of the more powerful employer, or unwillingness to believe that they have sent their child to an exploitative situation. Corporal punishment is also common in Nigeria so beatings of children by parents and guardians are accepted or even encouraged. It is only where severe harm is done to such a child that others will speak up, but still there is reluctance to involve the law in such situations.

What to do

In all cases, the best interests of the child must be paramount. If a child in this situation comes to your attention, look at the available options before removing the child. Ask the child in a private and secure environment what she or he would like to do. If the child wants to stay, can the employer be negotiated with to treat the child better and ensure that the child does indeed receive an education or vocational training? If the child wishes to return home, can the child's parents take the child back? If you believe that the situation is truly exploitative, and may involve physical or other abuse of the child, then remove the child in the least traumatic way. Arrange alternative accommodation and services before the child is taken out so that he or she is not kept in further uncertainty.

Law enforcement:

- Identify and investigate child trafficking routes and prosecute those who are selling children into exploitation, or abusing children that they have agreed to foster
- In cases of severe exploitation, investigate and prosecute the employers of the child to demonstrate that society will not tolerate such practices.

Civil Society:

- Report situations of child labour or exploitation in your community to the Police, NAPTIP or family courts, Social Welfare Office of the Ministry for Women Affairs and Social Development or relevant NGOs
- Raise awareness and conduct community outreach to neighbourhoods about child rights and the proper and fair treatment of fostered children
- Develop and publicise minimum enforceable standards for child fostering
- Offer a listening ear and help to child domestics wherever they may be found (in schools, at church, in the market, while hawking on the streets, while running errands)
- Work with schools, religious and traditional rulers to sensitize their communities.

Onya's Story

Onya lived with her mother, father and three siblings in a village in Nigeria. Her parents were both farmers. From an early age they would help out at the farm every day. When she was 8 years old her father died and left them to survive on their own. They lived from the small amount of vegetables they grew and could sell at the market or by the street. Onya and her siblings had to stop school because their mother struggled to pay the fees.

When Onya was 11 years old, her mother's friend, who lived in Lagos, started coming to visit them. She was well known in the village as a wealthy woman and Onya and her siblings called her 'auntie'. She was kind to the children, bringing presents to them, and Onya always looked forward to her visits. One day when Auntie came to visit she told Onya's mother that she would like to take Onya to Lagos so that she could receive further education. Onya said she felt sad to leave her mother but was also excited to have the opportunity to go to Lagos with her 'Auntie'. Onya's mother said this was a big opportunity

and a better future for her daughter than she could ever provide in the village so she was happy for her to go. She believed Onya would return one day a very educated woman and help to support her siblings with their own education.

One day 'Auntie' came to the village with a driver and a car and took Onya with her to Lagos. Auntie's house in Lagos was big and had many rooms. She lived with her husband and two children. The following day 'Auntie' showed Onya how to clean the house and she told her that this will be her job from now on. She said 'you will have to do this or I will beat you'. She said, 'you will have to stay indoors and look after the house' and then, 'you are not going to school'. Onya says 'Auntie' changed when they got to Lagos. She started becoming angry and shouting at Onya if she did not do what she wanted. Sometimes she would beat her with a long stick, a broom, an electric cord, a soup spoon or anything else within her reach. Sometimes she would beat her without any reason. Her husband and children (who were of Onya's age) would sometimes join in the beating. She was not allowed to eat together with the family and would also be punished by not being given food for a day.

Onya lived with the 'Auntie' for two years until she finally ran away. She was picked up in the streets by some people who took her to NAPTIP office.

9.3. Close Community Networks

Traditional Nigerian society provides a network of support for its children and members. Children belong not only to their immediate biological parents, but to an extended family that exercises collective responsibility for the child's socialisation. The community considers its children as assets to assist with household chores. Adult members monitored the activities of the children and guided them appropriately. Migration from Nigeria is mostly organized around informal family and community networks - individuals leave the home community and then help to bring others to the same destination.

In recent years the extended family system has broken down in many areas as families move away from the land. Coupled with

increasing rural and semi-urban poverty, unemployment and a weak institutional framework, the support, security and protection that was enjoyed by children and other members of the community have been eroded. It is disturbing to note that in many trafficking cases, the perpetrators originate from the same community and even the same village as the victim. They may be relatives (aunties, sisters, siblings and parents), or close family friends who have knowledge of the economic situation of families and know who would be willing to send a child away or migrate for work. They pretend to offer help to such families to overcome their financial difficulties by offering fraudulent jobs to the children.

These community networks used in recruitment processes constitute a major challenge for access to justice for victims of trafficking because if trafficked persons speak to the police and name their trafficker, they will be accusing a person who is known to them, usually a more powerful or wealthy person in the community. This can expose them or their families to re-trafficking, to retribution from the trafficker's network, or to exclusion from community life. Sometimes family and community delegations intercede on behalf of offenders and persuade the family of the person who has suffered harm to refrain from seeking formal justice. In some cases, the trafficking victim may be unwilling to prosecute out of concern for the welfare of the trafficker's family, should the trafficker be imprisoned.

Nigeria also has a culture of denial about domestic and gender-based violence so very often shame and fear of stigma will prevent trafficked persons from speaking out about their experiences within the community.

What to do:

- Practitioners should ensure victims understand their rights to privacy and confidentiality
- Make return to the community voluntary; never force a person to return
- Work with the family and community to sensitise them about trafficking before the person returns; there should be no return to a hostile community
- If reintegration is impossible, help the trafficked person to relocate where they

so desire and identify alternative support options

- Explore use of local justice systems to seek redress where applicable
- Offer physical protection to trafficked persons and their families
- Protect the confidentiality and privacy of the trafficked person
- Provide economic empowerment options

1.4. Trafficking Versus Prostitution

When working on trafficking, it is tempting to become side-tracked and discuss the rights or wrongs of different industries in which trafficking occur, such as the sex industry. More media attention is given to trafficking into prostitution than any other industry, and this has sometimes given the impression that trafficking and prostitution are the same thing. It is crucial for practitioners to remember however, that Trafficking in Persons (TIP) is not synonymous with prostitution.

Prostitution is the sale or exchange of sex services for money or other material gain/profit. Prostitution is often a high-risk activity because sex work is stigmatised and sex workers are discriminated against in many societies. However, most sex workers have the freedom to choose their own hours, move between employers and negotiate conditions with clients. While their lives might be difficult, most sex workers state that they are doing it voluntarily for economic reasons.

As set out in Chapter 1, trafficking is the recruitment and movement of persons using lies and coercion into a situation of exploitation that is akin to servitude - whether in the sex industry or in any other environment. The person is kept under tight control, for example by the use of ritual oaths (see 9.1 above), the keeping of documents, locking the premises, keeping them in exorbitant debt, not paying promised wages, or threatening family and friends. If a woman (or man) in the sex industry is in these conditions, then he or she has likely been trafficked.

So what is the situation if the person knows, before leaving, that he or she is going to

work in the sex industry - can she/he be trafficked? **YES**. Although some people consent to migrate knowing that they will “work” as prostitutes, they are often deceived by the trafficker about the conditions of this work. It is not until they arrive that they find that they are deprived of their basic human rights and forced to work under conditions similar to slavery.

When deciding if the case is trafficking, do not look at the type of work, but look at the conditions that the person was living in, and the ability of that person to exercise control or make decisions.

The dangers of viewing trafficking as synonymous with sex work are many:

- Other sectors in which trafficking occurs such as factory work, domestic service, agriculture and many more are ignored and the victims of exploitation in these areas are left with nowhere to turn
- Because prostitution is stigmatised, equating trafficking with prostitution may stigmatise any person who has been trafficked. This will discourage individuals who have been trafficked into domestic work, or factory work etc. from coming forward
- It can lead to confusion between ending prostitution and ending trafficking, and thus diverting resources from identifying the real problems
- It can lead to criminalising the sex industry and thus women who work in prostitution. Sex workers will then be even more stigmatised and exposed to violence as they will become criminals, and will be less likely to come forward to report trafficking.

What to do in cases of suspected trafficking for prostitution:

- Clearly distinguish between voluntary and forced /extremely abusive prostitution in all interventions
- Educate law enforcement on the differences between voluntary prostitution and trafficking
- Avoid discrimination against all trafficked persons whether or not they have engaged in sex work
- Provide adequate information on re-integration choices to returnees and allow them to choose

- Protect victims’ identity and the nature of exploitation they have suffered
- Reach out to sex workers’ communities to expose sexual exploitation and child prostitution
- Protect the rights of all women, whether they are sex workers or not, in all interventions
- Ensure withdrawal from sex work is voluntary and concrete long term alternatives are provided to the sex workers.

ANNEX 1: The Crimes of Trafficking and Related Crimes

Crimes under the NAPTIP Act

CRIMES OF TRAFFICKING OF BOTH ADULTS AND CHILDREN

| Section | Crime | Maximum Penalty |
|---------|---|--|
| 15 | Procuring, using or offering a person for prostitution, production of pornography or pornographic performance, or keeping a brothel | 14 years, no option of fine. 10 years if person is not a Nigerian citizen. |
| 15(d) | Procuring, using or offering a person to produce or traffic drugs | 14 years, no option of fine |
| 15(e) | Trafficking a person for forced recruitment and use in armed conflict | 14 years, no option of fine |
| 16 | Organising or encouraging travel which promotes prostitution of another (sex tourism) | 10 years, no option of fine |
| 19(b) | Making a person go from any place, using force or deceit | 10 years imprisonment or a fine of 100,000 Naira or both |
| 19(c) | Confining or detaining a person against her or his will or denying the person liberty | 5 years imprisonment or a fine of 100,000 Naira or both |
| 20 | Abducting, kidnapping or luring a person away in order to kill them | Life imprisonment |
| 22(a) | Using a person for forced labour, or permitting a place to be used for forced labour | 5 years imprisonment or a fine of 100,000 Naira or both |
| 23 | Importing, exporting, removing, buying, selling disposing or trafficking of a person as a slave/ keeping a person as a slave | Life imprisonment |
| 24(a) | Dealing, trading, buying or selling of a person for slavery | Life imprisonment |
| 24(b) | Placing a person in servitude as a security for a debt | Life imprisonment |
| 24(c) | Transporting or inducing a person within Nigeria | Life imprisonment |
| 24(b) | Holding or possessing a person as a slave | Life imprisonment |

CRIMES RELATED SPECIFICALLY TO THE TRAFFICKING OF CHILDREN

| Section | Crime | Maximum Penalty |
|---------|--|---|
| 11 | Exporting a child outside of Nigeria, or importing a child into Nigeria, knowing the child will be forced into prostitution | Life imprisonment |
| 12 | Inducing a child from one place to another, knowing the child will be forced to have intercourse with another person. Procuring, enticing or leading away a child to "gratify the passions of another" | Ten years imprisonment, without an option of a fine |
| 13 | Causing or encouraging the seduction or prostitution of a child under the care of the offender | Ten years imprisonment |
| 14 | Procurement of a child to have unlawful carnal knowledge with another person, or to become a prostitute, either inside or outside of Nigeria | Ten years imprisonment |
| 15 | Allows a child to be in a brothel or trade in prostitution | 14 years imprisonment, without an option of a fine |
| 17 | Conspiring to induce a child or detaining a child on premises to have unlawful carnal knowledge with another | 10 years imprisonment |
| 18 | Procuring a child using threats, intimidation, deception or drugs to have carnal knowledge of a man or animal, inside or outside Nigeria | 10 years imprisonment or a fine not exceeding 200,000 Naira |
| 19 | Taking a child outside of Nigeria without the consent of the lawful guardian, or forcibly or fraudulently taking or enticing a child away, or detaining, receiving or harbouring a child that has been taken away in such a manner. | 14 years imprisonment, without the option of a fine |
| 19 | Taking a child out of the custody of the parents or lawful guardians against their will | 10 years imprisonment without the option of a fine |
| 21 | Buying, selling, hiring or letting a child, or obtaining possession or disposing of a child for use for immoral purposes. | 14 years without the option of a fine. |
| 22 | Employing a child to: <ul style="list-style-type: none"> - be used in any capacity, except by a member of his family or for light domestic, agricultural or horticultural work - lift, carry or move very heavy objects - as a domestic help, outside his or her home environment - work in industry | 5 years imprisonment, or a fine of 100,000 Naira, or both |

Related offences from other applicable federal and local laws.

| Types of Offence | APPLICABLE LAWS & SECTIONS | | | | | |
|--|------------------------------|--|---------------------|---------------------------|---------------------|------------------------------------|
| | NAPTIP ACT | THE CHILD RIGHTS ACT | EDO STATE LAW | THE CRIMINAL CODE | PENAL CODE | LABOUR ACT |
| Slavery, slave dealing, servitude and forced labour | S.21 S.23 | Section 11 (a) & (d) S.28 (a) & (d) S.32 | | s.365 S369 | S. 280 S.279 | S.73 s.78 |
| Child trafficking and child labour | | s.14 s.28 | | | | s.39 &40 s.49 s.59 & s.60 |
| Procuring or inducing a girl or woman to become a prostitute in Nigeria or elsewhere | Section 11(a) & (d) | | S. 223 S.222 | S. 223 (a) (b) and (c) | SS.201 281 | |
| Kidnapping, or stupefying or cajoling a child under 18 years into illicit sex | S.12 S.13 S.14 S.18 | S.31 | s.224 | | S.275 | |
| Organizing or promoting foreign travels which encourages prostitution | S.16 | | S.223(a) | | | |

ANNEX 2: CORE RIGHTS OF TRAFFICKED PERSONS IN THE JUSTICE PROCESS

Under international law, victims of crime have rights which must be protected and upheld at all times. Some of these rights are also reflected in national laws in Nigeria. However, even if they are not specifically included in national laws, they are still relevant and encouraged. There are also general Civil and Political Rights that apply to Trafficked Persons during the legal process.

These rights include the following:

| Right | Details | Applicable Laws |
|--------------------------|--|---|
| Access to Justice | <p>Victims of crime have the right to access justice, including criminal, civil and administrative mechanisms, and to receive redress for the harms suffered.</p> <p>This does not only mean a right in law, but also in practice - the process should be as quick as possible, fair, inexpensive and accessible.</p> | <p>Section 52(a) NAPTIP Act</p> <p>United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 Article 4</p> |
| Information | <p>The victim has a right to be told, as soon as possible, about the following:</p> <ul style="list-style-type: none"> • All of his/her legal rights and the legal options • All information about the cases that he/she is involved in, including cases in the court and administrative matters such as visa applications • This should include the scope of the case (what is being sought), how long it is expected that the case/matter will take and what steps will happen along the way, the progress so far, and her/his role in the case • All court dates and any changes to the dates • The court's decision about the case and any sentence given to the trafficker • The whereabouts of the trafficker, including the prison that the trafficker will be held in, the date that the trafficker is scheduled for release, and the date that the trafficker actually is released • The health, education, counselling or other services that the victim could access • All of the rights that are set out in this table <p>Information must be given to the victim in a language that she/he understands.</p> | <p>Section 50(b) NAPTIP Act</p> <p>United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 Articles 6(a) and 15.</p> <p>Palermo Protocol Article 6(3)</p> |
| Legal Assistance | <p>The trafficking victim has a right to be offered legal assistance throughout the criminal proceedings. However, in civil matters, relevant agencies such as the Human Rights Commission, and Legal Aid Council as well as NGOs' can provide legal assistance.</p> | <p>UN Declaration (above) Articles 6(c), 14</p> |
| Other Assistance | <p>Victims also have a right to necessary material, medical, psychological and social assistance through any means (government, private, NGO or traditional), including:</p> <ul style="list-style-type: none"> • Appropriate housing • Counseling and information • Medical and psychological assistance, both emergency and longer term • Material assistance - clothing, personal items • Employment, education and training opportunities <p>This assistance should be appropriate to the victim's age, gender, or special needs and children should be given special consideration.</p> | <p>Section 50(b) NAPTIP Act</p> <p>Palermo Protocol Article 6(4)</p> |

| | | |
|---|--|--|
| Documentation | <p>The victim should be given:</p> <ul style="list-style-type: none"> • A copy of the court processes relating to the case • A copy of the court's decision <p>If you do not think that s/he can read or understand these documents, they should be explained clearly to her or him in a language that s/he can understand.</p> | |
| Physical Safety | <p>The victim, the victim's family and other witnesses, have the right to be reasonably protected throughout the criminal justice proceedings. However, such protection should be in proportion to the actual or perceived risk to the particular victim. An individual risk assessment should be undertaken for each victim and continuously reviewed.</p> | <p>Section 50(j) NAPTIP Act</p> <p>Palermo Protocol Article 6(5)</p> |
| A fair hearing | <p>This is a right of all parties in a case. It is a right to a fair hearing within a reasonable time by a court or tribunal established by law that is independent and impartial.</p> | <p>Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa 2003, 2(b) and (c)</p> <p>Nigerian Constitution, section 36</p> |
| Compensation, Reparations and Restitution | <p>The victim should receive compensation for damage suffered.</p> <p>Defendants or other third parties who bear responsibility for the trafficking crime should pay restitution to the victim such as:</p> <ul style="list-style-type: none"> • The return of any property taken from the victim • Payment of expenses related to the crime • Payment for harm or other loss suffered • If an agent of the State was involved in causing the harm through a violation of criminal law, the state should pay compensation to the victim. | <p>Section 52(b) NAPTIP Act</p> <p>Palermo Protocol Article 6(6)</p> <p>UN Declaration Articles 8 and 11.</p> |
| Property Return | <p>The property of the victim or witness that has been taken for use as evidence must be returned to the victim as promptly as possible unless there is a compelling need to keep the items.</p> | <p>Nigerian Constitution, sections 44(1) and 44(2)(k)</p> |
| Compassion and respect for the persons Dignity | <p>The victim should at all times be treated as an equal person and with dignity and respect. This includes respect for the choices that person made in the past, or is making now about her/his life, regardless of your personal view of those choices.</p> <p>A child also has a right to be treated with respect. If a decision is being made that will affect the child, the child's views and wishes should be taken into account.</p> | <p>Convention on the Rights of the Child</p> |
| Expression | <p>The victim and her/his family have a right to consult with the prosecutor, and to express their views at the stages where their interests might be affected.¹⁶ For example, their views should be sought about the disposition of the case.</p> | <p>UN Declaration, Article 6(b),</p> <p>Palermo Protocol Article 6(2)(b)</p> |

| | | |
|------------------------------------|---|--|
| Non-discrimination | The victim should not be discriminated against for any reason of her/his age, class, gender, occupation, wealth, religion, race, ethnicity or other. | S. 50(a)NAPTIP Act Nigerian Constitution, s. 42 |
| Privacy and confidentiality | <p>The trafficking victim has a right to have his/her privacy respected and her details kept confidential. This includes, among other things:</p> <ul style="list-style-type: none"> • Making, where possible, legal proceedings relating to the trafficking confidential • Keeping the victim's personal contact details away from the defendant or her/his lawyer • Not giving the victim's photograph or other identifying information to the media • Not talking about her case with anyone other than is strictly necessary or required by law. <p>These provisions extend to the Media.</p> | S. 50(g) NAPTIP Act Palermo Protocol Article 6(1) |
| Liberty | <p>All persons have the right to their personal liberty and no person shall be deprived of that liberty unless:</p> <ul style="list-style-type: none"> • They are suspected of having committed a crime • They are a child and it is for his/her welfare • By reason of an order of the court • If they are a non-citizen and it is necessary for their extradition/repatriation <p>Thus, trafficked persons above the age of 18 years should not be deprived of their liberty unless it is by order of the court. If they are children, it should be strictly for their welfare.</p> <p>A person who is deprived of her liberty illegally, ie. not as part of the conditions above, is entitled to compensation.¹</p> | Nigerian Constitution, section 35. |

ANNEX 3: International Treaties

| Convention | Description | Nigeria's Ratification |
|--|--|--------------------------------------|
| <i>United Nations Slavery Convention, 1927</i> | Abolishes slavery in all of its forms including forced or compulsory labour that develops into "conditions analogous to slavery". Article 3 of the Convention obligates high contracting parties to undertake to adopt all measures with a view to suppressing the embarkation, disembarkation and transport of slaves in their territorial waters and upon vessels flying their respective flags. Clearly puts the responsibility of eradication of slavery on State parties. | 1961 |
| <i>ILO Convention 29, Forced Labour, 1930</i> | Requires all states to suppress the use of forced or compulsory labour as soon as possible. It defines forced labour as: "all work or service which is exacted from any person under the menace of any penalty and for which person has not offered himself voluntarily." | 1960 |
| <i>ILO Convention 182: Concerning The Prohibition And Immediate Action For The Elimination Of The Worst Forms Of Child Labour, 1999</i> | Defines Child Labour to include: a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, serfdom, forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; b) The use, procuring or offering of a child for prostitution, for the production of pornography, or for pornographic performances; c) The use, procuring or offering of a child for illicit activities e.g. the production and trafficking of drugs, as defined in the relevant international treaties; d) Work, which, by its nature or circumstances in which it is carried out, is likely to harm the health, safety or morals of children. Note also Articles 4-8 which require governments to consult with employers, workers and other concerned groups to identify what work is harmful for children, and then start programs of action to end the worst forms of child labour. Actions should include penalizing offenders, preventing children from starting harmful work, helping and educating children leaving harmful work, reaching out to children at risk and making special efforts for girl child labourers. | 2002 |
| <i>Convention on the Rights of the Child, 1990</i> | States "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, <u>the best interests of the child shall be a primary consideration</u> " (Article 3). Children have a right to be registered at birth, to education and to a family life. See Articles 7, 16, 19, 28, 31, 32, 34, 35, 36, 37, and 39. | 1991 |
| <i>The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000:</i> | Calls on states to prohibit the sale of children, child prostitution and child pornography, particularly for sexual exploitation, forced labour, the transfer of organs for a profit. Sets out obligations towards children during the criminal justice process, including informing them of their rights and the scope and timing of the case, providing support and allowing their views to be put forward. See Articles 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16. | Signed 2000 (not yet ratified) |
| <i>The Convention on the Elimination of all forms of Discrimination Against Women, 1979</i> | Guarantees the right of women to live free of discrimination, including equal access to education, health, employment. It also states women's right not to be trafficked or enslaved. Calls on governments to take all appropriate measures to ensure the full development and advancement of women. See Articles 2, 6, 9, 11, 12, 14, 15, and 16. | 1979 |
| <i>UN Declaration on the Elimination of Violence Against Women, date??</i> | Violence against women includes physical, sexual and psychological violence and including trafficking and forced prostitution. Calls on states to investigate and punish acts of violence against women and redress the wrongs caused to women by violence. See Articles 2 and 3. | Adopted by the General Assembly 1993 |
| <i>The International Covenant on Civil and Political Rights, 1966</i> | Guarantees the right to life, rights to freedom of arbitrary deprivation of liberty and to not be subjected to torture, cruel inhuman or degrading treatment or punishment. Also guarantees a right to a remedy if one's rights are violated. See Articles 2, 3, 7, 8, 9, 12, 14, and 26. | 1993 |
| <i>The International Covenant on Economic, Social, and Cultural Rights, 1966</i> | Guarantees the right to work, to earn fair wages and have safe working conditions, the equality of men and women to enjoy these rights, special protection of children, and the right to education and healthcare for all. | 1993 |

GLOSSARY

| | |
|---------------------------------|--|
| Camel jockey | Person who races a camel, often children. Camel racing is popular in the middle east but child jockeys are now outlawed because of the high incidence of abuse and risk of injury. |
| Charges | An official claim made by the police that somebody has committed a crime. |
| Child labour | The employment of children in regular and sustained labour, other than light tasks or helping parents in the home or in agricultural work. |
| Civil court | A court hearing and deciding civil cases. |
| Civil law | Law that deals with disputes between people and/or organizations. |
| Community | A group of people that considers themselves connected by residence in the same area or through a shared religion/race/language/culture/job etc. |
| Confidentiality | Keeping certain information, written spoken or acted on, secret. |
| Constitution | A document defining the political principles and establishing the structure, procedures, powers and duties of government of a state or other entity. |
| Criminal courts | A court hearing and deciding criminal cases. |
| Criminal law | Deals with disputes between the state and its citizens, and governs the punishment of citizens for acts which are considered contrary to the laws of behaviour (crimes). |
| Criminal defendant | A person charged with a crime in a criminal prosecution. |
| Defence counsel | A lawyer who represents and advises an accused person and presents his or her case to the court, with the aim of ensuring that the accused person receives a fair trial. |
| Defendant | The person in a criminal court of law who is accused of committing a crime, or in a civil court who is sued by another person. |
| Discharged and acquitted | Where a court finds that the charges against the defendant are not proved and the defendant is allowed to leave the court. |
| Enforce | To compel obedience or observance of a law or decision. |
| Exploitation | The use of another person for selfish ends. |
| Financial loss | Losses of the victim or plaintiff that are monetary in nature. In trafficking this could include travel costs, unpaid wages, visa fees etc. |
| Fostering | To take another person's child into your home for a period of time without becoming his/her legal parents. |
| Fraud | The crime of deceiving somebody in order to get money or goods illegally. |
| Juju | Supernatural power ascribed to an object. |
| Law enforcement agencies | Organizations that enforce the laws of one or more governing bodies, or an organization that actively and directly assists in the enforcement of laws. |
| Migrant | A person who is moving from one location to another for a period of residence, either within or between countries. |
| Plaintiff | A person who makes a complaint against another in a civil court. |
| Pre-trial Conference | Meeting held before the trial between the parties to outline discovery proceedings and to define the issues to be tried; more useful in civil than in |

| | |
|--------------------------------|--|
| | criminal cases. |
| Prima facie (evidence) | Determining whether there is enough evidence to warrant a case continuing to trial in the judicial process. |
| Prosecution | The process of trying to prove in a court of law that somebody is guilty of a crime. |
| Recruitment | The search for new people to join a group or organization, in this case to be trafficked into certain industries. |
| Rehabilitation | Having a normal and useful life again after being trafficked. |
| Organ Trafficking | The removal of another's organs for sale without that person's consent. |
| Repatriation | The organised return of a person to their home country. |
| Restitution | Payment, usually money, for some harm or wrong that somebody has suffered. |
| Right | An entitlement, freedom or privilege to do or obtain something granted under the law. |
| Ritual oath | A promise to honour an agreement sealed by a religious/ritual ceremony. |
| Sentencing | Punishment meted out to a convicted criminal by a criminal court. |
| Servitude | Being a slave or being forced to obey another person. |
| Sex work | Providing sexual services for money or other benefit. |
| Sex worker | A person who provides sexual services for money or other benefit. |
| Sexual history | The sexual experiences a person has had in the past. Often used in trafficking cases to impugn the character of a witness, but is generally irrelevant and not admissible to proving the crime. |
| Slavery | Situation in which a person is 'owned' by another person. |
| Stigma | Feelings of disapproval or social exclusion attaching to certain behaviours or conditions. Commonly experienced, for example, by individuals who have been raped, who have worked in the sex industry, or who suffer from HIV. |
| Summary trial | A shortened court process for deciding a case. |
| Tracing | The process of searching for family members or primary legal or customary caregivers. The term also refers to the search for children whose parents are looking for them. The objective of tracing is reunification with parents or other close relatives. (IRC guiding principles 2004) |
| Trauma | A mental condition caused by witnessing or experiencing a profoundly distressing event. |
| Victim | The person against whom a crime has been committed. |
| Victim impact statement | A written or verbal statement made as part of the judicial legal process, which allows a victim of crime the opportunity to speak during the sentencing of their attacker or at subsequent parole hearings. |
| Vulnerable | Easily hurt or taken advantage of. |

ADDITIONAL REFERENCES

International Organization for Migration (IOM), Mission in Indonesia, *Guidelines for the Investigation and Prosecution of Human Trafficking Cases and the Treatment of Victims During Law Enforcement Proceedings*, Jakarta, 2005.

Available at: www.iom.or.id/publications/pdf/18_CTGuidelines.pdf

International Rescue Committee (IRC), *Inter-agency Guiding Principles on Unaccompanied and Separated Children*, Geneva, 2004.

Available at

www.unhcr.ch/include/fckeditor/custom/File/IAPUnaccompaniedChildren_e.pdf

National Policy on Protection and Assistance to Trafficked Persons in Nigeria

NY Anti-Trafficking Network Legal Subcommittee, *Identification and Legal Advocacy for Trafficking Survivors*, 3rd Ed, Dechert LLP, New York, January 2009.

Available at

www.ny-anti-trafficking.com/assets/docs/t_visa_manual_3rd_edition_2009.pdf

Office of the High Commissioner for Human Rights, *Principles and Guidelines on Human Rights and Trafficking*, E/2002/68/Add.1 (2002).

Available at: <http://www1.umn.edu/humanrts/instree/traffickingGuidelinesHCHR.html>

United Nations Development Programme, *Programming for Justice for All: A practitioner's guide to a human rights based approach to access to justice*, Bangkok, 2005.

Available at www.undp.org/governance/docs/Justice_Guides_ProgrammingForJustice-AccessForAll.pdf

UNICEF Headquarters, Child Protection Division, *Guidelines on the Protection of Child Victims of Trafficking*, New York, September 2006.

Available at: http://www.unicef.org/ceecis/0610-Unicef_Victims_Guidelines_en.pdf

United States Conference of Catholic Bishops, Migration and Refugee Services, Catholic Legal Immigration Network, and the Legal Aid Foundation of Los Angeles, *A Guide for Legal Advocates Providing Services to Victims of Human Trafficking*, Los Angeles, November 2004.

Available at: www.ny-anti-trafficking.com/assets/docs/a_guide_for_legal_advocates.pdf

Zimmerman and Watts, *WHO ethical and safety recommendations for interviewing trafficked women*, World Health Organisation, Geneva, 2003.

CONTACT INFORMATION

NAPTIP, www.naptip.gov
Abuja Headquarters:
2028 Dalaba Street Zone 5 Abuja,

Benin Zonal Office:
47 Adesuwa College Road,
GRA, Benin City.

Lagos Zonal Office:
No. 15A Awolowo Road,
Ikoyi Lagos.

Enugu Zonal Office:
61 Ezeilo Street,
Independence Layout,
GRA, Enugu.

Uyo Zonal Office:
No. 13 Udo Udoma Street, Uyo.

Sokoto Zonal Office:
No. 4 Kalgo Road, Runjin Sambo,
Opposite NTA Sokoto.

Kano Zonal Office:
98 Foundation Road, Farm Centre,
Nassarawa, GRA, Kano State

Nigeria Immigration Service
New Site. Airport Road ,
P.M.B. 38, Garki
Abuja
TEL: +234-9-2341550
FAX: +234-9-2341550
Email: info@immigration.gov.ng
Web: www.immigration.gov.ng

Nigeria Customs Service
Headquarters
Abidjan Street,
Wuse Zone 3,
P.M.B. 26,
Abuja - FCT, Nigeria
TEL : 09-5234694
Email: info@customs.gov.ng
Email: pro@customs.gov.ng
Website: www.customs.gov.ng

National Human Rights Commission
No.19, Aguiyi Ironsi Street, Maitama,
P.M.B. 444, Garki-Abuja, Nigeria
TEL: (234)-9-4135274;
FAX: (234)-234-9-4135272
E-mail: nhrceanigeria@yahoo.com or
info@nigeriarights.gov.ng
Web: www.nigeriarights.gov.ng

North-West Zone
Zonal Headquarters
Plot 313, New Hospital Road,
Opp. Aminu Kano Teaching Hospital,
Gyedi-Gyedi, Kano.
TEL: 064-668729

North-East Zone
Zonal Headquarters
No.4, Bama Road,
Opp. University Teaching Hospital,
Maiduguri.
TEL: 076-230360

North-Central Zone
Zonal Headquarters,
Plot 12677, Laminga,
Lierty Dam Road, Rikkos Village
Opp. National Civic Registration Center,
Jos - Plateau State.
TEL: 08033296152

South-East Zone
Zonal Headquarters
No 3, Ezeagu Street,
New Haven, Enugu.
TEL: 042-256211

South-West Zone
Zonal Headquarters
3rd Floor, Old National Assembly Building,
Glass House,
Tafawa Balewa Square,
Lagos.
TEL: 01-8506708

South-South Zone
Zonal Headquarters
Plot H, Block 157, NO 203,
Bonny Street, Port Harcourt,
Rivers State.
TEL: 084-24012

