

THE UNIVERSITY OF HULL

Interstate Cooperation and Anti-Trafficking: Assessing Existing
Approaches between Nigeria and the United Kingdom

being a Thesis submitted for the Degree of
Doctor in Philosophy (PhD) in Law
in the University of Hull

by

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(December 2010)

Declaration

I hereby declare that this submission is wholly and to the best of my knowledge the outcome of my research and I am its sole author. This thesis does not contain any material previously published or accepted for any award. Where other sources of information have been used, they have been properly acknowledged. I understand that my thesis may be made electronically available to the public.

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Acknowledgements

The successful completion of this doctoral research would not have been conceivable without the astute support of several people. Firstly, I thank the University of Hull, Faculty of Arts and Social Sciences (FASS) for the PhD scholarship that has made this thesis possible. I am extremely grateful to my research supervisors, Dr. Joel Quirk and Dr. Richard Burchill for their valuable guidance, constructive criticisms and the consistent encouragement I received throughout the course of my research. I thank Dr. Joel Quirk for presenting me with a number of opportunities that has helped shape my experience as a scholar. I would also like to show profound appreciation to the support staff of the Law School and Graduate School. They were always there to provide advice and assistance during my entire research experience.

To the staff of The National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP) and the United Kingdom Human Trafficking Centre (UKHTC), especially Mr. Godwin Morka and Mr. Mark Walters, I thank them for their immense support in gathering data for this research during my fieldwork. I also appreciate the survivors of human trafficking that I interviewed, for their bravery in retelling their stories and sharing their experiences with me for the originality of my research work. My gratitude also extends to the various organisations that gave me audience during my fieldwork both in Nigeria and the United Kingdom.

Further, the moral support and motivation of my numerous friends and family have been sources of strength in the duration of this research journey. I thank my father, Mr. J.E. Ikeora for his words of wisdom and scholarly advice while reading through my work. To Philip Uwumarogie, Dr. George Nwangwu and John Sarbah for the countless times you have read through my work, shared your thoughts and encouraged me, I remain thankful for having friends like you. To Nancy

Quadri, Fatim Kamara, Saran Toure, Antoinette Dike, Cynthia Taiwo, Charity Onyeneho, Elsie Till, Thomas Millar, Omozele Okosun, Temi Conde, Gabriel Ikeora, Mr. Ayo, Mr. Badejo, Chike Oputa and my mother – Mrs. Helen Ikeora, this PhD is a testament to your faith in me. To Dr. Roger Koranteng, Dr. K. Osei-Nyame Jnr and Dr. R. Ako, I am profoundly grateful for your support and scholarly advice.

In addition, I would like to thank my examiners Professor Kevin Bales and Dr. Christine van de Anker for their encouragement, insightful comments, and hard questions. Above all, I owe it all to almighty God for granting me the wisdom, health and strength to undertake this research task and enabling me to its completion.

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Acronyms and Abbreviations

AU	African Union
AVRIM	Assisted Voluntary Return of Irregular Migrants
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment
CATW	Coalition Against Trafficking in Women
CEOP	Child Exploitation and Online Protection
CEPOL	Contributing to European Police Cooperation through Learning
COSUDOW	Committee for the Support of the Dignity of Women
CRA	Child Rights Act
CRC	Convention on the Rights of the Child
CSOs	Civil Society Organisations
CTAC	Child Trafficking Advice Centre
DfID	Department for International Development
ECHR	European Convention of Human Rights
ECOWAS	Economic Community of West African States
EEA	European Economic Area
EFCC	Economic and Financial Crimes Commission
EU	European Union
FCO	Foreign and Commonwealth Office
FOI	Freedom of Information
GAATW	Global Alliance Against Traffic in Women
GLA	Gangmasters Licensing Authority
GPI	Girl Power Initiative
HST	Hegemonic Stability Theory
IATT	International Agency Task Team on Anti-Corruption
ICCPR	International Covenant on Civil and Political Rights

ICPC	Independent Corrupt Practices Commission
IDMG	Inter-Departmental Ministerial Group on Human Trafficking
ILO	International Labour Organisation
IMF	International Monetary Fund
IOM	International Organization for Migration
ISIM	Institute for the study of international migration
MLA	Mutual Legal Assistance
MNCs	Multinational corporations
MO	Modus Operandi
MOU	Memorandum of Understanding
NACTAL	Network of NGOs against Child Trafficking, Abuse and Labour
NAPEP	National Poverty Eradication Programme
NAPTIP	National Agency for the Prohibition of Trafficking in Persons
NCF	National Consultative Forum
NCMs	National Coordination Mechanisms
NDE	National Directorate of Employment
NGO	Non-governmental organisation
NRM	National Referral Mechanism
NSPCC	National Society for the Prevention of Cruelty to Children
OHCHR	Office of the High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
SADC	Southern African Development Community
SLO	SOCA Liaison Officer
SOCA	Serious Organised Crime Agency
TIP	Trafficking in Persons

TVPA	Trafficking Victims of Protection Act
UBE	Universal Basic Education
UKBA	United Kingdom Border Agency
UKHTC	United Kingdom Human Trafficking Centre
UN	United Nations
UN.GIFT	United Nations Global Initiative to Fight Trafficking
UNDP	United Nations Development Programme
UNESCO	United Nations Educational Scientific and Cultural Organization
UNHCHR	United Nations Office of the High Commissioner for Human Rights
UNHCR	United Nations High Commissioner For Refugees
UNIAP	United Nations Inter-Agency Project on Human Trafficking
UNICEF	United Nations International Children's Emergency Fund
UNICRI	United Nations Interregional Crime and Justice Research Institute
UNODC	United Nations Office on Drugs and Crime
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime
US	United States
VARRP	Voluntary Assisted Return and Reintegration Programme
WOCON	Women's Consortium of Nigeria

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- Appendix II List of Respondents

Laws, Treaties and Policies

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, United Nations, 2000

United Nations Convention against Transnational Organized Crime, 2000, and the Protocols Thereto

Council of Europe Convention on Action against Trafficking in Human Beings, 2005

The Universal Declaration on Human Rights, 1948

Optional Protocol to the International Covenant on Civil and Political Rights, 1966

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 1989

International Covenant on Economic, Social and Cultural Rights, 1966

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, 2008

International Convention on the Elimination of All Forms of Racial Discrimination, 1965

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

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1999

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987

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

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990

Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, as amended by Protocol No. 11 with Protocol Nos. 1, 4, 6, 7, 12 and 13

African Charter on Human and Peoples' Rights, 1981

European Union: Council of the European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, 15 April 2011, 2011/36/EU.

Council Directive 2004/81/EC of 29 April 2004 on the Residence Permit Issued to Third-Country Nationals Who are Victims of Trafficking in Human Beings or Who Have Been the Subject of an Action to Facilitate Illegal Immigration, Who Cooperate With the Competent Authorities.

Council Framework Decision 2002/629 on Combating Trafficking in Human Beings

ECOWAS Convention A/P1/7/92 on Mutual Assistance in Criminal Matters and ECOWAS Convention A/P1/8/94 on Extradition.

National laws

The Trafficking In Persons Law Enforcement and Administration Act (2003, Amended 2005)

Trafficking in prostitution - section 145 of the Nationality, Immigration and Asylum Act 2002

Trafficking into the UK for sexual exploitation - section 57-59 of the Sexual Offences Act 2003

Trafficking people for labour and other exploitation - section 4 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004

The Coroners and Justice Act 2009 at Clause 71 Slavery, servitude and forced or compulsory labour

Policies and Action Plans

The Nigerian National Plan of Action against Human Trafficking, 2008

United Kingdom – UK Action Plan on Tacking Human Trafficking – March 2007

United Kingdom – Update to the UK Action Plan on Tacking Human Trafficking – October 2009

Crown Prosecution Service Policy for Prosecuting Cases of Human Trafficking, 2011

Enforcement Instructions and Guidance: Chapter 9- Identifying Victims of Trafficking, 2009

Asylum Process Guidance – Victims of Trafficking: Guidance for Competent Authorities

Asylum Process Guidance – Victims of Trafficking: Guidance for frontline UK Border Agency staff

ECOWAS Plan of Action against Trafficking in Persons (2002-2003)

Case Law

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LM, MB, DG, Betti Tabot and Yutunde Tijani v The Queen, [2010] EWCA Crim 2327.

Mohammed Lemine Ould Barar v. Sweden, 42367/98, Council of Europe: European Court of Human Rights, 19 January 1999.

OOO & Others v Metropolitan Police, [2011] EWHC 1246 (QB).

PO (Nigeria) v Secretary of State for the Home Department CA, CIVIL DIVISION 22 February 2011.

R (on the application of S) v Secretary of State for the Home Department, [2011] EWHC 2120.

R v Badu, (2012) CA, CRIMINAL DIVISION 11 December 2012.

R v N; R v E CA, CRIMINAL DIVISION 20 February 2012.

R. v. LM and others, [2010] All ER (D) 202 (Oct), judgment delivered October 21, 2010.

R. v. O, [2008] EWCA Crim 2835.

Rantsev v. Cyprus and Russia, Application no. 25965/04, Council of Europe: European Court of Human Rights, 7 January 2010.

Siliadin v. France, 73316/01, Council of Europe: European Court of Human Rights, 26 July 2005.

YA (R on the application of) v London Borough of Hillingdon, (2011) QBD, ADMINISTRATIVE COURT 1 March 2011.

Chapter One - Introduction

Abstract

Even though it is over a century since the abolition of transatlantic slavery, people are still sold as commodities in the form of human trafficking, to be exploited for sexual services, cheap labour, domestic servitude and other emerging forms of contemporary slavery. Human Trafficking (Hereafter, Trafficking) is a transnational human rights violation that has generated renewed global attention over the last decade. Its prominence has placed the issue at the top of growing political agendas for both national governments and anti-trafficking agencies at various levels. In an effort to address the issue, the anti-trafficking regime has given rise to the 3Ps (Prevention, Protection and Prosecution) as foci areas through which states can cooperate towards tackling this modern-day slavery. Despite the measures put in place to tackle the problem including the enactment of relevant international anti-trafficking laws, the issue continues unabated due to the inadequacies of some of the approaches adopted to deal with the issue. Subsequently, these limitations have also impacted on the extent to which states have cooperated within the issue area.

This thesis is founded on the premise that human rights violations are the major causes and consequences of trafficking and that the anti-trafficking measures will continue to fall short until the concerns of those whom it intends to protect are placed at the forefront of current approaches. Whilst a rights-based approach is still giving rise to burgeoning amount of literature within the anti-trafficking discourse, this study contends that it can only be proficient, if it is broadened to cover the diverse nature and interpretations of human trafficking across various cultural traditions that often transcends legality. Hence, this thesis introduces a human-centred approach to surpass the objective of human rights

in this context. It is emphasised that the adopting of such a 'beyond law' approach during interaction amongst states can be useful to international cooperation in this instance.

Using a case study of trafficking between Nigeria and the UK, this research sheds more light on the contextual nature of trafficking that warrants better intervention including how both states have cooperated in this regard. Ongoing socio-economic and political factors within Nigeria and the UK are crucial to understanding the modus operandi (MO) of human trafficking. Furtherance to the MO, the extent to which both countries have addressed the current realities of the problem across their territories, in terms of internalizing anti-trafficking measures and operationalizing their 2004 bilateral cooperation is also analysed. This thesis concludes that anti-trafficking approaches needs to move on from those which are currently identified with the political interest of states to one geared towards achieving the best outcomes for those at risk/victims/survivors of trafficking.

Introduction

“Two hundred years ago this Parliament voted to abolish the slave trade in the countries - including parts of my own - which were then British colonies. Today we gather, as free men and women, to commemorate that historic event, and to recall centuries of struggle against mankind's least human practice... Despite the fact that all human beings are born free and equal in human dignity, every day thousands of women and children are sold so that their bodies and their labour can be exploited”.

- Kofi Annan¹

Human Trafficking: Forms and Scope

Over the last decade, there has been considerable growth in the literature on modern slavery with substantial efforts placed in capturing the different experiences of victims of slavery around the world.² There has also been continuous awareness of the various quandaries uncovered within the rubric of contemporary slavery.³ Amongst the different forms of modern slavery, the subject of human trafficking has received renewed attention. The United Nations (UN) General Assembly established an intergovernmental, ad-hoc committee in December 1998 and charged it with developing a new international regime to fight transnational organized crime.⁴ After eleven sessions involving over 120 participating states, the ad-hoc committee

¹ UNODC, 'Address by H.E. Mr. Kofi Annan to both Houses of Parliament – London' (8 May 2007) available [online] at: http://www.unodc.org/unodc/en/about-unodc/speeches/speech_2007_05_08.html (Accessed 17th March 2013).

² Kevin Bales, *Disposable People: New Slavery in the Global economy* (University of California Press 2000).

³ Joel Quirk, 'New Approaches to Combating Modern Slavery' (2000) 31 *Human Rights Quarterly* No. 1, pp. 257-258.

⁴ Transnational Organized Crime, G.A. Res. 53/111, U.N. GAOR, 53rd Sess., 85th plen. mtg., U.N. Doc. A/RES/53/111 (1998).

concluded its work in October 2000 with a regime against human trafficking.⁵ In order to enable cooperation amongst states in this issue area, there was a need to agree on what human trafficking constitutes, so that all states operate on the same basis. Therefore, the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, (hereafter, Trafficking Protocol) supplementing the United Nations Convention against Transnational Organized Crime, (hereafter, Organised Crime Convention) define human trafficking as follows:

“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.”⁶

There are three major elements that emerge from this definition. Firstly, the ‘act’, which stipulates what was done; secondly, the ‘means’, which simply illustrates how it was done. The means is omitted in a situation where a child is involved⁷; and thirdly, the ‘purpose’, which specifies why it was done. The Trafficking Protocol provides the first international definition of trafficking as an explicit law

⁵ Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh session United Nations General Assembly - Fifty-fifth session, Agenda item 105, Crime prevention and criminal justice (2nd November 2000) UN Doc A/55/383.

⁶ United Nations Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime, 2000 [hereafter referred to as the Trafficking Protocol] article 3.

⁷ Trafficking Protocol 2000, article 3(c).

enforcement regime.⁸ It marks a significant milestone in the international efforts to combat the problem of human trafficking and to date has attracted 147 signatories.⁹

The actualization of its definition was not engendered without critical analysis from scholars and activists. The definition has led to an increase in literature from scholars in different disciplines who have critically debated the contents and implications of the Protocol from different perspectives. Scholars like Gallagher, offer several explanatory literatures on the process involved in articulating the Trafficking Protocol.¹⁰ This has exposed the uneasiness in reaching a consensus on such a complex issue. The agreed definition was not achieved without States underlining key factors that cater for their own interests. According to Gallagher,

“While the obvious human rights concerns may have provided some impetus for collective action, it is the ... border security issues surrounding trafficking issues that appear to be the true driving force behind such efforts, at least on the part of the member states.”¹¹

Whilst the definition of human trafficking can be viewed as a sign of progress in addressing the issue, some scholars and activists contend that the way in which the definition has been framed is vague and problematic.¹² Following existing literature on this topic, scholars have facilitated debates on the trafficking definition across its different elements. For instance, it has continually proven

⁸ Elizabeth Bruch, 'Models Wanted: The Search for an Effective Response to Human Trafficking' (2004) 40 *Stanford Journal of International Law* p. 14.

⁹ UNODC, *International Framework for Action to Implement the Trafficking in Persons Protocol* (UNODC 2009).

¹⁰ Anne Gallagher, 'Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis' (2001) 23 *Human Rights Quarterly* No 4, pp. 975-1004.

¹¹ *ibid.*

¹² *ibid.*

difficult to reach an international consensus regarding the interpretation of 'exploitation' given that its severity varies, generating a range of experiences across victims of trafficking.¹³ There is the ongoing issue of measuring coercion for adult migrants who might have been trafficked for sexual exploitation. As it stands, the Protocol does not break 'new grounds or grant new rights' nor significantly guarantee the responsibility of states to protect trafficked victims.¹⁴ It has also given ammunition to longstanding debates including the ongoing feminists discourse on prostitution/sex work. According to Lee, despite the constant discussions on the definition there is very little input from trafficked survivors as State officials and other powerful groups remain dominant social actors.¹⁵ Aside from the problematic definition, it is crucial to highlight the forms through which human trafficking is made manifest.

Human trafficking affects both adults and children and takes the form of sexual exploitation, forced labour, domestic servitude, organ harvesting, amongst other emerging forms of exploitations. Trafficking for sexual exploitation is one of the most discussed forms of trafficking, dominating most academic literature on the subject. According to the United Nations Office on Drugs and Crime (UNODC), since sexual trafficking is the most reported form of trafficking, it has been the most documented in comparison to other forms of trafficking that require similar attention.¹⁶ It is an overly emphasized area but does not cease to

¹³ Bridget Anderson, Julianne, O'Connell Davidson, *Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study* (IOM Research Series No.15, IOM 2003) 12.

¹⁴ See Gallagher, 'Human Rights and the New UN Protocols on Trafficking' (n 10).

¹⁵ Maggi Lee, 'Contested Definitions of Human Trafficking' (2010) [online] available at: http://www.ungift.org/doc/knowledgehub/resource-centre/Lee_Trafficking_CH_01.pdf (Accessed 13th of March 2013)

¹⁶ UNODC, *Global Report on Trafficking in Persons* (UNODC 2009) 6.

provoke moral consciousness following 'morality tales of women and girls who are sexually enslaved'.¹⁷.

Current reports on human trafficking estimate that eighty per cent (80%) of victims trafficked internationally are made up of women and seventy per cent (70%) of these women are trafficked for sexual exploitation.¹⁸ The convictions on human trafficking have also been dominated by sexual exploitation offences making up ninety per cent (90%) of prosecutions.¹⁹ As part of sex trafficking, victims are forced to engage in all forms of sexual activities as sex-workers, in brothels, massage parlours or wherever the trafficker deems fit for such business. Typically, victims of sex trafficking especially from Nigeria incur debt in the process of trafficking, which they are expected to repay before they can be freed. This includes monies that have been invested to facilitate their migration and up keep. The debt is usually outrageous, often ranging between \$25,000 and \$40,000, thereby keeping victims in a state of indebtedness for longer until the trafficker has no further use for them.²⁰

Forced labour on the other hand, involves 'all work and services that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily'.²¹ A menace of penalty includes

¹⁷ Maggi Lee, *Trafficking and the Global Crime Control* (Sage Publications 2011) 39.

¹⁸ ILO, *Global estimate of forced labour* (ILO 2012). This publication refers to estimates of adults in forced labour as being 15.5 million.

¹⁹ Nicola Piper, 'A Problem by a Different Name? A Review of Research on Trafficking in South-East Asia and Oceania' (2005) 43 *International Migration*, No. (1/2) 203.

²⁰ Human Rights Watch (HRW), 'Owed Justice: Thai Women Trafficked into Debt Bondage in Japan' (1 September 2000) [online] available at: <http://www.refworld.org/docid/3bdffcf91.html> (Accessed 9 June 2013).

²¹ Forced Labour Convention, 1930 (No. 29) Article 2(1) " For the purposes of this Convention the term **forced or compulsory labour** shall mean all work or service which is exacted from any person under the menace of any penalty and for

threats of physical violence against a worker or relatives, physical confinement and denial of rights.²² According to the 2012, International Labour Organisation (ILO) global estimate of forced labour, 20.9 million persons are affected globally of which mostly adults are victims.²³ Similar to sex trafficking, they could also be in debt to their traffickers and having to work to buy off their freedom. The United Nations Supplementary Convention on the Abolition of Slavery, the Slave Trade and Practices Similar to Slavery also prohibits this form of labour debt bondage.²⁴ The actions and outcomes that constitute forced labour within the Trafficking Protocol could also be found within the legal parameters of employment systems, hence the 'continuum of abuse' in the mainstream economic sectors.²⁵ However, forced labour and workers exploitation are not the same, due to the physical and/or psychological trauma associated with forced labour.²⁶

which the said person has not offered himself voluntarily" [as emphasised in original document]; Convention concerning Forced or Compulsory Labour (Entry into force: 01 May 1932)

²² ILO, A Global Alliance Against Forced Labour, Report of the Director-General, 93rd Session, Report I (B) (ILO 2005) 5.

²³ See ILO, 'Global estimate of forced labour' (n 18).

²⁴ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956, Article 1 (a); See also Organization for Security and Co-operation in Europe (OSCE) Annual Report (2009) 36. [online] available at: <http://www.osce.org/secretariat/67759> (Accessed 5 April 2012).

²⁵ See Lee, *Trafficking and the Global Crime Control* (n 17) 42; see also Peter Andreas, 'Smuggling Wars: Law Enforcement and Law Evasion in a Changing World' (1998) 4 *Transnational Organized Crime* p.72; See also Bridget Anderson, *Motherhood, Apple Pie and Slavery: Reflections on Trafficking Debates* (COMPAS Working paper 2007).

²⁶ As the ILO observes, "Forced labour cannot be equated simply with low wages or poor working conditions. Nor does it cover situations of pure economic necessity, as when a worker feels unable to leave a job because of the real or perceived absence of employment alternatives" see ILO, 'A Global Alliance Against Forced Labour' (n 22) 5; Bridget Anderson and B. Rogaly, *Forced Labour and Migration* (Study prepared by COMPAS in collaboration with the Trades Union Congress 2005) 18.

Although sometimes explored separately, domestic servitude often falls under forced labour where victims are forced to work in private households. Work often includes being forced to perform household tasks like housekeeping and childcare for little or no pay. Sometimes the victims have restricted access to movement outside the home where they work. Children usually fall within this category of exploitation and the pattern often differs across cultures.²⁷ In many circumstances, they experience physical violence at the hands of their employers and in extreme cases, sexual abuse. The Organization for Security and Co-operation in Europe (OSCE) refers to domestic servitude as “an invisible form of exploitation which is extremely difficult to detect due to the hidden nature of the work provided”.²⁸ As a result, domestic servitude cases often go undetected, thereby lacking substantial data. In addition to the common forms of human trafficking that have been briefly explored above, there are other emerging forms of exploitation including organ harvesting²⁹, baby harvesting³⁰, trafficking for benefit fraud that also require extensive investigation.³¹

²⁷ Research Paper on Trafficking in Human Beings for Domestic Servitude in the OSCE Region: Analysis and Challenges Report of the Tenth Alliance against Trafficking in Persons Conference “*Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude*”, Vienna, 17-18 June 2010.

²⁸ *ibid.*

²⁹ Scheper-Hughes indicated that it is most prominent in areas in South Africa, India, Brazil and China etc generally involving the illegal trade of body parts e.g through kidnapping, the deceit of people who are poor and socially marginalized. See Nancy Scheper-Hughes, ‘Global Traffic in Human Organs’ (2000) 41 *Current Anthropology* No.2; See also Jean Allain, ‘Trafficking of Persons for the Removal of Organs and the Admission of Guilt of a South African Hospital’ (2011) 19 *Medical Law Review* pp. 117–122; For definition, see WHO, Organ trafficking and transplantation pose new challenges (2004) [online] available at: <http://www.who.int/bulletin/volumes/82/9/feature0904/en/> (Accessed 13th March 2012).

³⁰ See the case study of Pastor Gilbert Deya and his ‘miracle babies’ in Mwangi Githahu, ‘Kenya - Clergyman Denies Baby Trafficking Charge’ *The Nation* (15th August 2004) [online] available at: <http://www.religionnewsblog.com/8365/clergyman-denies-baby-trafficking->

Given the hidden nature of this form of slavery, measuring its prevalence has proved tough, with different organisations and scholars giving different estimates in the quest to quantify its scale. In so doing, statistics on human trafficking have suffered both from under and over-estimation, as part of the limitation in this research area. According to Di Nicola, research in this area seem 'languish' and the knowledge achieved seems to be 'weak or in piecemeal'.³² Such deficiency in research, directly or indirectly affects the calibre of existing policies, which are sometimes based on sentiments and political or dogmatic bias rather than strong substantiated research result.³³ Bales' estimation of 27 million people currently in slavery continues to be of popular use.³⁴ However, it combines all forms of modern slavery of which human trafficking is only a component part. That said, there seems to be differing global estimation but no real figure as to the extent of human trafficking.³⁵ Maggi Lee asserts that the estimates on the prevalence of human trafficking may be

charge (Accessed 13th March, 2012); The Nigerian police recently raided a home allegedly being used to force teenage girls to have babies that were then offered for sale for trafficking or other purposes. See The Telegraph, 'Nigerian 'baby factory' raided and 32 teenage girls freed' (1st June 2011) [online] available at: <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/nigeria/8550792/Nigerian-baby-factory-raided-and-32-teenage-girls-freed.html> (Accessed 13th March, 2012).

³¹ For example, the UK uncovered a case from Nigeria regarding a woman who trafficked a baby in order to acquire benefits. BBC News Online, "Woman jailed for smuggling baby" by June Kelly 16 May 2008, [online] available at: <http://news.bbc.co.uk/2/hi/uk/7404090.stm> (Accessed 15 October 2013).

³² Andrea Di Nicola, "Researching into Human Trafficking: Issues and Problems" in Maggi Lee (ed.) *Human Trafficking* (Devon 2007) 49.

³³ *ibid.*

³⁴ Kevin Bales, *Understanding Global Slavery* (University of California Press 2005).

³⁵ See Lee (n 17) 11; See also Kamala Kempadoo, "Introduction: Globalizing Sex Workers" in Kamala Kempadoo & Jo Doezema (eds.) *Global Sex Workers: Rights, Resistance, and Redefinition* (Routledge 1998) 15; see also Frank Laczko, 'Introduction: Data and Research on Human Trafficking' (2005) 43 *International Migration* p. 5–16.

manipulated for other purposes: for enforcement agencies – to boost their efforts in combating illegal migration, to obscure failure and to secure more resources.³⁶ Such limitation in estimating the scale of trafficking interrogates the United Nations' estimation that trafficking is the third most lucrative business in the world, generating profits of over 31.6 billion dollars annually; an estimation that suffers the limitation of accurate data.³⁷

Furthermore, trafficking can take place internally (within a country) as well as across borders. According to Laczko, research on trafficking has been more concerned with international trafficking and less on internal trafficking in particular countries.³⁸ Both levels of human trafficking seem to be studied as though they are 'completely distinct and separate phenomena'.³⁹ The International Organization for Migration (IOM) has described internal human trafficking as under-researched but essential to the anti-human trafficking discourse. Some scholars have also insisted that it is of high prevalence in comparison to cross-border trafficking and can often be a starting point to the latter in certain communities.⁴⁰ For instance, a report by the United Nations International Children's Emergency Fund (UNICEF) indicated that human trafficking in India directly affects over 200,000 people and within this figure, only

³⁶ See Lee (n 17) 16 -18.

³⁷ United Nations Global Initiative to Fight Human Trafficking *Human Trafficking facts* [online] available at: http://www.unglobalcompact.org/docs/issues_doc/labour/Forced_labour/HUMAN_TRAFFICKING_-_THE_FACTS_-_final.pdf (Accessed 21st of May 2011); see also Patrick Besler, *Forced Labour and Human Trafficking: Estimating the Profits* (Working Paper ILO 2005).

³⁸ See Laczko 'Data and Research on Human Trafficking' (n 35) 9.

³⁹ *ibid.*

⁴⁰ Alexis A. Aronowitz, "Trafficking Nexus and the Myths Surrounding Human Trafficking" in William Frank McDonald (ed.) *Sociology of Crime, Law and Deviance Volume 13: Immigration, Crime and Justice* (Emerald Group Publishing, 2009) 119.

about ten per cent (10%) of it is international trafficking.⁴¹ According to The Protection Project Human Rights Report: Nigeria, internal human trafficking is recognized as a problem in almost ninety per cent (90%) of African countries.⁴² Therefore, its link to international trafficking cannot be overlooked or underestimated in respect of arriving at better data on the scale of the problem for a more informed solution.

In addition, it is often expected that cross-border migration must take place in order to confirm trafficking even though this is not the case. Morehouse, highlights that in the last hundred years, international legal instruments have played a crucial role in determining who is legally considered to have been trafficked in international law through proof of border crossing.⁴³ However, the UN Special Rapporteur on Trafficking in Persons affirms the irrelevance of border crossing to the Trafficking Protocol in her 2006 Report to the UN's Economic and Social Council, stating: "The Protocol definition of trafficking does not require proof of movement of the victim across borders or otherwise. Trafficking is just as much trafficking even when it occurs in the victim's own home village, town or city."⁴⁴ It is the subsequent exploitation, and not the crossing of international borders that defines trafficking of human beings.⁴⁵ However, there has been some confusion among governments and experts, as the scope of application is usually international in nature. While there has been enormous progress made in understanding the nature and scope of trafficking, there has been a colossal

⁴¹ See UNICEF, 'Special: Child trafficking is increasing in India' (2007) [online] available at:

<http://www.childtrafficking.org/cgi-bin/ct> (Accessed 20th March 2011).

⁴² cited in Aronowitz 'Trafficking Nexus and the Myths' (n 40) 7.

⁴³ Christal Morehouse, *Combating human trafficking: Policy Gaps and Hidden Political Agendas in the USA and Germany* (VS Verlag 2009) 28.

⁴⁴ see Aronowitz, "Trafficking Nexus and the Myths" (n 40).

⁴⁵ *ibid.*

emerging interest in the research to devise better approaches towards combating human trafficking.

Moving From the Study of Trafficking to Anti-Trafficking

The Institute for the Study of International Migration (ISIM) found that, among other gaps in the research on human trafficking there has been a limited understanding of the characteristics of victims and their trafficking trajectories; poor understanding of the operations of traffickers and their networks; and lack of evaluative research on the effectiveness of governmental anti-trafficking policies and the efficacy of rescue programs.⁴⁶ This ISIM report contends that filling these research gaps is pertinent to articulating a more inclusive anti-trafficking approach. Similarly, scholars like Bales insists that research in this area should shift from a more narrative gauge to generating better ways to end today's slavery.⁴⁷ Quirk also stresses the timeliness of the latter, supporting the notion that pursuing effective anti-trafficking measures should be the way forward. Quirk adds that this is the 'right time' for scholars to exhaust in-depth research exploring effective ways to tackle the trafficking of human beings.⁴⁸

Combating trafficking has also become an increasingly important priority for many state governments and relevant stakeholders around the world. As a result, global measures have been put in place to address the problem. These measures have commenced with the establishment of an anti-trafficking

⁴⁶ Elzbieta M. Gozdziaak and Micah N. Bump, *Data and Research on Human Trafficking: Bibliography of Research-Based Literature*. Institute for the Study of International Migration (ISIM), Walsh School of Foreign Service, Georgetown University 2008) 4.

⁴⁷ Kevin Bales, *Ending Slavery: How we Free Today's Slaves* (University of California Press 2007).

⁴⁸ Joel Quirk, 'New Approaches to Combating Modern Slavery' (2009) 31 *Human Rights Quarterly*, Number 1, p. 258.

regime, which clarifies the principles, norms, rule, and decision-making procedures that guide states into cooperation with one another. This has led to the creation of different legal instruments addressing states' obligation towards the fulfilment of anti-trafficking objectives. The year 2000 marked an important year for anti-trafficking through the adoption of the Trafficking Protocol, which obliges states to take all measures to Prevent, Protect and Prosecute (3Ps) to end trafficking.⁴⁹ Today, these 3Ps have become the fundamental areas of anti-trafficking through which states can demonstrate the fulfilment of their obligations within the anti-trafficking regime.

States can also demonstrate their cooperation by adjusting their domestic legislation in line with the principles of the regime. This also includes adopting bilateral or multilateral agreements to address elements of the 3Ps that require direct joint responsibilities.⁵⁰ Despite the signing and ratification of the Protocol by member states, implementation remains a significant problem and as a result, trafficking still continues in its worst forms. This shortfall does not exist in a vacuum as it is prompted by a number of factors that forms part of ongoing debates on current anti-trafficking approaches.

The crux of the debate on the existing anti-trafficking approaches has been the conflict between state interest and the human rights of those affected by human trafficking.⁵¹ Many scholars have insisted that for human trafficking to be suppressed, states have to adopt a human rights-based approach that protects

⁴⁹ Trafficking Protocol 2000, article 2(a-c).

⁵⁰ Organised Crime Convention 2000, article 1.

⁵¹ Anne Gallagher, 'Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis' (2001) 23 *Human Rights Quarterly* No 4, p. 975; James Hathaway C., 'The Human Rights Quagmire of Human Trafficking' (2008) 49 *Virginia Journal of International Law* (1) pp. 1 – 59.

victims rather than an emphasis on criminalization.⁵² This conflict of approaches resonates in three major typologies as proffered by Morehouse including, migration, labour and sex work.⁵³ The way in which these typologies have been conceived by various states within the realm of trafficking has been instrumental to the approaches currently employed to address the problem. This is further complicated where the victims concerned are non-citizens. As a result, it has contributed to the inadequacy of existing anti-trafficking measures not just from a human rights perspective but also constrains the extent to which states' secure their interest. Even though a human rights-based approach has received vast acceptance amongst scholars and activists; it overlooks a socio-cultural lens that hinders the actualisation of these rights. This gap stems from the diversity that encompasses the very nature of trafficking across diverse communities, which often transcends legal understanding.

Subsequently, it questions the extent to which states have cooperated in addressing human trafficking especially within the context of non-Western and Western states which are usually the major source and destination states respectively. It is still uncertain as to how states with different identities and therefore different interests will cooperate in this issue area where they have a diverse outlook on the issue even though they abide by the same anti-trafficking international law. This essentially also questions how states can cooperate beyond the existing legal parameters in order to address existing realities across their borders as previously indicated. In order to promote and enhance interstate cooperation within this issue area, the Organise Crime Convention made provisions for the monitoring of states through the establishment of the

⁵² Jonathan Todres, 'Widening Our Lens: Incorporating Essential Perspectives In The Fight Against Human Trafficking' (2011) 33 *Mich. J. Int'l L.* pp. 53-75; Tom Obokata, *Trafficking Of Human Beings From A Human Rights Perspective: Towards A Holistic Approach* (Martinus Nijhoff Publishers 2006).

⁵³ Morehouse, *Combating human trafficking* (n 43) 75.

Conference of Parties (CoP).⁵⁴ Despite the existence of monitoring mechanisms (through the European Union (EU), United States (US) and the United Nations) to assess the extent to which states have implemented the 3Ps of anti-trafficking, there has been little or no attention in terms of assessing how states cooperate bilaterally. Anti-trafficking does not only require state responsibilities within its territory but shared efforts in addressing the problem across their borders.⁵⁵ According to the IOM, there have been few independent evaluations of counter-trafficking measures and the assessments of the real effectiveness and impact of existing interventions.⁵⁶

It is against the backdrop of this existing lacuna in the literature exploring anti-trafficking that this thesis focuses on assessing the extent to which Nigeria and the United Kingdom has cooperated in suppressing human trafficking. As oppose to many monitoring mechanisms that give a general assessment of individual states, this thesis focuses on contextualizing the case study alongside the process of the trafficking vis-à-vis its mode of operation. Nigeria and the UK are source, transit, and destination countries. However, within this study, Nigeria is explored within the context of a source country and the UK, as a destination country. Their efforts in addressing human trafficking across their territory are explored as a continuum to international cooperation beyond internalizing the legal norms of the anti-trafficking. This thesis, while supportive of a human rights framework in addressing human trafficking, also proposes a human-centred approach that addresses the socio-cultural gaps in fulfilling the rights of those

⁵⁴ Organize Crime Convention, Art. 32. Sub-section 1 states that “A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat transnational organized crime and to promote and review the implementation of this Convention.”

⁵⁵ See Trafficking Protocol 2000, article 2(c).

⁵⁶ Janie Chuang, ‘Beyond a Snapshot: Preventing Human Trafficking in the Global Economy’ (2006) 13 *Indiana Journal of Global Legal Studies* Issue 1, p. 156.

affected or at risk of trafficking. Trafficking from Nigeria presents a real case for the current socio-cultural peculiarities that hinders efforts to address trafficking and human rights therein. More so, the link between Nigeria and the UK in the operation of trafficking is one that has not received warranted attention despite the prevalence of trafficking between both countries

Human Trafficking from Nigeria to the UK

In the last three years, trafficking from Nigeria to the UK has become a growing concern. It has become more obvious especially since the UK introduced its National Referral Mechanism (NRM). The NRM was established as a way to properly identify victims of trafficking and estimate the scale of trafficking in the UK. Based on the NRM, Nigeria is presented as one of the five major source countries referred for human trafficking.⁵⁷ For instance, a 2011 report by the Serious Organised Crime Agency (SOCA) estimated that out of 2077 victims referred into the NRM process from seventy-five countries, over eleven per cent (11%) of them came from Nigeria.⁵⁸ Given the hidden nature of the crime and the fact that referral to the NRM is not mandatory, it is assumed that the current figures only reflect the tip of the iceberg.

One of the major issues in relation to trafficking from Nigeria to the UK is the issue of victim identification and its implication for the counter-trafficking efforts. Although there is evidence for the high rate of Nigerian victims referred to by the UK 'first responders'⁵⁹ as trafficked, the NRM system is sometimes unable and/or

⁵⁷ The five most common countries of origin of potential victims of trafficking were Romania, Slovakia, Nigeria, Poland and the Czech Republic. This is based on a report by the UKHTC in 2011. UKHTC: A Baseline Assessment on the Nature and Scale of Human Trafficking in 2011, August 2012: Serious Organised Crime Agency (SOCA).

⁵⁸ *ibid.* Nigeria was ranked one of the top five source countries for trafficking.

⁵⁹ First responders are the agencies who will refer the child onto the National Referral Mechanism. For children, a first responder may be: a local authority; the

does not conclude that these persons are trafficked for the most part, due to the complexities of cases from Nigeria. In the 2013 NRM report produced by SOCA, although the referrals of Nigerian citizens topped the list of the national referral statistics with 206 (seventeen per cent (17%) of the total number of referrals), only twenty-one (21) were concluded as trafficked.⁶⁰ These disproportionate figures stems mainly from the fact that the profile of victims from Nigeria were not conventional and surpasses the expertise of designated competent authorities that tend to assess them.⁶¹ In many cases, the mode of operation of trafficking from Nigeria engenders a smokescreen of normality that makes it difficult to ascribe victimhood to those identified.

Victims from Nigeria may sometimes not experience physical violence and they may not be closely guarded by their trafficker as seen with European victims; they may also not work in massage parlours and sometimes may also not be locked up in a room; these are common indicators along which UK authorities construct victimhood of referred persons. However, these victims are often overwhelmed with fear that keeps them under the control of their traffickers and also forces them to protect the identity of their traffickers. This control mechanism as seen with Nigerian cases stems from traditional 'life threatening' oath-taking rituals performed on victims from Nigeria usually during the recruitment process. Hence, these victims are unable to give evidence to

UK Border Agency (UKBA); the police; the Serious Organised Crime Agency (SOCA); Barnardo's; the NSPCC's Child Trafficking Advice Centre (CTAC); an agency who deal predominantly with adults who have been trafficked (such as Gangmasters Licensing Authority, The Poppy Project, TARA, Migrant Help, the Medaille Trust, Kalayaan and the Salvation Army).

⁶⁰ The author's interpretation of the National Referral Mechanism Statistics Report between January and December 2012 - Serious Organised Crime Agency (SOCA).

⁶¹ Lorena Arocha, *The Wrong Kind of Victim: One Year On – An Analysis of UK measures to Protect Trafficked Persons* (The Anti Trafficking Monitoring Group (ATMG) and Anti-Slavery International 2010).

support their identification process through the NRM. The inability for victims of trafficking from Nigeria to give the required evidence that would help formally confirm their status as victims as well as the inability for UK practitioners to understand this traditional/cultural control mechanisms has led to the denial of rights assigned to trafficked persons.

The element of traditional oath-taking ritual associated to trafficking from Nigeria and the lack of understanding of the element by UK stakeholders has made anti-trafficking more challenging. Such challenge has constrained the human rights of these victims as they are only entitled to protection in the UK after a positive conclusive ground decision by the NRM is achieved.⁶² Without the proper identification of victims, there is a possibility for criminalization where some of these victims have committed crimes out of duress. The latter has often led to the detention and deportation of trafficked victims. Furthermore, the lack of identification also potentially hinders investigations and the prosecution of traffickers. Altogether, this challenges the quest to counter trafficking, as the denial of human rights becomes a hindrance towards developing clearer measures for the implementing the 3Ps.

In addition, the aforementioned problem is made complex by the politics attached to anti-trafficking. This is apparent in the approach applied by states

⁶² Conclusive grounds decision - Following a positive reasonable grounds decision, the competent authority is required to make a second identification decision to conclusively decide if the child is a victim of trafficking. The competent authority will consider whether, on the balance of probabilities, there is sufficient information to conclude that the child has been trafficked. This decision is usually made within 45 days of the reasonable grounds decision; however, sometimes this may take longer because of the levels of trauma experienced by some victims and the impact of this on their health. See NSPCC factsheet – The National Referral Mechanism (NRM) (August 2013) available [online] at http://www.nspcc.org.uk/Inform/resourcesforprofessionals/childtrafficking/national_referral_mechanism_wda84858.html (Accessed 20th of October 2013).

to deal with the issue. From the UK side, the migration approach currently utilised by its Government to address trafficking from non-EU countries appears to pursue its national interest behind the façade of protecting rights. Consequently, such an approach has done little to address human trafficking effectively but has rather increased vulnerability of victims and has hindered the prosecution of traffickers. As predicated within international human rights law, the UK has a responsibility to exercise due diligence in ensuring that persons within its territory are well protected.⁶³ However, scholars like Hathaway asserts that the anti-trafficking legal regime has allowed for 'significant collateral human rights damage' by gratifying states interest in pursuing their border control agenda under the cover of promoting human rights.⁶⁴

Nevertheless, such state responsibility does not lie solely on destination countries but also on source countries. Whilst it is important to protect the rights of those already exploited, there is a real danger where source countries do not cooperate to address the root causes of trafficking. According to Chuang, eliminating the 'vicious cycle' of trafficking requires an approach that frames the problem within a broader socioeconomic context while targeting the root causes of the issue."⁶⁵ The inability of the Nigerian Government to respect, protect and fulfil the rights of its citizens has been detrimental not just for the victims but for the countries that will bear the burden of addressing the exploitation it breeds. It is against this backdrop that this thesis attempts to offer a deeper understanding to the evolving concept of trafficking and critically

⁶³ The agreed articulation of those rules is contained in the International Law Commission's draft articles on responsibility of States for internationally wrongful acts with commentaries, Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 (A/56/10).

⁶⁴ James Hathaway C., 'The Human Rights Quagmire of "Human Trafficking"' (2008) 49 *Virginia Journal of International Law* (1) p. 1 – 59.

⁶⁵ Janie Chuang, 'Beyond a Snapshot: Preventing Human Trafficking in the Global Economy' (2006) 13 *Indiana Journal of Global Legal Studies*, Issue 1, p. 156.

assess how Nigeria and the UK have devised measures to tackle the reality of the problem. In order to clearly articulate this empirical study, the following questions below will be explored;

Research Question[s] and Discussions

Main question: To what extent have Nigeria and the UK cooperated to combat the prevalence of human trafficking across their borders?

Sub-questions

1. How does the different conceptualizations of trafficking impinge upon the policies to address trafficking?
2. To what extent has the anti-trafficking regime made provisions for tackling human trafficking and enabling cooperation amongst states?
3. What is the MO of trafficking between Nigeria and the UK?
4. Based on the current MO of human trafficking between Nigeria and the UK, how have both countries effectively addressed the problem that trafficking presents across their borders?

Since the enactment of the Trafficking Protocol, there has been a contested discussion around the definition of trafficking and the concepts that frames its overall understanding as earlier stated. As pointed out by Quirk, the “multi-barrelled definition [of trafficking] is indicative of the complexities and ambiguities that surround trafficking.”⁶⁶ These different debates that have emerged from this definition have also prompted the analysis of the different approaches applied to counter-trafficking. Hence, there have been various conceptual, epistemological and historical interpretations of trafficking.⁶⁷ The

⁶⁶ Joel Quirk, *The Anti-Slavery Project: From the Slave Trade to Human Trafficking* (University of Pennsylvania Press 2011) 226.

⁶⁷ Maggi Lee, *Trafficking and the Global Crime Control* (Sage Publications 2011).

multidisciplinary nature of the topic has enabled scholars to conceive the understanding of trafficking from different perspectives of law, migration, politics, feminism, criminology and human rights. Despite the different concepts of trafficking, there is a question of consensus in the way it is conceived by the stakeholders involved and how it has impacted on anti-trafficking policies. Although this thesis is grounded in the concept of trafficking against the backdrop of human rights, it cross-examined the extent and challenges of a human rights-based approach to anti-trafficking, especially where its concepts clashes with state-interest.

In exploring the nexus of human rights and state-interest in the context of trafficking, there are important reasons to consider a contextual understanding that examines the core concepts of trafficking against the backdrop of certain communities in order to articulate the appropriate approach. As Lee puts it “when a problem is defined as a moral, crime or illegal migration issue, there is a tendency to opt for solutions that involve control and punishment and risk stigmatisation and penalisation of trafficked victims...”⁶⁸ It is for this reason that this thesis questioned the various concepts of trafficking to ascertain the consensus of various actors in meeting the needs and circumstances of people at risk/victims/ survivors of trafficking.

It is worth bearing in mind that the last twelve years have seen the proliferation of different international and regional legal instruments against trafficking by the international community. These instruments, which have also been supplemented by institutions and agencies across the globe, have formed part of developing principles, norms, rules and decision-making procedures for the anti-trafficking regime. Hence, there was a need to ascertain how this regime considered the empirical concepts of trafficking especially from a human

⁶⁸ *ibid* 11.

rights/human-centred viewpoint[s]. A legal analysis seemed appropriate in this instance. In addition, owing to the fact that regimes should enable cooperation,⁶⁹ it seemed necessary to investigate the extent to which states will cooperate following the provisions made by this regime, bearing in mind the different identities of the countries of the case study. Subsequently, there was need to explore the different theories of regime to produce a basis for analysis for interstate cooperation.

It is in aligning the concepts and approaches previously interrogated that the case studies for this thesis was employed to assess the *Modus Operandi* (MO) of trafficking. According to Sanderson, MOs are crucial to addressing the gaps in the trafficking process and therefore offers opportunity for a deeper understanding necessary for articulating the appropriate approach within context.⁷⁰ The analysis of the MO was an attempt to investigate the process of trafficking from the recruitment phase, the transportation and the exploitation phase. The gaps identified from these phases set the background to cross-examine the measures employed by Nigeria and the UK to address the problem that trafficking presents in their territory. In addition to articulating the anti-trafficking approaches of these countries, this thesis employs the concept of human rights and international cooperation in answering the main question of the thesis.

⁶⁹ Richard Little, *International Regimes' in The Globalisation of World Politics* (4th edition Oxford University Press 2009) pp.296-311.

⁷⁰ Thomas M. Sanderson, 'Transnational Terror and Organized Crime: Blurring the Lines' (2004) 24 *SAIS Review of International Affairs* (1) p. 56.

Research Methodology

Case study selection: Why Nigeria and the UK?

A case study approach was utilised to support the argument of this thesis. Such approach has been defined as, “an empirical inquiry that investigates a contemporary phenomenon within its real life context, especially when the boundaries between the phenomenon and context are not clearly evident.”⁷¹ In review of literatures surrounding trafficking, there has been an enormous amount of focus on studies of individual countries or comparative case studies and less on exploring trafficking as a process between countries. Hence, the UK and Nigeria were purposefully selected to illustrate the process of trafficking and elucidate how crucial factors existent in each country decisively influence the process of trafficking and measures employed to tackle it. Nigeria was selected as a source country and the UK as a destination country. Both countries have been selected for four major reasons amongst others.

Firstly, there has been a clear prevalence of trafficking from Nigeria to the UK as current statistics from the UK shows. Secondly, there is a consensus on the challenge that Nigeria poses to global anti-trafficking as a source country. However, empirical studies have focused mainly on Southern Europe as major destination countries, undermining other prominent destination countries.⁷² As a result, there has been limited effort assigned to deterring trafficking between these countries of study. Thirdly, trafficking between Nigeria and the UK encompasses the different forms of trafficking and not limited to sexual

⁷¹ Robert Yin, *Case Study Research: Design and Methods* (Sage Publications 1994) 15.

⁷² May-Len S. and Marianne T., “Mission Impossible? Voluntary and Dignified Repatriation of Nigerian Victims of Trafficking” in Thanh-Dam Truong, D. Gasper (eds.) *Transnational Migration and Human Security: The Migration-Development-Security Nexus* (Springer 2011).

exploitation as other studies have shown.⁷³ Exploring UK as a destination country allows for a broader investigation of trafficking that includes domestic servitude which is often missing in literature on trafficking from Nigeria. The UK is home to an estimated 800,000 Nigerians, making a clear case for a significant migrant network that may be favourable for trafficking.⁷⁴ Fourthly, the existence of an anti-trafficking bilateral agreement signed by both countries presents an opportunity for better analysis for assessing broader international cooperation within the anti-trafficking regime.

Qualitative Approach

This study utilised a qualitative research method to gather the data utilised for analysis. The complexity of human trafficking and the need for rich and detailed information contributed to the decision to utilise qualitative data collection methods in this research. This was achieved through exhaustive primary, secondary and tertiary sources ranging from books, journals, reports, Internet resources, case law review, policy paper, legal instruments and semi-structured interviews. Through the Freedom of Information (FOI) Act 2000, key documents like the 'memorandum of understanding between Nigerian and the UK in addressing trafficking in human beings' and other relevant documents were requested from the appropriate authorities. However, prior to any form of data collection an ethics proposal was submitted for the consideration of the University's Law School Ethics Committee. The proposal was approved in April 2011. Subsequently, the Committee also advised the researcher to keep abreast of the political situation in Nigeria before embarking on fieldwork. The ethics proposal informed the ethical consideration for this study as illustrated below.

⁷³ UNICRI, *Trafficking of Nigerian Girls to Italy; Report of Field Survey in Edo State, Nigeria* (UNCRI 2004).

⁷⁴ Alexis Aronowitz, *Human Trafficking, Human Misery: The Global Trade in Human Beings* (Praeger 2009).

Ethical Consideration

Ethics were considered for this research to ensure that those involved in the research including the researcher will be protected from any possible harm before, during and after the process of the study.⁷⁵ Human Trafficking is a highly sensitive topic of study that entails possible psychological and physical harm for those involved. Subsequently, in the process of carrying out this research, the safety of the participants as well as that of the researcher were imperative. While aware that the elimination of all risks is generally impossible, 'safety' was to be given high priority and risks were evidently minimized. Several documents and toolkits were useful in considering the research ethics including authoritative sources like the 'Ethical Guidelines for Good Research Practice' and the 'Association of Social Anthropologists of the UK and Commonwealth'.⁷⁶

Specifically, in addressing existing gaps and identifying better strategies in undertaking counter-trafficking research, the United Nations Inter-Agency Project on Human Trafficking (UNIAP) launched its 2008 Ethics and Human Rights in Counter-Trafficking Initiative.⁷⁷ This was derived from lessons learnt from anti-trafficking programmes/projects within six different countries. This initiative was created to formulate a guide for people intending to undertake research concerning counter-trafficking. Although this was created against the backdrop

⁷⁵ Roger Homan, *The Ethics of Social Research* (Longman 1991) 1; Angelica Orb, Laurel Eisenhauer, Dianne Wynaden, 'Ethics in Qualitative Research ' (2000) 33 *Journal of Nursing Scholarship*, 1, pp. 93-96.

⁷⁶ Ethical Guidelines for Good Research Practice, The Association of Social Anthropologists of the UK and Commonwealth [online] available at: <http://www.theasa.org/ethics/guidelines.htm> (Accessed 20 September 2012).

⁷⁷ United Nations Inter-Agency Project on Human Trafficking (UNIAP) *Guide in Ethics and Human Rights in Counter-Trafficking initiative: Ethical Standards for Counter-Trafficking Research and Programming* (UNIAP 2008).

of six countries of which Nigerian and United Kingdom are not included, it gave an insight to some valuable techniques that were useful for this study.

Privacy, confidentiality and data protection were crucial at all stages of the research process. Data protection was maintained in terms of how the data is stored and used in line with the principles of UK Data Protection Act 1998.⁷⁸ Maintaining absolute confidentiality was pertinent to this study, making sure that the identities of respondents were protected. Participants were assured that care will be taken to ensure that they would not be identified in the final draft of this thesis. For instance, in the course of writing up this thesis, many of the participants were not quoted by their names. For survivors, the researcher formulated false names for them prior to the interview. The identification of other interviewees like government and non-governmental organisation (NGO) officials were kept anonymous unless authorised otherwise. Confidentiality was also necessary to set the right atmosphere for respondents to speak freely. All recordings and memo derived from the interview were uploaded electronically into the researcher's hard drive and saved in a hidden folder with a protective password only accessible by the researcher.

The researcher made a conscious effort to be neutral and non-judgmental during interviews whilst also making sure that respondents (especially victims/survivors of trafficking) were satisfied with the questions asked using the 'five-question verbal consent requirement' as suggested on the UNIAP

⁷⁸ If you handle personal information about individuals, you have a number of legal obligations to protect that information under the Data Protection Act 1998. The Act states that data protection should follow these principles. Fairly and lawfully processed; Processed for limited purposes; Adequate relevant and not excessive; Accurate; Not kept longer than necessary; Processed in accordance with the individual's rights; Secure; Not transferred to countries outside European Economic area unless country has adequate protection for the individual.

guideline.⁷⁹ According to the guideline, a ‘five-question verbal consent requirement’ as seen below was suggested, with a witness who can attest to, and sign to, positive responses for each of the five questions.⁸⁰

Table 1: “Five-Question Verbal Consent Requirement” – UNIAP Guide to Ethics and Human Rights in Counter-Trafficking

Five-Question Verbal Consent Requirement
1. Do you have any concerns about conducting this interview with me?
2. Is there anyone you want to talk to before we have this interview? [Watch for fear of reprisals or concerns about the consent of others]
3. Is this a good time and place for the interview? [Ensure convenience, relaxation, and security, including no inappropriate eavesdropping]
4. Do you have any questions about this interview? [Ensure there are no outstanding needs or questions]
5. Is it okay to have this interview?
Source: United Nations Inter-Agency Project on Human Trafficking (UNIAP) <i>Guide in Ethics and Human Rights in Counter-Trafficking initiative: Ethical Standards for Counter-Trafficking Research and Programming</i> , (UNIAP, Bangkok, Thailand 2008)

Even though the ethics committee approved the interview with children who have been trafficked with the presence of a guardian, children were not used for this study, with only adult victims/survivors being interviewed. While it could be quite difficult for some survivors to engage in retelling their trafficking experiences, participants for this study were generally willing to tell their stories. It is in taking all these ethical considerations as well as ensuring the safety of the researcher that fieldwork was carried out.

⁷⁹ See note 77.

⁸⁰ *ibid* 24.

Fieldwork/Interviews

Fieldwork took place in two locations (the UK and Nigeria) and commenced from July 2011 up till July 2012 with some follow-up interviews. Specifically, fieldwork in Nigeria took place in 3 states for strategic reasons – Edo state; for its prominence as a source for trafficked persons; Lagos – prominent for its international migratory route; Abuja –where major organisations and government agencies relevant to this study reside. The research had to employ a sampling process so that data collection was more targeted to key informants for this research. This study targeted law enforcement/criminal justice authorities, social workers, NGOs, survivors/victims of human trafficking amongst other frontline workers in both UK and Nigeria. These target groups were crucial to gathering the needed data for this study through semi-structured interview.

However, not all these targets were accessible or easy to reach. As Tyldum and Brunovskis highlighted, one of the most challenging factor when researching in the field of human trafficking is that most population relevant to the study constitutes so-called 'hidden population'.⁸¹ A hidden population is a group of individuals for whom the size and boundaries are unknown, and for whom no sampling frame exists.⁸² In order to reach these respondents, a snowball sampling or chain referral sampling seemed appropriate. This non-probabilistic sampling technique was used within this study to identify potential subjects especially where subjects were hard to locate.⁸³

Although the chain referral process allows the researcher to reach populations that are difficult to sample but it also has its shortcomings. Firstly, the researcher

⁸¹ Guri Tyldum and Anette Brunovskis, 'Describing the Unobserved: Methodological Challenges in Empirical Studies on Human Trafficking' (2005) 43 *International Migration* Issue 1-2, pp. 17–34.

⁸² *ibid.*

⁸³ Leo A. Goodman, 'Snowball Sampling' (1961) 32 *Annals of Mathematical Statistics* Number 1, pp.148-170.

potentially has little control over the sampling method, as the subjects obtained are most times dependent on previous subjects. Secondly, the representativeness of sample is not guaranteed. Thirdly, there is a fear of 'sampling bias' when using this sampling technique. Sampling bias mainly arises from initial subjects often nominating people that they are most acquainted with as opposed to those that may balance the objectivity of the research. It is usually possible that subjects will nominate those who share their similar interest and opinions. There was also the problem of institutional bias, which follows similar rhythm, but on a higher level.⁸⁴ In order to reduce selection bias inherent in this method, multiple entry points for snowball initiation were utilised to reduce reliance on some key respondents.

Forty-six (46) respondents were interviewed for this study using semi-structured interview technique. Almost all interviews were tape recorded and transcribed accordingly. After every interview the interviewee signs a consent form. Despite the number of potential key respondents identified for interview, this study was not able to reach most of the respondents due to last minute cancellations, no response, while some just declined a meeting due to the time consumption of speaking to research students. In some instances, responses from key respondents have been significantly delayed. The process of carrying out interviews in Nigeria was a typical case. Even though meetings with respondents in Nigeria were well arranged prior to arriving Nigeria, there were significant glitches in keeping to the fieldwork plan. Fieldwork in Nigeria was not short of incidences of redundant protocols in accessing some government institutions that were not only time consuming, but also capital intensive.

As predicted, identifying survivors/victims for interview was difficult, for various reasons mainly around ethics. Most of the victims in the care of some NGOs

⁸⁴ See note 81.

were still in their recovery period at which time they were bombarded with all manners of enquirers including law enforcement authorities. NGOs who support them [i.e. the victim] were sceptical towards adding more researchers to the equation. The researcher was able to identify some Nigerian adult survivors in the UK who were no longer in the formal care system. In order to ensure a more representative data collection from victims, case laws files and second-hand victims' testimonies from reports were substituted. In Nigeria, the researcher was able to speak to some survivors of human trafficking repatriated back to Nigeria but could not identify any survivors returned from the UK. Notwithstanding, interviewing these survivors in Nigeria provided an insight to the repatriation process in Nigerian relevant for data analysis.

Table 2: Summary of informants interviewed in Nigeria and the UK⁸⁵

	Key informants (category)	Number
1.	Non-governmental organisations	8
2.	Anti-trafficking institutions (UK and Nigeria)	19
3.	Survivors of human trafficking	8
4.	Academics	2
5.	Research consultants	2
6.	International Organisations/Institutions	4
7.	Country High Commissions	3
	Total	46

Data and Framework Analysis

Data analysis in this study involved summarising and categorising the data collected according to the research questions of the study. ⁸⁶ After categorisation, the next step was to interpret the data to generate meaning

⁸⁵ See a detailed interview list in Appendix II.

⁸⁶ Martyn Denscombe, *Ground rules for good research: A 10 point guide for social researchers* (Open University Press 1998).

and conclusions. The multidimensional nature of this topic meant that using one theoretical perspective would not offer sufficient explanations and understandings for the arguments made. The data analysis was set mainly against the framework of international law and international relations but includes constructivism in order to substantiate the argument. It is argued within this study that a human rights framework is necessary as the best approach to address trafficking. Therefore, international human rights law was also central to the analysis of this study. This was inculcated through the critical analysis of its various legal instruments in reaffirming the obligations of states in relation to anti-trafficking.⁸⁷ Similar legal analysis was also accorded to the Trafficking Protocol and relevant regional legal instruments of the EU and the Economic Community of West African States (ECOWAS) as well as the national legal framework of the countries of focus.

While human rights was a well acknowledged and developed framework for this study, the data collected for this study exhibited an important element of diversity bore from the different identities of the countries of focus. Consequentially, a constructivist approach was utilised to explain the limitation of the human rights-based approach in understanding and actualising the rights of Nigerian victims. This led to the human-centred approach that argues for the broadening of the human rights-based approach to include socio-cultural lens that transcends legality. This assumption also stemmed from elements of how communities have constructed migration-cum-trafficking and their human rights. While, this thesis supports the universality of human rights, it contends that to depend solely on the universalism notion would mean to 'close off the possibility of creative expansion' in the discourse of human rights.⁸⁸ As Bunting

⁸⁷ Constructivism has been utilized across different scholarships including psychology, anthropology, education and international relations.

⁸⁸ Annie Bunting, 'Theorizing Women's Cultural Diversity in Feminist International Human Rights Strategies' (1993) 20 *Journal of Law and Society*, No.1 pp. 6-22.

puts it, "... a recognition that international norms can be filled with local contextual meaning will enhance the use of international human rights law."⁸⁹

Subsequently, a human-centred approach as a proposed anti-trafficking measure builds upon human rights in ensuring that trafficking from Nigeria is well understood in order to circumvent the denial of rights. It is utilised to elucidate the MO of trafficking between Nigeria and the UK. The human-centred approach through empirical data highlights the "agency" component in trafficking of which when ignored constrains anti-trafficking approaches. This thesis argues that a human-centred approach should not be ignored for effective cooperation between states. State cooperation against anti-trafficking was analysed within this thesis through exploring the theories of regime and compliance. International law and international relations scholarships convene within these theories and were used to explain why and how states cooperate.⁹⁰

Regimes enable cooperation among states ⁹¹ and accordingly, states cooperate by adjusting their laws and policies in order to 'bring international law home' in an issue area.⁹² States may also adopt specific agreements, whether bilateral or multilateral to enhance their cooperation. It is on this basis that the anti-trafficking national legal frameworks and 2004 Memorandum of Understanding (MOU) by Nigeria and the UK were critically analysed. While rationalist are of the viewpoint that the interest of states are static and forever rational, constructivists are of the notion that state actors cannot be separated

⁸⁹ *ibid* 18.

⁹⁰ Kal Raustiala and Anne-Marie Slaughter "International Law, International Relations and Compliance" in B. A. Simmons (ed.), *International Law Vol. III* (Sage Publication 2008).

⁹¹ Richard Little, *International Regimes in The Globalisation of World Politics*, (4th edition Oxford University Press, 2009).

⁹² Cited in Kenneth A. Oye (ed.), *Cooperation under Anarchy* (Princeton University Press 1986).

from their socio-political surroundings, which in turn forms their identity. Constructivists underscore that a state's identity can change through continuous interaction of knowledge and learning between states. In ascertaining the implication of the different theories in the operationalization of cooperation, this thesis explores the constructivist approach to cooperation as one which allows for shared understanding and better accommodate the human-centred approach promoted in this study. It is the standpoint of this thesis that the latter theory allows the countries of study to address trafficking through their interactions and cross-cultural dialogues.⁹³ In light of this framework of analysis, the chapters of this thesis have been divided into eight chapters and structured as illustrated below.

Chapter Structure

The subsequent part of this research is structured into seven chapters. Chapter two concerns the conceptualization of human trafficking from a human rights perspective. Whilst trafficking can be understood from different standpoints, human rights as a cause and consequences of human trafficking presents an overarching explanation to an appropriate approach for anti-trafficking as predicated by international human rights law hence, a human rights-based approach. Nevertheless, state interest as well as several socio-cultural factors that lack legal understandings tends to hinder actualizing the human needs involved in anti-trafficking. Set against the backdrop of three typologies of migration, labour and sex work, this chapter argues for a human-centred approach which serves to broaden the reach of human rights for the people it intends to protect.

⁹³ Abdullahi Ahmed An-Na'im, "Towards a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment" in Mark Goodale ed. *Human Rights: An Anthropological Reader* (Wiley-Blackwell 2009).

Whilst chapter two reaffirms states' responsibility in addressing trafficking, individual states cannot bear the cost of anti-trafficking alone hence, the formation of a regime that will enable states to cooperate to tackle this problem was explored in chapter three. It investigated the extent to which the anti-trafficking regime makes provision for anti-trafficking and enables international cooperation commencing from a legal standpoint. Subsequently, it underscores the theories of international cooperation in interrogating why states may cooperate with each other within the issue area. Specifically, this second section explores these theories in respect to capturing the best condition for inter-state cooperation within the context of this research. Chapter three flows from the argument of chapter two towards inculcating an approach to international cooperation that is highly contextual to the identities of cooperating states which should surpass legal parameters following a constructivist standpoint.

Chapter two and three formed the basis for the analysis that flowed through chapter four up to chapter seven. Chapter four explored the MO of trafficking between Nigeria and the UK. This chapter aimed at injecting some clarity and critical insight into the peculiarity of trafficking between Nigeria and the UK, as a foundation to foreground the appropriate interventions. Beneficial to the human-centred approach in terms of understanding the experiences of victims in the process within the context of this study, it broadens the indicators for allocating victimhood to persons affected. This chapter elucidates such clarity across the three main stages of recruitment, transportation and exploitation within the process of trafficking. Following the empirical illustration presented in chapter four, it becomes important to ascertain how Nigeria has dealt with the problems highlighted from the source and how the UK has supposedly tackled it within the context of a destination country. Chapters five and six explored the latter by assessing the approaches employed by both countries through their

domestic laws and policies to intercept the different stages of trafficking in line with fulfilling their human rights obligations and subsequent human-centred concerns.

These chapters highlighted shared responsibilities that evidentially prompt interstate cooperation. For this reason, chapter seven assessed the existing interstate cooperation between Nigeria and the UK alongside the MOU signed by both countries in 2004 to fight against human trafficking. This chapter practically illustrates the importance of mutual understanding in negotiating future collaborations so as to help bring rights that are situated and contextually meaningful to Nigerians in need of protection in the forefront of their bilateral relations. Chapter eight as a conclusion to this thesis presents a summary of preceding chapters, arguments and reflections of anti-trafficking approaches between Nigeria and the UK.

Chapter Two - Conceptualizing Human Trafficking: A Human Rights Perspective

Introduction

Since the emergence of the Trafficking Protocol, scholars have continued to debate across different disciplines concerning what may constitute trafficking. These various articulations of the concept of human trafficking have also led to proposed approaches in tackling the problem. According to Firman, anti-trafficking cannot be fully conceived without the understanding of how the problem of trafficking is conceptualized by different actors.¹ Some have viewed trafficking from the standpoint of migration, transnational crime, feminism, and economics, amongst others. Consequently, approaches like law enforcement and human rights, as well as gender-sensitive measures have been suggested. This thesis, on the other hand, contends that a human framework which touches on these different facets of human trafficking is required. Normatively based on international human rights standards, the human rights-based approach proffers some advantages in tackling human trafficking. While prominent scholars like Obokata and Gallagher as well as frontline anti-trafficking activists have publicized and built upon this approach, it also presents some challenges. Firstly, it is limited by its confliction with state interest and secondly, the socio-cultural factors that limit the actualization of the approach. While state interest remains an aspect of the international system that continues to pose a challenge to human rights, the second limitation argues for the broadening of the human rights-based approach by introducing a 'human-centred approach'.

The human-centred approach does not add new obligations to states but essentially suggests a way in which we ought to look at existing obligations with regards to human trafficking. It aims to address issues that surpass legality so that

¹ Richard Firman, "Human Trafficking, Human Security and the Balkans" in H. Richard Firman and Simon Reich (eds.), *Human trafficking and the Balkans* (University of Pittsburgh Press 2007).

within unfamiliar circumstance in human trafficking, victim's human rights will not be undermined. To further articulate this argument, the chapter is divided into three main sections. The first section demonstrates that human trafficking is a human rights violation based on the elements of promulgated within international human rights law. Although human trafficking is a criminal offence perpetrated by private citizens, it is often debatable as to what extent the crime breaches basic human rights. This section argues that states have both positive and negative obligations to address trafficking within various jurisdictions and as ascribed in the Articles of State Responsibility.

The second section sets out the limitation of a human rights-based approach and argues for a human-centred approach, so that certain socio-cultural factors do not hinder the actualization of the articulated rights. That said, the latter approach still conflicts with states interest. The third section thus, argues that the state-centric perspective does not suppress human trafficking but instead instigate approaches that increases the vulnerabilities of those at risk or affected by trafficking. This section is set against the backdrop of three typologies – migration, prostitution and labour. It is crucial to mention that these typologies are often interconnected and may overlap in the process of analysis.

Human Rights and Human Trafficking

Human rights have been defined as “pronouncements in social ethics, sustainable by open public reasoning that may or may not be reflected in a legal framework through specific ‘human rights legislation’.”² They are fundamental rights to which persons are inherently entitled simply because they are human beings. Human trafficking on the other hand has accrued high human cost in terms of its consequences on human beings. Several pieces of

² Amartya Sen, ‘Elements of a theory of human rights’ (2004) 32 *Philosophy and Public Affairs* (4), p. 354.

research, illustrating the experiences of trafficked victims, have highlighted the impact of human trafficking. This includes sickness, death and social exclusion, amongst other effects of human rights violation.³ Some scholars insist that trafficking is both a cause and consequence of the violation of human rights.⁴ According to Aronowitz, the human rights paradigm has the longest history when it comes to analysing human trafficking.⁵ The proliferation of international human rights instruments, movement, institutions and the rise in human rights discourse as the 'lingua franca of global moral thought'⁶ consolidates trafficking as a human rights issue. Human rights violations occur when actions by states or a non-state actors breaches any part of the Universal Declaration of Human Rights (UDHR) or other international human rights or humanitarian law. Although the phrase 'human trafficking' is not specifically mentioned in some of these instruments, they touch upon elements that constitute human trafficking.

Human trafficking has been clarified as a form of modern day slavery as many works of literatures have reemphasized.⁷ While the nineteenth century gave birth to the abolition of transatlantic slavery, slavery has taken new forms and

³ Kathleen Fitzgibbon, *Modern-Day Slavery?* (2003) 12 *African Security Review*, No. 1, pp. 81-89.

⁴ Conny Rijken, 'The European Union's Struggle To Realize A Human Rights-Based Approach To Trafficking In Human Beings: A Call on the EU to Take THB-Sensitive Action in Relevant Areas of Law' (2009) 25 *Connecticut Journal Of Intl Law* p. 49-79.

⁵ Alexis A. Aronowitz, "Trafficking Nexus and the Myths Surrounding Human trafficking," in William Frank McDonald (ed.) *Sociology of Crime, Law and Deviance Volume 13: Immigration, crime and justice* (Emerald Group Publishing 2009) p.119.

⁶ Michael Ignatieff, *Human Beings as Politics and Idolatry* (Princeton University Press 2001).

⁷ Gary Craig, Aline Gaus, Mick Wilkinson, Klara Skrivankova and Aidan McQuade, *Contemporary slavery in the UK: Overview and key issues* (Joseph Rowntree Foundation 2007); Kevin Bales, *Defining and Measuring Modern Slavery* (2007) [online] available at: <http://www.freetheslaves.net/Document.Doc?id=21> p. 1 (Accessed 20th February 2011).

patterns across diverse communities.⁸ The prohibition of slavery forms part of *jus cogens* and peremptory norms of international customary law.⁹ The 1926 Slavery Convention described slavery as "... the status and/or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised". The 1956 UN Supplementary Convention also offers a definition of servile status and "slavery-like practices", such as debt bondage; serfdom; forced marriage; and the exploitation of young people as well 'slave trade'.¹⁰ Consequently, Bales asserts that contemporary slavery matches this definition based on three essential criteria and thus defines it as "the complete 'control' of a person for economic 'exploitation' by 'violence' or threat of violence".¹¹ Additionally, the United Nations High Commissioner for Human Rights (UNHCHR) defines contemporary slavery as including:

"debt bondage, serfdom, forced labour, child labour and child servitude, trafficking of persons and human organs, sexual slavery, children in armed conflict, sale of children, forced marriage and the sale of wives, migrant work, the exploitation of prostitution, and certain practices under apartheid and colonial regimes."¹²

⁸ Joel Quirk, 'New Approaches to Combating Modern Slavery' (2009) 31 *Human Rights Quarterly*, Number 1, pp. 257-267; Kevin Bales, *Ending Slavery: How we Free Today's Slaves* (University of California Press 2007).

⁹ "Jus cogens are rules within customary international law which have a special status above treaty-based law"; See Sandhya Drew, *Human Trafficking and Human Rights: Law and Practice* (Legal Action Group 2009).

¹⁰ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 U.N.T.S. 3, entered into force April 30, 1957 – See Article 1 and 7.

¹¹ Kevin Bales, *The Slave Next Door: Human Trafficking and Slavery in America Today* (University of California Press 2009) 13 – firstly, "the complete control of one person by another, through the use of violence – both physical and psychological – [Secondly], hard labour for little or no pay ... the third criterion is economic exploitation - making profit for the slaveholder".

¹² Special Rapporteur on Contemporary forms of slavery – United Nation Human Rights

Therefore, trafficking not only violates international anti-slavery laws but also the United Nations Universal Declaration of Human Rights, Article 4 of which proclaims that “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms”.¹³ It also violates the following human rights including but not limited to; the right to life¹⁴; the right to freedom of movement¹⁵; the right to not be subjected to torture, cruel, inhuman or degrading treatment or punishment¹⁶; the right to be free from gender-based violence.¹⁷ The European Court of Human Rights also confirms the application of human trafficking as a human rights violation as provided by a 2010 judgement made in *Ranstev vs Cyprus and Russia* case law where the Court was required to consider Article 4 of the European Convention of Human Rights (ECHR) which prohibits slavery, servitude and forced compulsory labour.¹⁸ It concluded that:

<http://www.ohchr.org/EN/Issues/Slavery/SRSlavery/Pages/SRSlaveryIndex.aspx> (Accessed 10th July 2013).

¹³ Slavery Convention, 1926, article 1; Supplementary Convention on the Abolition of Slavery, 1956, article 1; Convention Concerning Forced and Compulsory Labour, 1930, articles 1, 2 and 4; Universal Declaration of Human Rights, article 4; Convention Concerning the Abolition of Forced Labour, 1957, article 1; International Covenant on Civil and Political Rights, article 8; European Convention on Human Rights, article 4; African Charter on Human and Peoples' Rights, article 5; Rome Statute, articles 7 (c) and 7 (g).

¹⁴ Universal Declaration of Human Rights, article 3; International Covenant on Civil and Political Rights, article 6; Convention on the Rights of the Child, article 6; European Convention on Human Rights, article 2; African Charter on Human and Peoples' Rights, article 4.

¹⁵ Universal Declaration of Human Rights, article 5; International Covenant on Civil and Political Rights, article 7; Convention against Torture; Convention on the Rights of the Child, article 37.

¹⁶ European Convention on Human Rights, article 3; African Charter on Human and Peoples' Rights, article 5; Protocol on the Rights of Women in Africa, article 4.; Non-treaty source: Declaration on the Human Rights of Individuals who are not Nationals of the Country in which They Live, article 6.

¹⁷ *ibid*; see also Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) article. 6.

¹⁸ It also violates articles 2,3 and 5 of the ECHR.

“There can be no doubt that trafficking threatens human dignity and the fundamental freedoms of its victims and cannot be considered compatible with a democratic society and the values expounded in the Convention...”¹⁹

This is a case that resulted in the loss of human life (the victim). The same Article 4 of the ECHR was also relied upon in *Siliadin v France* where the European Court of Human Rights confirmed that

“...Art.4 entailed a specific positive obligation on Member States to penalise and prosecute effectively any act aimed at maintaining a person in a situation of slavery, servitude or forced or compulsory labour. In order to comply with this obligation, Member States are required to put in place a legislative and administrative framework to prohibit and punish trafficking.”²⁰

Specifically focused on women, the Convention on the Elimination of All Forms of Discrimination Against Women (the CEDAW Convention) is designed to protect women from continuing discrimination and human rights violations, offering a wide range of actions to be pursued by State parties in combating trafficking in women. It specifically mentions trafficking in Article 6, stating “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of

¹⁹ *Rantsev v. Cyprus and Russia*, Application no. 25965/04, Council of Europe: European Court of Human Rights, 7 January 2010.

²⁰ See *OOO & Others v Metropolitan Police* [2011] EWHC 1246 (QB) quoting *Siliadin v France*, European Court of Human Rights Application no 73316/01, para. 285; see also Holly Cullen, *Siliadin v France: Positive Obligations under Article 4 of the European Convention on Human Rights* (2006) 6 *Human Rights Law Review*, No. 3, pp. 585 – 592.

women".²¹ The Convention on the Rights of the Child (CRC) also confirms human trafficking as a violation of the human rights, obliging States Parties to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.²² It emphasizes that the best interests of the child should be the primary consideration in all actions concerning children.²³

Given the cross-border nature of human trafficking, victims tend to be identified in countries outside their country of citizenship. Therefore, they often require protection from international human rights laws that appeals to their status as non-citizens especially where the victim is an adult. The international human rights system has repeatedly affirmed the special vulnerabilities faced by migrants and the particular nature of the violations to which they are subject.²⁴ However, international human rights laws do not provide extensive protections for migrants beyond those identified as being applicable to non-citizens. The rights assigned to non-citizens victims of human trafficking generally flow from the non-discrimination clauses found in several international legal instruments that do not permit differentiation in the treatment of nationals and non-citizens in terms of fundamental human rights. This is not often adequate in dealing with the unique vulnerabilities of this category of victims, especially those who have entered the host country illegally. Nevertheless, several international treaties including the ILO instruments protecting migrant workers and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Migrant Workers Convention) 1990 offer relative protection but suffer from limited ratification.

²¹ CEDAW – article 6.

²² Convention on the Rights of the Child, articles 35 and 37.

²³ Convention on the Rights of the Child, article 3.

²⁴ Anne Gallagher, *International Law of human Trafficking* (Cambridge University Press, 2010).

According to Pitrowicz, “to treat trafficking as a human rights violation as such requires overcoming the accepted notion that human rights obligations operate vertically, between states and those subject to their jurisdiction, and accepting some kind of horizontal application.”²⁵ In terms of jurisdiction, the Organized Crime Convention Article 15 establishes a series of jurisdictional bases that are relevant to trafficking. In this context, states are obliged to provide jurisdiction on the basis of the principle of territoriality²⁶, nationality²⁷ and passive personality.²⁸ Following the rights violated by human trafficking as predicated in international human rights law, states have both positive and negative obligations in ensuring that human rights are respected, protected and fulfilled within this context. As a positive obligation, they are obligated to prohibit trafficking, prosecute traffickers, protect victims and prevent trafficking in a manner that falls within the principles of international human rights law standard.²⁹ As a negative obligation, individual states are responsible for acts and omissions that causes or contribute to human trafficking. Here, states are held responsible where they fail

²⁵ Ryszard Piotrowicz, “Human Security and Trafficking of Human Beings: the Myth and the Reality” in Alice Edwards and Carla Ferstman (eds.) *Human Security and Non-Citizens: Law, Policy and International Affairs* (Cambridge University Press 2010) 406.

²⁶ Organized Crime Convention, Article 15 (1) “states may establish extra-territorial jurisdiction for domestic prosecution in lieu of extradition when the latter is denied on the ground of nationality”.

²⁷ Organized Crime Convention 2000, Article 15(3).

²⁸ Organized Crime Convention 2000, Article 15(2) States parties are further encouraged to establish jurisdiction on the basis of active and passive personality principles, namely when their nationals are perpetrators or victims of related offences; UNODC, *Anti-Human Trafficking Manual for Criminal Justice Practitioners, Module 6: International Cooperation In Trafficking In Persons Cases* (UNODC 2009).

²⁹ Tom Obokata, ‘A Human Rights Framework to Address Trafficking of Human Beings’ (2006) 24 *Netherlands Quarterly of Human Rights*, 3, pp. 379 – 404.

to exercise due diligence as stipulated in the Articles of State Responsibility.³⁰ “Under the standard of “due diligence”, the State is not held responsible for the acts of others, but rather held responsible for its own failure to prevent, investigate, prosecute or compensate for the commission of the act”.³¹ It is on the basis of establishing the human rights obligation of states, that many scholars have suggested a human rights-based approach as an effective tool for tackling trafficking.³² Although, it makes logical sense to utilise a human right-based approach to address a human rights issue, the next section explores the extent to which it addresses the issues that human trafficking presents, especially within the context of this study.

Human Rights-Based Approach: Human-centred Enough?

According to the Office of the High Commissioner for Human Rights (OHCHR), “A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.”³³ In general, a human rights-based approach is said to be founded upon a number of core principles: universality and inalienability; indivisibility;

³⁰ The agreed articulation of those rules is contained in the International Law Commission’s draft articles on responsibility of States for internationally wrongful acts with commentaries, Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 (A/56/10); Malcolm Shaw, *International Law* (5th edition Cambridge University Press 2003) pp. 721- 724; Dinah Shelton, ‘Private Violations, Public Wrongs and the Responsibilities of States’ (1989) 13 *Fordham International Law Journal*, p.1.

³¹ OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking Commentary (Office of the United Nations High Commissioner for Human Rights 2010) 77.

³² Shelley Case Inglis, ‘Expanding International And National Protections Against Trafficking For Forced Labor Using A Human Rights Framework’ (2001) 7 *Buffalo Human Rights Law Review*, pp.55-104.

³³ OHCHR, Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation, 2006.

interdependence and inter-relatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law.³⁴ According to Obokata, a human rights framework to trafficking presents two advantages, including addressing a wider range of issues and promoting a victim-centred approach.³⁵ While the human rights framework may allow the latter flexibility, it is often limited in its operationalization from the stance that it conflicts with the interest of states and sometimes lacks a socio-cultural lens in its application to anti-trafficking. Firstly, human rights frameworks have to contend with the interest of states as the trademark of the international system.³⁶ States as sovereign actors remain by far the most important actors in determining the extent to which people enjoy human rights. For instance, even though international human rights law promotes freedom of movement, it also grants states the supreme authority within their territories and denies the existence of any higher authority within these borders.³⁷ In this regard, whilst states may express their concerns regarding the well-being of individuals, their actions tend to lean towards the pursuit of their autonomy.³⁸

Secondly, empirical findings of this study suggest that there are aspects of human trafficking that transcend legal understanding and are likely to hinder the actualization of human rights as part of anti-trafficking. The factors that underscore this limitation are grounded in socio-cultural underpinnings held by certain communities, in line with how they understand or construct trafficking.

³⁴ The Human Rights-Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies, United Nations Second Interagency Workshop on Implementing a Human Rights-Based Approach in the Context of UN Reform, May 5-7, 2003.

³⁵ Tom Obokata, 'A Human Rights Framework to Address Trafficking of Human Beings' (2006) 24 *Netherlands Quarterly of Human Rights*, 3 pp. 379 – 404.

³⁶ Louis Henkin, *International Law: Politics and Values* (Martinus Nijhoff 1995).

³⁷ Christian Reus-Smith, 'Human Rights and the Social Constructing of Sovereignty' (2001) 27 *Review of Human Rights Studies* pp.519-538.

³⁸ See (n 36) 169.

This context-specific pattern of trafficking makes human rights murky and difficult to achieve beyond contending with states' interest. Scholars like Kokko assert that 'trafficking is culturally patterned' therefore, better understanding of the cultural context in which human trafficking occurs and by which the 'normalcy of certain behaviours is justified, is a valuable starting point to developing counter-trafficking efforts.'³⁹ Such an understanding is necessary in articulating how states cooperate towards ending human trafficking especially where states have diverse identity and lack the knowledge and consensus as to what constitutes trafficking across their borders.

Similarly, Surtees contend that "central to the understanding of the contributing forces of trafficking is how this practice is understood within the country of origin and how it forms part of traditional social structures."⁴⁰ As such, what may seem common in one culture may be unacceptable in another.⁴¹ Where two countries need to cooperate in this instance, an absence of such understanding can be detrimental to the achievement of its cooperative goals. However, attributing cultural diversity to human rights is an area that is largely neglected in the international arena probably due to the contradiction between cultural relativism and universal human rights. According to Kokko, "it is ... feared that the cultural justification of human trafficking would pave the way for uncritical and biased preference of policies limiting immigration."⁴² In a similar light,

³⁹ Laura Kokko, 'People for Sale? Three different approaches to Human Trafficking' (2008) 6 *Human Security Journal*, pp. 46-55.

⁴⁰ Rebecca Surtees, *Other Forms of Trafficking in Minors: Articulating Victim Profiles and Conceptualizing Intervention* (The NEXUS Institute to Combat Human Trafficking and the International Organization for Migration (IOM) 2005).

⁴¹ Rebecca Surtees, *Alternative Forms of Trafficking Minors: Articulating Victim Profiles and Conceptualising Interventions* (paper presented at the Childhoods Conference of the International Organization for Migration and the Nexus Institute for Combating Human Trafficking, June 29–July 3, 2005 in Oslo, Norway) 23.

⁴² See Kokko 'People for Sale?' (n 39) 51.

human rights supporters may find the cultural lens unacceptable as admitting cultural factors will be detrimental to the quest for better recognition to victims of trafficking.⁴³ The problem with rejecting the cultural lens is that it limits the understanding of human trafficking which constrains the approaches of anti-trafficking.

Likewise, Donnelly insists that in justifying the efficacy of human rights, certain forms of 'relativity' and 'contingency' must be acknowledged.⁴⁴ In other words, cultural diversity should not be devalued in this regard.⁴⁵ The acknowledgment of diversity is not suggested in this regard to condone violence or the violation of people's rights but rather provokes an attention to culture and history that potentially invites a richer analysis to social problems or human rights issues like trafficking.⁴⁶ The Bangkok Declaration supports this notion as it included a controversial statement that Asian states

"[r]ecognize that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds."⁴⁷

⁴³ Thanh-Dam Truong, *Governance and Poverty in Sub-Saharan Africa: Rethinking Best Practices In Migration Management* (UNESCO 2008).

⁴⁴ Jack Donnelly, 'The Relative Universality of Human Rights' (2007) 29 *Human Rights Quarterly*, Number 2, pp. 281-306.

⁴⁵ Annie Bunting, 'Theorizing Women's Cultural Diversity in Feminist International Human Rights Strategies' (1993) 20 *Journal of Law and Society* No.1 pp. 6-22; see also J. Donnelly, 'The Relative Universality of Human Rights' (n 44).

⁴⁶ *Ibid.*

⁴⁷ Report of the Regional Meeting for Asia of the World Conference on Human Rights (Bangkok, 29 Mar – 2 Apr. 1993), at 3, A/Conf.157/ASRM/8 – A/Conf.157/PC/59 7 (April 1993).

Essentially, to depend solely on the universalism notion of human rights would mean to 'close off the possibility of creative expansion' in the discourse of human trafficking.⁴⁸ According to Cushman, "from the perspective of social constructionism, human rights can only be seen as cultural representations, which are projected, objectified, and internalized by social actors to varying degrees at various times and places in world history".⁴⁹ Additionally, scholars like Monshipouri et al. contend that even universal human rights are dynamic, historically contingent and socially constructed.⁵⁰ Hence, human rights are not static or absolute but should continually question whom and in whose interest the rhetoric is being deployed.⁵¹ It is for this reason that this thesis proposes that the human rights-based approach be broadened to address issues that may not underscore the legality of right, in the form of a human-centred approach.

A human-centred perspective of human trafficking holds that a people-centred viewpoint is necessary for addressing human trafficking at all levels. It recognises the agency of persons affected by trafficking and insists on the obligation of states to take all measures to protect all persons from trafficking at the backdrop of international human rights law. This approach challenges the traditional notion of national interest but remains indebted to the human rights tradition. It builds upon a rights based approach by adopting principles of international human rights law with the aim to effectively articulate obligations, which can be imposed upon relevant stakeholders especially States, towards preventing and suppressing trafficking.⁵² It strengthens it by propelling the need

⁴⁸ See Bunting, 'Theorizing Women's Cultural Diversity' (n 45) 18.

⁴⁹ Tom Cushman, "Human Rights" in Bryan S. Turner (ed.) *The Cambridge Dictionary of Sociology* (Cambridge University Press 2006) 520.

⁵⁰ Neil Stammers, 'Social Movements and the Social Construction of Human Right' (1999) 21 *Human Rights Quarterly*, No. 4 pp. 980-1008.

⁵¹ See note 45.

⁵² See Conny Rijken and Eefje de Volder, 'The European Union's Struggle to Realize A Human Rights-based Approach to Trafficking in Human Beings' (2009)

to move above and beyond the current legality towards addressing the underlying root causes of trafficking within diverse communities that may have no legal bearing. According to Jones, “the theory of human rights is a practical theory; it is a theory about what people should be able to do and what they should not suffer”. If, in effecting human rights, one should take a pragmatic approach, the approach must take full account of the world it intends to change.⁵³ In other words, a human right-based approach might be perceived insufficient when it undermines the need of the people it intends to protect.

The problem with a human-centred approach is that human needs are diverse and those who offer services to victims may consider some of these human needs unrealistic or, in some cases, misconstrued. For this reason, a human-centred approach proffers opportunity for tailored measures to dealing with the various peculiarities of human trafficking within context. Service providers taking a human rights-based approach may go by the books to offer the usual physical and psychological support to victims without consideration of what victims consider to be support or protection. For instance, in some cases, despite

25 *Connecticut Journal of International Law* pp. 49 – 80; see also Conny Rijken and Koster, Dagmar, *A Human Rights Based Approach to Trafficking in Human Beings in Theory and Practice* (May 2008). Available at SSRN: <http://ssrn.com/abstract=1135108> or <http://dx.doi.org/10.2139/ssrn.1135108> (Accessed 20th May 2013); Anne Gallagher and Nicole Karlebach, *Prosecution of Trafficking in Persons Cases: Integrating a Human Rights-Based Approach in the Administration of Criminal Justice*, United Nations High Commissioner for Human Rights, Expert Meeting of the UN Special Rapporteur on trafficking in persons, especially women and children, Ms Joy Ngozi Ezeilo, 4th July, 2011, Geneva, Switzerland; see also Tom Obokata, ‘A Human Rights Framework to Address Trafficking of Human Beings’ (2006) 24 *Netherlands Quarterly of Human Rights*, 3, 379-404; Anne Gallagher, ‘Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis’ (2001) 23 *Human Rights Quarterly*, No. 4, p. 975.

⁵³ Peter Jones, “Human Rights and Diverse Cultures: Continuity or Discontinuity?” in Caney S and Jones P. (eds.) *Human Rights and Global Diversity* (Frank Cass 2001).

the support some victims may receive within the protection framework of anti-trafficking, some of them often refuse to be rescued while others may sometimes go back to their traffickers. This mainly stems from the fact that their underlining needs have not been met. For instance, although uniting victims with their families as part of repatriation may seem appropriate from a human rights viewpoint, certain fears or stigmatization within their communities may hinder their ability to recover from their trafficking experiences. These fears/stigma varies across societies and therefore must be dealt with for safe repatriation in order to avoid re-trafficking or further abuse. Most importantly, such possibilities must be integrated into anti-trafficking policies as part of inculcating a human-centred approach.

The human-centred approach expands the 'protection' framework, which has been significantly downplayed within the Trafficking Protocol as the next chapter highlights. With regards to the scope of this thesis, specific focus is assigned to victims from Nigeria and their status as non-citizens in the United Kingdom. While trafficking has been established within this section as a human rights violation that requires a human-centred approach, it conflicts with the interest of states in areas most crucial to the addressing human trafficking as would be explored in the coming section. Specifically, this conflict is elucidated through three major typologies of migration, prostitution and labour

Trafficking Typologies: State-Centric Vs. Human-Centred Perspectives

Human trafficking is a multidimensional subject and therefore has orchestrated debates from diverse scholarships including migration, feminism, economic, anthropology, politics and law. In the absence of a well-developed theoretical framework of human trafficking this section utilises Morehouse's 'three typologies' as a structure to explore the contested viewpoints of both states and human interest. Although there are many perspectives to trafficking, these three

typologies have dominated the theoretical concepts of human trafficking in existing literatures since the international community's definition of trafficking in 2000.⁵⁴ They include trafficking as a by-product of forced labour; a symptom of migration facilitated by organized crime and a result of prostitution.⁵⁵ These different underpinnings of trafficking tend to mean different things to both states and non-state actors.

Such conflation emerges in their competition for the right to be 'enunciators' in Foucault's terms, following the struggles between agencies and mandates of ownership of the issue.⁵⁶ The conceptualization of this conflict in understanding the concept of trafficking is not only vital for the assessment or evaluation of state practices against trafficking but also exposes weaknesses and inaccuracies in the ways the problem has been conceptualized.⁵⁷ A state-centric perspective of human trafficking, especially within a cross-border context, focuses on the aspects of transnational crime - migration and national security. While migration and security are also important, from a human-centred perspective, it focuses on these issues from a socio-economic viewpoint. If states are to effectively address trafficking, they need to fully appreciate the human-centred perspective across these three typologies. Starting with the typology of migration, the next sub-section explores how both states and non-state actors have constructed migration within trafficking.

⁵⁴ Chritsal Morehouse, *Combating human trafficking: Policy Gaps and Hidden Political Agendas in the USA and Germany* (VS Verlag 2009) 75.

⁵⁵ *ibid* 75-89.

⁵⁶ Susan Kneebone and Julie Debeljak, *Transnational Crime and Human Rights: Response to Human Trafficking in the Greater Mekong Subregion* (Routledge 2012) 30.

⁵⁷ Janie Chuang, 'The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking' (2006) 27 *Michigan Journal of International Law*, p.158.

As a Symptom of Migration

Migration is an important aspect of this study especially where traffickers move their victims [il]legally across borders. Although some scholars argue that migration and trafficking are separate phenomena, they cannot be meaningfully separated.⁵⁸ According to Evans and Bhattarai, trafficking normally involves migration but migration does not always involve trafficking.⁵⁹ There have been strong political pressures to divorce the debate on trafficking from the more general phenomenon of migration and to treat 'smuggling and trafficking' as distinctive phenomena.⁶⁰ This distinction according to Anderson and O'Connell Davidson is relatively different in the perceptions and priorities for key advocates - those with the political priority to issues of national sovereignty/border control and those whose primary concern is to promote and protect the rights of migrant workers.⁶¹ In a similar light, Boonpala and Kane submit that the uneven handling of trafficking across various entities is actually 'more a question of approach and context than a difference of intent'.⁶² More problematic in this typology of migration, is the fact that there is no clear demarcation between trafficking and smuggling despite its legal definitions. Both concepts can be 'two sides of a coin' with a great deal of 'crossover'.⁶³

⁵⁸ Blanka Hancilova and Petra Burcikova, "Anti-trafficking and Human Rights" in Christien van den Anker and Ilse van Liempt (eds.) *Human Rights and Migration: Trafficking for Forced Labour* (Palgrave Macmillan 2012); Mike Kaye, *The Migration-Trafficking nexus: Combating Trafficking Through The Protection of Migrants Human Rights* (Anti-Slavery International 2003).

⁵⁹ Catrin Evans and Pankaja Bhattarai, *Trafficking in Nepal: Intervention Models - A Comparative Analysis of Anti-Trafficking Intervention Approaches in Nepal* (The Asia Foundation & Population Council- Horizon project 2000).

⁶⁰ *ibid.*

⁶¹ Bridget Anderson and Julianne O'Connell Davidson, *Is Trafficking in Human Beings Demand Driven? A Multi-Country Pilot Study* (IOM Research Series No. 15 IOM 2003).

⁶² Boonpala, Panudda and June Kane, *Trafficking of Children: The Problem and Responses Worldwide* (ILO/IPEC 2001) 15.

⁶³ See Blanka Hancilova and Petra Burcikova, 'Anti-trafficking and Human Rights' (n 58) 228.

From a state-centric perspective, trafficking threatens the national border security of states. It is thereby problematized as an immigration dilemma for destination states. For instance, the United Kingdom Action Plan on Tackling Human Trafficking makes it clear that trafficking must be tackled first, as an 'immigration crime'.

“As human trafficking often involves crossing international borders, it is essential that measures to address it are mainstreamed into the UK’s immigration system. Dealing effectively with human trafficking will be an integral part of the new Border and Immigration Agency’s business, delivering the Agency’s objectives to strengthen our borders and ensure and enforce compliance with immigration laws.”⁶⁴

Viewing human trafficking as an immigration problem is not so much the problem; it is the response it prompts towards combating human trafficking that raises concern. Scholars like Hathaway insist that this sort of approach drives the ongoing migration agendas of states over the human rights of victims of trafficking.⁶⁵

Trafficking from a state-centric migration viewpoint especially in Europe stems from a wider regional politics against migration from non-EU countries. Over the last twenty years, receiving countries in Europe have increasingly portrayed migrants and immigrants as a source of threat and an obstacle to the

⁶⁴UK Action Plan on Tackling Human Trafficking, (Home Office and Scottish Executive 2007) 7.

⁶⁵ James Hathaway C., 'The Human Rights Quagmire of Human Trafficking' (2008) 49 *Virginia Journal of International Law* (1) pp. 1 – 59.

governance and maintenance of the liberal world system'.⁶⁶ For this reason, illegal migration into Europe has become a central issue in its political agenda following the ongoing development of its regional legal frameworks. Despite highlighting the need to address illegal immigration from its origin and the need to safeguard victims of trafficking in the process, as reinstated by the European Council of Tampere in 1999, only border security seems to dominate the discussion and legislative drafts.⁶⁷ Geared towards strengthening Europe's borders, the fight against illegal immigration in the context of combating smuggling and trafficking became a political priority for member states. Subsequently, states insist that tightening migration channels to make it difficult for 'others' to move across fortress Europe should be a way forward for tackling trafficking.

Migration into Europe is de facto reserved for only those who are highly skilled or economically and otherwise privileged.⁶⁸ Hence, illegal migrants often face deportation when they come to the attention of law enforcement authorities. Furthermore, even though international human rights law like the UDHR insists on the freedom of movement, states have the undisputed right to determine which aliens they let into their jurisdiction. The only exception is derived from the Geneva Convention's non-refoulement clause, which prohibits an alien's

⁶⁶ Maggie Ibrahim, 'The securitization of migration: a racial discourse' (2005) 43 *International Migration* No. 5 pp. 163-87, p.172 cited in Blanka Hancilova and Petra Burcikova, 'Anti-trafficking and Human Rights' (n 58) 228; see also Emiliano Garcia Coso, "The EU Combat against Illegal Immigration" Miliano Garcia Coso, "The European Union Effort to combat illegal migration, smuggling and trafficking in Human Beings: impact on Spanish Law" in Shiro Okubo and Louise Shelley, *Human security, Transnational Crime and Human Trafficking: Asian and Western Perspectives* (Taylor and Francis 2013) 198.

⁶⁷ ibidi Emiliano Garcia Coso, 'The EU Combat against Illegal Immigration' (n 66) 200.

⁶⁸ See Blanka Hancilova and Petra Burcikova 'Anti-trafficking and Human Rights' (n 58) 228.

expulsion under certain conditions.⁶⁹ It is important however, to bear in mind that the enactment of this clause is highly dependent to the extent to which these states conclusively identify a person as meeting the conditions that may prompt this clause.

From a human-centred viewpoint, restrictive borders and the failure for source countries to promote socio-economic rights increases the vulnerabilities of persons to trafficking. Socio-economic inconsistencies; socio-cultural values of migration intertwined with migration restrictions serve as a root cause of trafficking. From a human rights perspective, the vulnerability of persons to trafficking starts from the lack of socio-economic opportunities from origin states where state government do not take all measures to respect and fulfil their obligations to protect their citizens. According to Todres, “human trafficking persists, in part, when societies tolerate denials of the dignity and humanity of vulnerable individuals”.⁷⁰ This includes the denial of economic and social rights, discrimination, and poverty.

According to a Human Rights Watch Report, although “Nigeria has produced several hundred billion dollars worth of oil since its independence in 1960... ordinary Nigerians have derived appallingly little benefit from all that wealth”.⁷¹ The government’s performance in “providing for basic health and education services has widely been viewed as a shocking and disastrous failure”.⁷² As a result, citizens of Nigeria seek other means to a better life than what they currently experience through immigrating to developed countries to escape

⁶⁹ See Article 33 of the Geneva Convention.

⁷⁰ Jonathan Todres, ‘Widening Our Lens: Incorporating Essential Perspectives In The Fight Against Human Trafficking’ (2011) 33 *MICH. J. INT’L L.* p. 67.

⁷¹ Human Rights Watch, ‘Chop Fine: The Human Rights Impact of Local Government Corruption and Mismanagement in Rivers State, Nigeria’ (2007) Volume 19, No. 2(A) p.1.

⁷² *ibid* 2.

poverty. However, poverty as one of the root causes of trafficking is a major factor but a simple fact. According to Feingold,

“Trafficking is often migration gone terribly wrong. In addition to the push of poverty or political and social instability, trafficking is influenced by the expanded worldviews of the victims – the draw of bright lights and the big cities.”⁷³

The social construction of migration explains some of the inherent vulnerability to trafficking. Many Nigerians have often viewed migration as a means to escape the socio-economic issues (like poverty) that they face in their country of origin. While poverty is a common push factor for migration and trafficking, poverty is also relative to the socio-cultural values of various communities. Many who migrate or fall into the hands of traffickers are not always from extremely poor backgrounds.⁷⁴ A good number of Nigerian victims of trafficking are also persons from average backgrounds and may be university graduates or others who have paid large sums to be smuggled to the UK only to find themselves in a trafficking situation.⁷⁵ Economic factors being a major reason for migration in this context, some Nigerians often make rational decisions to migrate because “a cost-benefit calculation leads them to expect a positive return”.⁷⁶ This reflects in the socio-cultural value of migration in Nigeria as a significant determinant or the starting point of vulnerability to trafficking for some intending migrants. This

⁷³ David A. ‘Feingold, Human Trafficking’ (2005) *Foreign Policy*, No. 150, 32.

⁷⁴ Kevin Bales, *Understanding Global Slavery: A Reader* (University of California Press 2005).

⁷⁵ NAPTIP, *The Dynamics and Contexts of Trafficking in Persons: A National Perspective* (NAPTIP undated).

⁷⁶ Douglas S. Massey, Joaquin Arango, Graeme Hugo, Ali Kouaouci, Adela Pellegrino and J. Edward Taylor, ‘Theories of International Migration: A Review and Appraisal’ (1993) 19 *Population and Development Review* No. 3, 434.

by no means is intended to downplay the possible gains that migration may prompt.

However, vulnerability often increases due to socio-cultural expectations from migration that increases submission to trafficking and the 'threshold of exploitation'. Threshold of exploitation in this context resonates from the extent to which exploitation is constructed by victims and their communities and determines their tolerance, resilience or passive attitude to trafficking. In other words, exploitation becomes what they make of it, even though the Trafficking Protocol clearly defines what exploitation constitutes.⁷⁷ The passive attitude of some victims and their communities reflects in their view of exploitation as a "rough passage" that they have to get through in order to achieve a better life for themselves and their families. This notion is not only held by Nigerians but also held by other Global South countries where poverty may be prevalent. Anders Lisborg used the Thai proverb, "Pai tai auo dap na" that literally means "go prepared to die in front of the sword" to describe the permissive and passive attitude of the Thai people towards bonded labor – a type of modern slavery.⁷⁸

The problem with the construction of migration in Nigeria is the fact that it is often misguided due to the lack of factual or 'one-sided knowledge about emigrating. Ignorance, the global media, Internet access and the "success stories" of returning migrants or those whose families have profited from remittances, often boosts this high expectation of economic opportunities.⁷⁹ Some of the Nigerian diaspora in Britain demonstrate their 'success' by building their 'big' houses in their villages in Nigeria and driving glitzy cars whilst visiting

⁷⁷ Trafficking Protocol 2000, article 3(a).

⁷⁸ Anders Lisborg, *Bodies across Borders: Prostitution Related Migration from Thailand to Denmark* (Working Paper 139 Department of Geography Roskilde University Denmark 1998).

⁷⁹ Sally Cameron and Edward Newman, *Trafficking in Human\$: social, cultural and political dimensions* (United Nations University Press 2008) 22.

home briefly. They give testimonies of how they have suffered for a length of time in Europe and 'succeeded' later. Many who aspire to seek a better life often view such signs of success as a motivating factor to want to migrate to Britain without really understanding the reality behind "these success stories". Blindfolded by the temptation to replicate this "success", many of them fall into the hands of traffickers. Despite the awareness of the sort of exploitation they may encounter, 'success stories' increases the threshold of exploitation for those who are desperate to migrate for a better life, even though it means being trafficked. To this extent, some families go as far as investing their children in the business of trafficking.⁸⁰

Nevertheless, it is important to make clear that some of these families while aware of the conditions of their investment, do not necessarily perceive the operation as trafficking but rather an investment for a better life. Some Nigerians go as far as classifying it as 'hustling'.⁸¹ For some of these Nigerians, the end justifies the means. They rationalize and compare the inherent exploitation experienced during trafficking to their sufferings resultant from poverty in their state of origin. Hence, despite the increased awareness of human trafficking, many still insist on putting themselves at great risk. For instance, a victim of trafficking from Nigeria to the UK stated,

"Probably if I was aware of trafficking and the problems with it, I think I still would have come. To be honest, because my situation in Nigeria at the time was just really bad, poverty, and I was having all these problems with family and things like that. So yeah, I would have still come – there's not

⁸⁰ Interview with NAPTIP official in Abuja Nigeria [December 2011]; see also Victor Nnamdi Opara, "Trafficking Contracts: Myth or Reality?: Re-Examination of Consent in Human Trafficking" in Toyin Falola and Niyi Afolabi (eds.) *The Human Cost of African Migrations* (Routledge 2007).

⁸¹ Victims who were interviewed for this study never mentioned the word 'trafficking' as a description of their experiences.

any leaflet or flag or any awareness saying please stop the traffic... the children will go and say, please I want to be trafficked because I'm tired of this country - even if we should get the town crier to run around the whole of Nigeria to ring a bell that... telling the parents 'don't send your kids', they're not going to listen – its rare for a poor person to send a rich person away and say 'No, don't help my family' ..."⁸²

There is a general consensus that people will still move across borders but this is further complicated by the restrictive nature of immigration from Nigeria to prominent developed countries like the UK. For instance, where migration from Nigeria to Britain is mostly directed to the 'best and brightest', people who do not meet this criteria have to seek other means to fulfil their quest for a better life. Consequentially, current migration policies in receiving countries also foster the vulnerability of third country citizens to 'exploitation by smugglers-cum-traffickers or unscrupulous employers'.⁸³ With strict border restriction policies of the UK and the further tightening as a strategy to reduce trafficking, migration is made a scarce and difficult process for Nigerians who choose to emigrate.⁸⁴ Generally, migrating with a Nigerian passport can seem like a 'curse' for many, as the country is often blacklisted by many nation states except for ECOWAS and few states that operate relevant free movement systems.

Where restrictions are placed on the international movement of third country nationals, these restrictions are sometimes doubled for Nigerians, in terms of the level of criteria to obtain visas from a number of foreign embassies. Hence, many migrants from Nigeria are prone to experiencing difficulties in meeting the

⁸² Myriam Cherti, Jenny Pennington and Peter Grant, *Beyond Borders, Human Trafficking From Nigeria to the United Kingdom* (Institute for Public Policy Research (IPPR) 2013).

⁸³ See Blanka Hancilova and Petra Burcikova, 'Anti-trafficking and Human Rights' (n 58).

⁸⁴ See above UK Action Plan on Tackling Human Trafficking, 2007.

criteria for international migration, thereby, causing a lack of trust on legal immigration systems. As a result, some may seek immigration documents elsewhere, mainly from smugglers and in some cases, traffickers.⁸⁵ The scarcity of in attaining legal migration gives rise to a lucrative niche for entrepreneurs and institutions dedicated to promote international movements whether legally or illegally for profit thus, 'yielding a black market in migration'.⁸⁶ This ever-growing underground market creates conditions that breed exploitation and victimization. Hayter contends that existing border controls lead potential migrants into the hands of unscrupulous agents.

According to Hancilova and Burcikova, these restrictive migration channels particularly affect women mainly because they are more likely to migrate into unskilled, unregulated sectors, in particular sex work and domestic services.⁸⁷ As these areas are often not seen as "work" and may lack the required regulation and increase women's inability to access regulated migration and their propensity to seek unregulated work that renders them vulnerable. European policies on immigration may emphasize the need to safeguard victims of trafficking in their border securitization. However, this is only reactive rather than proactive. European policy on immigration does not address vulnerability. Even where victims of trafficking are intercepted at the borders, their immigration status often takes precedence over human rights especially where it concerns adults. Scholars like Green and Grewcock further contend that the intentions of protecting the rights of trafficked victims have been integrated into state policies of control and scrutiny and the wider political scheme of 'state

⁸⁵ Teresa Hayter, *Open Borders: The Case Against Immigration Controls* (2nd ed. Pluto Press 2004) 9.

⁸⁶ See note 76.

⁸⁷ See Blanka Hancilova and Petra Burcikova, 'Anti-trafficking and Human Rights' (n 58).

identity'.⁸⁸ Therefore, 'a hegemonic European character built upon principles of exclusion' is promoted.⁸⁹ With that in mind, anti-trafficking has been used as a tool for European receiving states to drive their ongoing immigration policies in the facade of protecting the rights of victims.

When vulnerable people become victims, traffickers often use states' restrict and selfish response to immigration as a tool to intimidate the victims in order to keep exploitation. They do this by brainwashing victims that law enforcement authorities will arrest and deport them (victim). However, this is often confirmed by state's approach trafficking. Traffickers seize the victims' travel documents or even threaten to report the victim to the border authority.⁹⁰ Restrictive UK immigration policies indirectly results in less protection for victims of trafficking due to the fact that a clamp down on illegal migration often tends to undermine other aspects of trafficking cases.⁹¹ The fear of deportation keeps victims at the mercies of their traffickers. Thus, restrictive immigration has remained ammunition for traffickers to gain control over their victims. Nigerian traffickers who have being prosecuted in the UK are mostly nationalized within the British system hence; immigration has not been a personal problem for them. Victims are unable to come forward to the authorities or agree to be referred on the NRM because they are illegal immigrants.⁹² The available evidence of a victim's deportation further complicates issues.⁹³ The NRM is an identification

⁸⁸ P, Green and M. Grewcock, 'The War Against Illegal Immigration' (2002) 14 *Current Issues in Criminal Justice*, No.1 cited by Maggy Lee, *Trafficking and Global Crime Control* (SAGE Publications 2011) 35.

⁸⁹ Ibid.

⁹⁰ See Gary Craig et al, *Contemporary slavery in the UK: Overview and key issues* (n 7).

⁹¹ Lorena Arocha, *The Wrong Kind of Victim: One Year On – An Analysis of UK measures to Protect Trafficked Persons* (The Anti Trafficking Monitoring Group. Anti-Slavery International 2010)

⁹² Ibid.

⁹³ Ibid.

mechanism developed to identify victims of trafficking by two competent authorities – the UK Human Trafficking Centre (UKHTC) and the UK Border Agency (UKBA).

The work of UKBA can also be called to question with regards to sustaining the re-trafficking of potential victims from Nigeria. The UK migration approach to suppressing human trafficking to the UK has resulted to UKBA deporting potential victims of trafficking even before they cross the border.⁹⁴ These persons may be identified as potentially trafficked but may not be put through the NRM system for verification. As far as they do not cross the UK border, they are not the UK's problem. While deporting these persons may appear to save time and resources for the UK government, it only recycles the trafficking process. There is a lack of literature and intelligence around re-trafficking especially within this context. However, the risk remains obvious. On the other hand, those who are successfully identified as victims and qualify to receive support are likely to face repatriation as part of the anti-trafficking process. Although reintegrating survivors of trafficking into their country of origin may seem like a positive way of dealing with trafficking, this does not often appeal to Nigerian survivors of trafficking. As a result, most of these survivors are constantly in legal battles to remain resident in the UK on the grounds that they may be re-trafficked. While research to substantiate this claim is scarce, there are several conditions that often prompt these appeal including the stigmatization, lack of police protection in source country, economic insecurity and violent threats that transcends the understanding of the courts. The testimonies of victims who have been repatriated supports the true nature of the aforementioned conditions.

Survivors of trafficking from Nigeria often have to grapple with the stigma attached to prostitution. Sex is a sensitive subject in most African societies, and

⁹⁴ Interview with an NGO official in London [June 2011].

even in this day and age is still seen as taboo. On return and attempting to reintegrate into their communities, survivors have to deal with the stigma of failure and being perceived by their communities as carriers of deadly diseases contracted abroad and that they have also brought dishonour to their families.⁹⁵ In certain situations, repatriated survivors are often initially put in prison and sometimes, mistreated by Nigerian authorities upon return. As it is illegal for Nigerians to sell sex abroad, there is potential for prosecution.⁹⁶ According to Camilla, “parents had to look for money to come and bail them out from the prison”.⁹⁷ Without the appropriate police protection, some of these ‘survivors’ are in physical danger following the debt-bondage attached to their exploitation.

These factors could potentially lead to re-trafficking and therefore may justify the application of the non-refoulement principle. Non-refoulement protection is available under the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT).⁹⁸ The principle of non-refoulement encompasses a

⁹⁵ Aderanti Adepoju, ‘Review of Research and Data on Human Trafficking in sub-Saharan Africa’ (2005) Vol. 43 *International Migration* (1/2) pp. 83 - 4.

⁹⁶ Christiana Okojie, Obehi Okojie, Kokunre Eghafona, Gloria Vincent-Osaghae, and Victoria Kalu, *Trafficking of Nigerian Girls to Italy: Report of field survey in Edo State, Nigeria* (United Nations Interregional Crime and Justice Research Institute (UNICRI) 2003); For instance, the Edo State Criminal code in Nigeria Section 223 (b) makes it an offence for any female person to knowingly offer herself for the purpose of prostitution or to carry out any immoral act within or outside Nigeria punishable by two years imprisonment or a fine of N 20,000 (\$154).

⁹⁷ May-Len Skilbrei and Marianne Tveit, “Mission Impossible? Voluntary and Dignified Repatriation of Nigerian Victims of Trafficking” in Thanh-Dam Truong, D. Gasper (eds.) *Transnational Migration and Human Security: The Migration-Development-Security Nexus* (Springer 2011) 141.

⁹⁸ In reference to non-refoulement, States are bound not to transfer any individual to another country if this would result in exposing him or her to serious human rights violations. Specifically, the right to life is guaranteed under Article 6 of the

protection regime where the refugee definition evolves in tandem with human rights principles set out under the CAT and the ICCPR. Although it applies mostly to refugees⁹⁹, it could be extended to trafficking cases especially when the government of some origin countries are unable to protect their citizens who are vulnerable to the persecution of their traffickers.¹⁰⁰ The principle of non-refoulement applies when there is evidence that a person would be subjected to inhumane treatment perpetrated by non-State actors.¹⁰¹ Although cases like Mohammed Lemine Ould Barar v. Sweden were unsuccessful on the grounds of this principle¹⁰², the principle is gradually emerging as complementary to the

ICCPR and, for example, Article 2 of the 1950 ECHR; Article 4 African Charter of Human Rights (ACHR); Article 4 of the African (Banjul) Charter on Human and People's Rights.

⁹⁹ Article 33 of the Convention relating to the Status of Refugees 1951, 189 United Nations Treaty Series 150, as revised by the Protocol Relating to the Status of Refugees, 1967. Article 33(1) of the 1951 Convention provides: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion."

¹⁰⁰ Protection under the CAT and the ICCPR is not constrained by the exclusion clauses of the Refugee Convention but operates as a form of human rights protection premised on states. See Udara Jayasinghe and Sasha Baglay, 'Protecting Victims of Human Trafficking Within a 'Non-Refoulement' Framework: is Complementary Protection an Effective Alternative in Canada and Australia?' (2011) 23 *International Journal for Refugee Law* (3) pp. 489-520; see also Tom Obokata 'A Human Rights Framework to Address Trafficking of Human Beings' (2006) 24 *Netherlands Quarterly of Human Rights* No. 3, pp. 379 – 404.

¹⁰¹ See *Bensaid vs United Kingdom*, Application No. 44599/98, Judgement of 6 February 2001, para. 34. Cited in Obokata, 'A Human Rights Framework' (n 100) 392.

¹⁰² The case was filed on the grounds that the expulsion of a person to a State where he/she would be subjected to slavery or forced labour might raise issues under the obligation to prohibit torture. The applicant complains that his deportation to Mauritania would involve a violation of Article 3 of the Convention, which provision reads as follows: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." See *Mohammed Lemine Ould Barar v. Sweden*, 42367/98, Council of Europe: European Court of Human Rights, 19 January 1999, available at:

protection of trafficking survivors.¹⁰³ One of the ways to secure the principle of non-refoulement is through issuing temporary or permanent residence permits so that those trafficked can legally reside in a given State where they can be safeguarded. However, with the limitation of knowledge on trafficking and its evolving dangers for victims, this principle remains difficult to achieve within the anti-trafficking discourse.

At the regional level, the EU adopted a Council Directive on the Short-Term Residence Permit Issued to Victims of Action to Facilitate Illegal Immigration or Trafficking in Human Beings. However, this is conditional to victims' cooperation with the Competent Authorities in the provision of information relevant to investigating the crime.¹⁰⁴ In the absence of specific assistance programs for victims of human trafficking the Refugee Convention has proved to be a useful alternative, even though it suffers some conceptual limitations from being the best protection solution.¹⁰⁵ That said, in order to understand Nigerian survivors' attitudes towards repatriation to Nigeria, it is important to consider what they left behind in their home country, which motivated them to leave Nigeria in the first place.¹⁰⁶ The same attitude to migration also applies to the next typologies in form of labour exploitation.

<http://www.refworld.org/docid/3ae6b6a88.html> [accessed 2 June 2013]; See also Obokata, 'A Human Rights Framework' (n 100) 392.

¹⁰³ See UN High Commissioner for Refugees, *The Principle of Non-Refoulement as a Norm of Customary International Law. Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1954/93*, 31 January 1994, available at: <http://www.refworld.org/docid/437b6db64.html> [accessed 2 June 2013]; see also Anne Gallagher, *International Law of human Trafficking* (Cambridge University Press 2010).

¹⁰⁴ Council Directive 2004/81/EC of 29 April 2004.

¹⁰⁵ See Jayasinghe and Sasha Baglay, 'Protecting Victims of Human Trafficking Within' (n 100) 518-19.

¹⁰⁶ May-Len Skilbrei and Marianne Tveit, 'Mission Impossible?' (n 96) 144.

As a By-product of Forced Labour

Human trafficking is a subset of forced labour and vice versa. The ILO posits that forced labour emerges from privately imposed labour that includes both commercial sexual exploitation and economic exploitation.¹⁰⁷ As a subset of trafficking, it is one of the different types of exploitations that constitute trafficking. Nevertheless, forced labour is not identical to trafficking but in both cases, there are concerns of labour standards violations. According to Beirnaert, it is difficult to draw a clear line demarcating “exploitation as a violation of labour rights from forced labour or human trafficking specifically”.¹⁰⁸ In response to this blur in understanding the latter, the ILO has set out indicators towards viewing trafficking as forced labour along a continuum of labour exploitation and to see the protection from such abuse along the continuum to suppress and prevent the process leading to forced labour.¹⁰⁹ This will require viewing trafficking for labour exploitation mainly as a subset of forced labour which would not only concentrate on the ‘real problem’ (the exploitation of workers) and avoid the conflation with illegal migration as explored earlier in this chapter.¹¹⁰ According to Morehouse, placing trafficking in the larger framework of labour exploitation overcomes gender-specific conceptions of trafficking.¹¹¹ Nevertheless, there is still a disconnection between trafficking and migration for

¹⁰⁷ See ‘A Typology of Forced Labour’ in ILO Director-General, “A Global Alliance Against Forced Labour: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 2005,” International Labour Conference, 93rd Session 2005 Report I (B).

¹⁰⁸ Jeroen Beirnaert, “A Trade Union Perspective on Combating Trafficking and Forced Labour in Europe in Combating Trafficking” in Conny Rijken (ed.), *Human Beings for Labour Exploitation*, (Wolf Legal Publishers 2011) 471.

¹⁰⁹ Klara Skrivankova, *Between Decent Work and Forced Labour: Examining the Continuum of Exploitation* (Joseph Rowntree Foundation Programme Paper 2010).

¹¹⁰ TUC EUIRD, Tackling trafficking through workers’ rights: TUC response to the January 2006 Home Office consultation (London 2006) <http://www.tuc.org.uk/international/tuc-11911-f0.pdf>

¹¹¹ See Morehouse, *Combating human trafficking* (note 55) p. 81.

work stemming from a widespread reluctance by States and others to include child labour and enforced prostitution as “work”. There is also the challenge that emerges from the dealing with typical forms of trafficking within the private sphere including domestic servitude. As a result of such disconnection, the rights of trafficked persons as ‘workers’ has been rarely articulated.¹¹²

In light of addressing human trafficking from a labour exploitation angle, there has been a growing need to address the demand and supply aspect of cheap labour. On one hand, one could also argue that poverty and desperation experienced in countries like Nigeria have expanded supply and demand accordingly.¹¹³ Anderson and Davidson have highlighted that often, it is the high supply of migrants who are willing to undertake such cheap labour that may also fuel demand.¹¹⁴ In other words, if industrialists can find cheaper labour, they will take advantage of it. According to a report by Anti-Slavery International, ‘the demand for cheap labour and the supply of migrant workers are part of a structural process in the global economy’ however there are still options for governments, agencies and individuals to address it.¹¹⁵

From a state-centric perspective, this is often viewed from a criminal justice framework that brings with it an approach of saving victims from perpetrators without acknowledging them as workers and active agents in the labour market.¹¹⁶ Additionally, states’ migration regulation as a means to combat trafficking as previously explored comes into play in this typology. Most migrants

¹¹² Anne Gallagher, *International Law of human Trafficking* (Cambridge University Press 2010) 166.

¹¹³ Elizabeth M. Wheaton, Edward J. Schauer and Thomas V. Galli, ‘Economics of Human Trafficking’ (2010) 48 *International Migration* (4) pp. 114 -141.

¹¹⁴ Bridget Anderson and Julia O’Connell Davidson, *Trafficking – a demand led problem? A multi-country pilot study* (Save the Children 2002).

¹¹⁵ Anti-Slavery International, *Trafficking for Forced Labour in Europe: Report on a study in the UK, Ireland, the Czech Republic and Portugal* (Anti-Slavery International 2006) 18.

¹¹⁶ See Beirnaert, ‘A Trade Union Perspective on Combating Trafficking’ (n 108) 478.

often move for better work as the ILO estimated in 2008, out of 191 million migrants worldwide, 95 million left their origin country directly in the search for better work.¹¹⁷ A focus on migration overlooks the need to adequately address real labour shortages on national labour markets that increases demand. Where migrant workers' residence status is tied to employment, it has generated a tool for exploitation and trafficking.¹¹⁸ The continuous demand for cheap labour in industrialized countries like Britain have created and remained a "pole of attraction for migrant workers".¹¹⁹ For instance, the UK's food and drinks industry needs to find 118,000 skilled workers to replace those who would retire from or leave the industry.¹²⁰

Despite the existence of laws and policies around this issue, responses are neither comprehensive enough nor target perpetrators effectively. The complexities of migration and labour regulations in receiving countries like the UK remain a barrier.¹²¹ Rather than focus on protecting the rights of irregular migrant workers and enabling channels for economic migration as a preventative measure of trafficking, EU policies "prioritises repressive migration policy over clear policies against labour exploitation".¹²² The introduction of the Employers' Sanction Directive that provides minimum standards on sanctions and measures against employers of illegal third-country nationals is a typical

¹¹⁷ ILO, *In search of Decent Work: Migrant workers' rights: A manual for trade unionists* (International Labour Office 2008).

¹¹⁸ see Beirnaert (n 105) 478.

¹¹⁹ Cited in Bridget Anderson and Julia O'Connell Davidson, *Trafficking – a demand led problem? A multi-country pilot study* (Save the Children 2002).

¹²⁰ UK industry faces increased demand for skilled workers – Food Production daily

<http://www.foodproductiondaily.com/Processing/UK-industry-faces-increased-demand-for-skilled-workers> (Accessed 20th May 2012).

¹²¹ Cited in Anti-Slavery International, *Trafficking for Forced Labour in Europe* (n 115) 18.

¹²² see Beirnaert (n 105).

example.¹²³ These sorts of policies often drive third-country nationals like those from Nigeria into the hands of unofficial intermediaries and put them at risk to criminal organisations that profit from labour exploitation.¹²⁴ Trade unions have often campaigned for the rights of migrants who are undocumented for reasons beyond their control to be given amnesty. However, this may be futile if better migration regulations are not adopted.. The absence of regulations that protects the rights of undocumented migrant workers 'benefits no one but abusive and exploitative employers'.¹²⁵

Even where state authorities have attempted to rescue those in forced labour, victims' identification is clouded by a migration agenda. Specifically, this difficulty often lies in the inability of relevant authorities to demarcate criminals from victims. As a result, victims are often mistaken as criminals and deported without compensation for any abuse suffered. State authorities such as the police, entrusted with the competence to control workplaces to identify trafficked workers do not have a mandate to protect workers and therefore, police raids have often been counter-productive.¹²⁶ According to the OSCE, if trafficking for labour exploitation is to be tackled, focus needs to be placed on promoting

"Decent work... [that] build societies free from the cancer of organised crime and corruption, based on the principles of non-discrimination and

¹²³ Directive 2009/52/EC of the European Parliament and of the Council of 18 June, 2009.

¹²⁴ ETUC, PICUM, Solidar, Joint comments of ETUC, PICUM and Solidar on expected commission proposals to fight 'illegal' employment and exploitative working conditions (26 April 2007) <http://www.etuc.org/a/4325> [Accessed 13th of August 2013].

¹²⁵ see Beirnaert (n 105) 479.

¹²⁶ Conny Rijken (ed.) *Human Beings for Labour Exploitation* (Wolf Legal Publishers 2011).

the rule of law, and inspired by the ideal of social justice, in which human rights and fundamental freedoms can really flourish.”¹²⁷

Non-citizens sometimes do not often qualify for benefits or gain access to work and therefore, in order to survive they enter the informal labour market to support their families. In many cases, they are willing to work for below minimum wage due to the limited choices available to them and the rationalized fact that the remuneration seem better than opportunities available to them in their home country.¹²⁸ Therefore, as stated by Hancilova and Burcikova,” drawing a line between exploitative and non-exploitative conditions will, obviously, be inherently difficult, for there are no objective criteria on how to balance the need to protect against exploitation with ‘the right to be exploited’”¹²⁹

The current state approach to labour exploitation disempowers migrant workers’ including factors like language barrier, limited knowledge of rights or capacity to access rights, tenuous migration situations, family obligation, etc.¹³⁰ The International Convention on the Protection of the Rights of All Migrants Workers and Members of their Families was adopted by the General Assembly in 1990 to expand upon existing rights.¹³¹ The Convention explicitly extends fundamental

¹²⁷ OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Maria Grazia Giammarinaro, press statement on the occasion of International Day for Social Justice (20 February 2011) <http://www.osce.org/cthb/75678> [Accessed 15th of August 2013].

¹²⁸ PICUM, *Undocumented Migrants Have Rights: An Overview of the International Human Rights Framework* (PICUM 2007).

¹²⁹ Blanka Hancilova and Petra Burcikova, ‘Anti-trafficking and Human Rights’ p. 237

¹³⁰ Fiona David, ‘Labour Trafficking’ (2010) *Australian Institute of Criminology, Research and Policy Series nr 108* Canberra, p. 13.

¹³¹ J. Lonroth, The International Convention on the Protection of the Rights of All Migrants Workers and Members of their Families in the Context of International Migration Policies: An Analysis of Ten Years of Negotiations (1991) *International Migration Review* No. 24 p. 721.

human rights to all migrant workers and their families, whether documented or undocumented.¹³² The Convention obliges State Parties to protect all migrant workers “against violence, physical injury, threats and intimidation”.¹³³ According to Gallagher, the Convention was developed ‘as a mainstream human rights issue’, even though ‘its sole reference to trafficking is brief and premlar’.¹³⁴ Despite the protection provided within this Convention, not many states are signatories or have ratified the Convention. As of July 2013, the Convention has only forty-six (46) parties, thirty-five (35) signatories and twenty-nine (29) ratifications.¹³⁵

Although Nigeria accessioned the Convention in July 2009, the UK is not a party or signatory to the Convention. In spite of the global campaign to ratify this Convention, Gallagher insist that ‘the current situation is not expected to change in the near future’, especially in terms of prompting the obligation of destination states.¹³⁶ While not all migrant workers are trafficked, many trafficked persons are migrant, at least within the case study of this thesis. There is an aspect of inclusiveness also compromised by this Convention in Article 3 where it exempts certain categories of persons including refugees and stateless persons. This exclusion is on the basis that peoples falling within these categories are protected under other international instruments. Given that the Trafficking Protocol was adopted seven years after this Convention, such exclusion may include trafficked person on the latter basis.¹³⁷ As such, it becomes more of an

¹³² Gallagher (n 112) 170.

¹³³ International Convention on the Protection of the Rights of All Migrants Workers and Members of their Families – article 16(2).

¹³⁴ Gallagher (n 112) 170-1.

¹³⁵ United Nations, Treaty Series, vol. 2220, p. 3; Doc. A/RES/45/158. http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-13&chapter=4&lang=en [Accessed 15th July 2013].

¹³⁶ Gallagher (n 112) 173.

¹³⁷ *ibid.*

advocacy tool rather than a source of substantive rights like other widely accepted international human rights treaties.¹³⁸

Nevertheless, in applying principles of equality and non-discrimination, States cannot treat documented and undocumented migrants, citizens or non-citizens differently to the extent that harms human rights. International law prohibits the discrimination of trafficked persons in substance or procedural law, policy or practice on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.¹³⁹ With regards to legal status and undocumented migrants, an advisory opinion issued by the Inter-American Court of Human Rights in 2003 affirms, “States may not discriminate or tolerate discriminatory situations that prejudice human rights”.¹⁴⁰ The Court adds that, while it does not encourage States or individuals in a State to offer employment to undocumented migrants, in a situation where these migrants are engaged in work, they immediately possess labour rights.¹⁴¹ As such, they cannot be discriminated against because of their immigration status.

Beyond the role of international human rights law, the way certain cultures within Nigeria construct labour especially with regards to child labour and domestic servitude is very crucial to understanding one of the root causes of

¹³⁸ *ibid* 176.

¹³⁹ Universal Declaration of Human Rights, article 2; International Covenant on Civil and Political Rights, articles 2 (1) and 26; Convention on the Rights of the Child, article 2; Migrant Workers Convention, article 7; International Covenant on Economic, Social and Cultural Rights, article 2 (2); Convention on the Rights of Persons with Disabilities, article 6; European Convention on Human Rights, article 14; American Convention on Human Rights, article 1 (includes “economic status”); African Charter on Human and Peoples’ Rights, article 2 (includes “fortune”). Non-treaty source: Cairo Declaration on Human Rights in Islam, article 1.

¹⁴⁰ Inter-American Court of Human Rights in 2003 on Legal Status and Rights of Undocumented Migrants, at para 119 cited in Gallagher (n 112) 176.

¹⁴¹ Cited in Gallagher (n 112) 177.

trafficking for labour exploitation. This highlights the human-centred perspective of trafficking for labour exploitation. There has been a growing concern that West African children brought to the UK under what is viewed as private fostering arrangements were being trafficked for the purposes of domestic servitude or benefit fraud.¹⁴² This was evident in the case of a Nigerian pastor who was jailed in the UK for trafficking two children under the guise of private fostering using falsified documents.¹⁴³ African traditional fostering, which originated from a culture that obliges communities to collectively raise children has been a source of support for children, families and the development of their communities at large. Traditional fostering often takes place in form of parents giving their consent for their children to be taken away by extended family members or strangers for a given period. According to the ILO, many individuals and families have taken advantage of this cultural tradition of fostering where the less privileged often send their children to other families for educational and employment purposes.¹⁴⁴

In Nigeria, fostering comes in different types, kinship fostering¹⁴⁵, crisis fostering¹⁴⁶, alliance/apprentice fostering¹⁴⁷, educational fostering¹⁴⁸ and domestic

¹⁴² ECPAT, *Child Trafficking and Private Fostering* (ECPAT 2011); see also The Child Exploitation and Online Protection Centre (CEOP) report *Strategic Threat Assessment - Child Trafficking in the UK* (CEOP 2010).

¹⁴³ BBC News - Pastor jailed for trafficking African child 'slaves' – 18th March 2011 <http://www.bbc.co.uk/news/uk-england-london-12789690> [Accessed 25th May 2012].

¹⁴⁴ ILO, *World of work magazine* No. 22, December 1997: Fighting child labour from dream to reality (International Labour Organization, Geneva, Switzerland).

¹⁴⁵ This type of fostering is largely a consequence of the need to relocate resources within the extended family or the Kin group, ensuring maximum survival for the unit and strengthening of kinship ties. See A. Okore, "The Ibos of Arochukwu in Imo State, Nigeria" in Caldwell, J.C. (ed.) *The Persistence of High Fertility*, (Vol. 1, The Australian National University Press 1977).

fostering. Domestic fostering is the type of fostering that is key to the argument within this section. In Africa, children are an important part of the domestic labour force and may be fostered to redistribute availability of services between households. Fostering of children for domestic tasks may have taken a new dimension at present where many working families take up children as domestic servants, maids and baby tenders in exchange for their maintenance, training and/or token wages to their family.¹⁴⁹ According to Okunola and Ikuomola, the perceptions, ideas and attitudes toward children in pre-colonial era on fostering have been rendered impracticable by the quest for materialism and increasing level of poverty in Nigeria.¹⁵⁰ Riisoen et al. observed that the lack of 'norms of

¹⁴⁶ This occurs in the case of dissolution of the family of origin by divorced, separation or death of a spouse. See R.A. Okunola and A.D. Ikuomola 'Child Labour in Fostering Practices: A Study of Surulere Local Government Area Lagos State, Nigeria' (2010) 5 *The Social Sciences*, Issue: 6, 493-506; see also Isiugo-Abanihe, U.C., *Child fostering in West Africa: Prevalence, determinants and demographic consequences* (Ph.D. Thesis University of Pennsylvania 1983)

¹⁴⁷ Alliance fostering and ward ship often combine the responsibilities of training and sponsoring of young children, they go hand in hand with apprentice fostering. Children may be sent away at a very early age to homes where they are disciplined or where they learn a trade. See John Sinclair, 'Educational Assistance, Kinship and the Social Structure in Sierra Leone' (1976) *Afr. Res. Bull.*, 2: 30-62; see also Esther Goody, "Delegation of Parental Roles in West Africa and West Indies" in Williams, T.R. (ed.) *Socialization and Communication in Primary Groups* (Mouton 1975) 125-158.

¹⁴⁸ Children are boarded out with relatives who are expected to provide formal education to the younger ones in return for having themselves received educational assistance. The children may also be sent to non-relatives in cases where few relatives live closer to school.

¹⁴⁹ R.A. Okunola and A.D. Ikuomola, 'Child Labour in Fostering Practices: A Study of Surulere Local Government Area Lagos State, Nigeria' (2010) 5 *The Social Sciences* (6) pp. 493-506.

¹⁵⁰ *ibid.*

accountability' in traditional fostering arrangements has also been detrimental to the vulnerability of children to trafficking.¹⁵¹

In the UK, it has been evident that some victims of child trafficking have been trafficked by close relatives or members of their communities. Traffickers often tend to recruit these children from their parents under the guise of traditional fostering. The parents are lured by the expectations that their child will acquire a British education and therefore be better off economically. Despite the risk of trafficking, some parents do not consider domestic servitude as a danger for their children and therefore willingly seek to give their children away. It is important to highlight that domestic servitude from Nigeria is not so much a crime perpetrated by criminal groups but rather by individuals who endeavour to preserve the culture of servitude. The presence of a domestic servant in some Nigerian households or shops in the UK not only helps to save money in areas like childcare but also fills an emotional vacuum for families far away from their country of origin.

The willingness for parents to supply their children, and the demand from Nigerian household in the UK for such labour, can be explained against the backdrop of the social construct of childhood in Nigeria. The varying preconceptions that encompass the notion of childhood, and inform the expected role to be played by the child in society, differ across cultures and societies and cannot be fully understood outside the context of other variables like class, disability, tradition, religion, race, nationality, gender and ethnicity and/or 'caste system'.¹⁵² Scholars contend that how children live in developing

¹⁵¹ Kari Hauge Riisoen, Anne Hatloy and Lise Bjerkan, *Travel to Uncertainty, A study of child relocation in Burkina Faso, Ghana and Mali* (FAFO Centre for Applied Research 2004).

¹⁵² Michael D. A. Freeman, *The Moral Status of Children: Essays on the Rights of the Child* (Martinus Nijhoff Publishers 1997) 8.

countries is shaped by the belief, norms and customs of their communities.¹⁵³ Even though by law a child is a person below the age of 18 years and not obliged to engage in certain types of labour, in practice, this is not often adhered to.

In Nigeria, there are certain expectations of children, often dependent on the economic capacity of the child's family. It is usually poorer children who often find themselves in vulnerable situation where they may have to contribute to the running of the family – whether by way of working as domestic servants for richer families or engaging in other forms of labour. Some parents often see this as an informal training for their children to be better equipped to deal with life.¹⁵⁴ Thus, such exploitation is couched within the sphere of culture/tradition of raising children in Africa. Even though the laws in Nigeria condemn this notion, the practice has found commonplace in culture of many communities through the 'house boy/girl' system often in overtone to traditional fostering. According to McGillivray "We are blinded by our context, our place in history, our socialisation from knowing not only how children are treated but how they should be treated".¹⁵⁵ This culture of servitude in the form of child labour and trafficking goes against international human rights law which protects children. While the culture of African child fostering can be beneficial to some children, it is the duty of the Nigerian state to ensure that children are safeguarded in the process.

Additionally, as part of protecting children, it is the responsibility of the state to fulfil the economic and social rights of parents, in order to prevent such abuse. This culture of servitude, which should be completely denounced coupled with

¹⁵³ Martin Woodhead and Heather Montgomery (eds.) *Understanding Childhood An Interdisciplinary approach* (Open University 2003).

¹⁵⁴ See note 146.

¹⁵⁵ Anne McGullivray 'Why Children do have equal rights: In reply to Laura Purdy' (1994) *2 International Journal of Children's Rights* pp. 243 – 258.

the labour related issues highlighted within this section, complicates the experiences of victims and strategies to combat human trafficking. These notions cannot be overlooked when devising means to address trafficking. Adopting laws within this typology is not lacking but instead, it lacks the consideration of socio-cultural factors surrounding laws that can impact the outcomes of anti-trafficking. Similar dilemma is evident in the typology of prostitution as seen in the next section.

As a Result of Prostitution?

Trafficking for forced prostitution is estimated to be one of the most prevalent forms of exploitation in human trafficking.¹⁵⁶ Subsequently, there has been a close link between the discourse of prostitution and trafficking. This link emerges from feminists' debates on prostitution before, during and after the drafting of the Trafficking Protocol. Their debate has dominated and still dominates discussions on human trafficking from several standpoints. Firstly, they offer a gendered perspective to the understanding of trafficking and secondly, they make a case from the viewpoint of the sex work discourse. While there are merits from injecting a gendered perspective, it focuses only on women and girls, leaving out the exploitation suffered by boys and men.¹⁵⁷ Despite the high level of research it has generated, there is an existing gender imbalance in scholarly focus. Samuel Jones, in his article "the invisible man: the conscious neglect of men and boys in the war on human trafficking", sheds more light on the need to commence research on the experiences of men.¹⁵⁸ Jones agrees that females have historically suffered enormous levels of harm, particularly at

¹⁵⁶ See Morehouse, *Combating human trafficking* (n 55) 88.

¹⁵⁷ Jeffery P. Dennis, 'Women are Victims, Men Make Choices: The Invisibility of Men and Boys in the Global Sex Trade' (2008) 25 *Gender*, pp. 11–25.

¹⁵⁸ Samuel Vincent Jones 'the invisible man: the conscious neglect of men and boys in the war on human trafficking' (2010) *Utah Law Review*, No 4, pp. 1143-1188.

the hands of men (presently, including women) however, the truism does not preclude the empirical reality that males have also suffered enormous exploitation at the hands of both males and females.¹⁵⁹ Abramson insists that this comes to play in the stereotyping of women and children as vulnerable beings in need of protection while men are seen as mere economic migrants.¹⁶⁰ The narratives of human trafficking often media-driven tend to augment the notion of predominantly men enslaving women for sex, 'complicitous with an ideology that males cannot be victims'.¹⁶¹ The limited attention on the trafficking of men has alienated men in the justice system as perpetrators and those who play a role in identifying human trafficking victims are reluctant to attach victimhood to men especially when the victimizer is female.¹⁶² Miles and Blanch add to this dearth in literature on males with their field exploration in Cambodia, illustrated in their article, "What about the boys?..."¹⁶³ With the high rate of male sexuality in places like Cambodia, males are often seen as a lucrative commodity. Hence the Cambodia proverb, "Women are like cloth and Men are like gold."¹⁶⁴ While the level of male victims of trafficking from Nigeria is not apparent, there is a strong case for including men and boys on research into victimhood within

¹⁵⁹ *ibid.*

¹⁶⁰ Kara Abramson, 'Beyond Consent, toward Safeguarding Human Rights: Implementing the United Nations Trafficking Protocol' (2003) 44 *Harv. Int'l L.J.* p. 479.

¹⁶¹ Jones, 'the invisible man' (n 158) 1180; see also Matthew C. Gutmann, 'Trafficking in Men: The Anthropology of Masculinity' (1997) 26 *Annual Review of Anthropology*, pp. 385-409.

¹⁶² See note 158.

¹⁶³ Glenn Miles & Heather Blanch, *What about boys? An initial exploration of sexually exploited boys in Cambodia*, Third Annual Interdisciplinary Conference on Human Trafficking, University of Nebraska – Lincoln, 2011. Follow this and additional works at: <http://digitalcommons.unl.edu/humtraffconf3> [Accessed 5th July 2013].

¹⁶⁴ *ibid.*

human trafficking. Otherwise, it implicitly narrows down the discourse on human trafficking¹⁶⁵.

Alongside the focus on females, the emphasis on sex work within the context of human trafficking has been a major and continuous debate driven by feminists. Both the radical (abolitionists) and the liberal feminists drive the debate on prostitution from different standpoints. The glaring reality that some people whether men or women (in this case women as majority sex workers) could consent to be trafficked for sex work is an idea that feminists continue to explore, especially for clarification through the definition of human trafficking. The radical feminists in this case, are of the viewpoint that consent should be meaningless in the anti-trafficking laws.¹⁶⁶ There is a continuum for this group of feminists that the sex industry is by definition exploitative. Their premise is based on their anti-prostitution movement which also highlights that prostitution is neither about an individual nor choice but about an institution of 'male dominance'.¹⁶⁷ Opposing the standpoint of radical feminists, the liberal feminists emphasize the free will of people to make choices about their lives or at least exercise considerable agency. They insist on an inclusion of such capacity to consent in the Trafficking Protocol from the viewpoint of equality. It is the assertion of some of these liberal feminists that sex work is a 'form of empowerment to realize equality in the workforce and to assert female self determination'... [In essence] prostitution is seen as an 'apogee of female liberation'.¹⁶⁸ For this feminist, violence against women is a human rights violation whether the woman is a prostitute or not.¹⁶⁹

¹⁶⁵ See note 160.

¹⁶⁶ *ibid.*

¹⁶⁷ Dorchen Leidholdt, 'Prostitution: A Violation of Women's Human Rights' (1993) *I Cardozo Women's L.J.* 133, 1336 cited in Abramson, 'Beyond Consent' (n 160) 489.

¹⁶⁸ See Abramson, 'Beyond Consent' (n 160) 478.

¹⁶⁹ See note 156.

The Global Alliance Against Traffic in Women (GAATW) a coalition of civil society organisations, advocated for the definition of prostitution as work. While the Coalition Against Trafficking in Women (CATW) favour the abolitionists' ideology. According to Hancilova and Burcikova, "At the extreme ends, both camps tend to disregard, albeit to a varying degree, the diversity of sex markets and experiences of actors and the complex personal experiences of persons engaged in prostitution."¹⁷⁰ Abolitionists believe that human rights of women are best protected when prostitution (which is already a deeply prejudiced institution) is abolished.¹⁷¹ From an abolitionist standpoint, it becomes difficult to demarcate between voluntary prostitution (which actually exist) and forced prostitution. This standpoint has often encouraged the state-centric standpoint of criminalizing prostitution as a way of addressing human trafficking for sexual exploitation. This latter risk supporting a conservative anti-migration agenda aimed at restricting female mobility and agency.¹⁷² For Cameroun and Newman, this has resulted in flawed legal strategies that are both 'anti-migrant' and 'anti-sex work' which has enormous implication for victims especially migrant women.¹⁷³

The liberal feminists on the other hand insist that prostitution should be considered as a legitimate form of labour and as a result, enjoy the same protection as other forms of labour. Neither international nor EU legislation takes

¹⁷⁰ Blanka Hancilova and Petra Burcikova, 'Anti-trafficking and Human Rights' (n 58) 232.

¹⁷¹ Ibid 233.

¹⁷² S. FitzGerald, "Putting Trafficking on the Map: The Geography of Feminist Complicity" in M. Della Giusta and V. Mounro (eds) *Demanding Sex: Critical Reflections on the Regulation of Prostitution* (Ashgate 2008) 99-120.

¹⁷³ Cameron and Newman, *Trafficking in Human\$* (n 79) 16.

a position on the treatment of voluntary prostitution as work.¹⁷⁴ Instead, it is left to the discretion of individual countries and as a rule it continues to be a highly divisive issue. The ILO Forced Labour Convention No. 29 considers voluntary prostitution of adults as a form of work.¹⁷⁵ The ILO maintains that it is not particularly useful to categorically demarcate between labour and sexual exploitation or treating trafficking of women, children or men as separate issues.¹⁷⁶ Criminalizing prostitution will only drive the business further underground and increase the vulnerability of victims. Morehouse contends “policy makers should refrain from weakening anti human trafficking efforts by attaching restrictions that have nothing to do with combating human trafficking”.¹⁷⁷ Anderson also insists that:

“It is the lack of protection for workers in the sex industry, rather than the existence of a market for commercial sex in itself, that leaves room for extremes of exploitation, including trafficking. The solution to the problem thus lies in bringing the sex sector above ground, and regulating it in the same way that other employment sectors are regulated.”¹⁷⁸

While liberal feminists would agree that women should be able to exercise their freedom of choice, the key here is the sum of accessible alternatives available to women who are drawn to sex work as a means to survive. Radical feminist often overlook the socio-cultural realities of third world migrant women as to why

¹⁷⁴ See Blanka Hancilova and Petra Burcikova, ‘Anti-trafficking and Human Rights’ (n 58) 233.

¹⁷⁵ ILO, A Global Alliance Against Forced Labour, Report of the Director-General, 93rd Session, Report I (B) (ILO 2005) para. 24.

¹⁷⁶ Blanka Hancilova and Petra Burcikova, ‘Anti-trafficking and Human Rights’ (n 58) 234.

¹⁷⁷ Morehouse, *Combating human trafficking* (n 54) 89.

¹⁷⁸ Bridget Anderson, *Motherhood, Apple Pie: and Slavery: Reflections on Trafficking Debates* (Centre on Migration, Policy and Society Working Paper No. 48, 2007) 7.

women may choose this trade even through exploitative means like trafficking. They seem more concerned about a static standpoint, which does not ultimately protect women nor address their real concerns.¹⁷⁹ As a result, it may have no real effect on anti-trafficking as it lacks the acknowledgement of human needs which may provide answers as to why people consent to prostitution-cum-trafficking in the first place.

Underneath these discussions of coercion and consent, is the representation of victimisation and agency as contradictions within contemporary feminist theory. Laura Agustín who has researched extensively on migrant women sex workers, emphasizes the need to acknowledge the driving factor that make women vulnerable to traffickers rather than just narrowing them as victims without agency.¹⁸⁰ Agustín argues that labelling these women as 'trafficked' does not accurately describe most migrants and that the rescue industry disempowers them. 'Social agents' in the form of policy makers and NGOs do not tend to probe prostitution discourse from the social construction of people they intend to help.¹⁸¹ Instead, "they position themselves as benevolent helpers, in what seems to them to be a natural move".¹⁸² In some cases, some of these women refuse to be rescued. This is seen with Nigerian women, who are trafficked for prostitution but return to their traffickers after being rescued.

Additionally, Doezma reemphasizes that current debates about coercion or consent into prostitution facilitates avoidance on the challenges posed by sex

¹⁷⁹ Margaret Jane Radin, *Contested Commodities: The Trouble With Trade In Sex, Children, Body Parts, and other Things* (Harvard University Press 1996) 51 cited by Bridget Anderson, *Motherhood, Apple Pie: and Slavery: Reflections on Trafficking Debates* (Centre on Migration, Policy and Society Working Paper No. 48, 2007).

¹⁸⁰ Laura Agustín, *Sex at the Margins: Migration, Labour Markets and the Rescue Industry* (Zed Books 2007).

¹⁸¹ *ibid* 7.

¹⁸² *ibid*.

workers rights arguments.¹⁸³ For Doezma, if these women are coerced by poverty and do not consent to trafficking, then policy responses that focuses on border and immigration control is evidently inadequate.¹⁸⁴ She also adds that such debates challenge the identification of trafficked victims where it present women who choose prostitution as undeserving of human rights protection and those who do not choose trafficking as 'real victims'. The issue of consent is inevitably more complex than that.¹⁸⁵ Whether or not African women choose to go into sex work, the key within the discourse of trafficking is the exploitation they experience rather than the moral consciousness of states. Where trafficking is equated with migration and sex work as previously highlighted, victims are unable to report or seek support, for fear of further exploitation by laws that portrays them as criminals or undeserving. Often times, they consequentially lack access to support (e.g. to public health) due to their status as illegal immigrants and this can amount to unresolvable health issues; further complicating the impact of trafficking.

Conclusion

Although there is a consensus in the conceptualization that human trafficking is a human rights violation, the conflict emerges from the interpretation of these rights by different actors including states, activists, scholars and victims (with the families and communities). The essence of understanding human trafficking is to find appropriate solutions to the issues it presents. However, different actors have different understandings or priorities within the issue. This subsequently drives the approach being utilised. For this thesis, human trafficking is primarily a human

¹⁸³ Joe Doezema, 'Loose Women or Lost Women? The Re-Emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women' (2000) 18 *Gender Issues* (1) 23-50.

¹⁸⁴ *ibid.*

¹⁸⁵ Anderson, 'Motherhood, Apple Pie' (n 178) 10.

rights violation. Hence, this chapter has endeavoured to reaffirm states' obligations to ensure that the rights of those within its territory are respected and promoted. It is on this basis that a human rights-based approach seemed appropriate. While this chapter carefully demonstrated the importance of this approach, it also asserted that the approach will be better accomplished by addressing factors that hinders its fulfilment and therefore introduces the human centred approach. As Piotrowicz puts it, "... states should apply the law, while remembering that the law is not the only relevant factor in addressing human trafficking."¹⁸⁶ Therefore, a human-centred approach was included in analysis to capture aspects of trafficking that exists beyond the law.

In addition, states' interest continues to conflate with the human rights in the three typologies explored within this chapter. Amongst the typologies, migration remains an overarching factor that overlaps all the other perspectives of trafficking especially with regards to non-citizens. Destination countries have seen trafficking as a problem of loose borders and in following this approach, it increases the vulnerabilities of victims, giving ammunition to traffickers to keep victims in exploitation and in some cases, lead to re-trafficking. All of this becomes more apparent when a human-centred approach is neglected. The problem associated with migration also intertwines with the labour typologies. Destination states neglect the real demand for labour and have not signed up to Conventions that could be beneficial for the protection of migrant workers. More so, the denial of basic rights and human dignity in countries like Nigeria not only push people to seek a better life in dangerous circumstances but also increases their threshold to withstand existing exploitation. For these categories of people, the end justifies the means. The same threshold is utilised by some

¹⁸⁶ Ryszard Piotrowicz, "Human Security and Trafficking of Human Beings: the Myth and the Reality" in Alice Edwards and Carla Ferstman (eds.) *Human Security and Non-Citizens: Law, Policy and International Affairs* (Cambridge University Press 2010) 418.

women who find themselves in sexual exploitation. However, the lack of agency and the criminalization of sex work continue to expose them to potential danger.

In the absence of a sufficient approach that tackles the rights and needs of people at risk/victims/survivors of human trafficking, the crime continues unabated. This boomerang effect seems to apply mainly to non-citizens from third countries often identified in Western countries. Human trafficking is a transnational problem that requires the cooperation of source, transit and destination states. No one state can bear the cost alone. Hence, the formation of a regime that will enable states cooperate to tackle this problem has been initiated for the greater good. Therefore, the coming section investigates the extent to which the anti-trafficking regime makes provision for anti-trafficking and enables international cooperation while considering the human-centred approach in its operationalization.

Chapter Three- International Cooperation and the Anti-Trafficking Regime

Introduction

In the last century, States have endeavoured to cooperate towards the eradication of human trafficking.¹ During this period, the principles that govern the anti-trafficking regime have continually evolved to cover broader conceptual understanding of the issue. This includes moving its attention from exclusively women and prostitution, to one that is inclusive of newer forms of exploitation. The last chapter demonstrates that the understanding of trafficking continues to exhibit new angles beyond international human rights law, following the social realities across diverse communities; forming part of introducing the human-centred approach. The approach questions the extent to which current anti-trafficking mechanisms tackle the complexities that human trafficking provokes and its implication for inter-state cooperation. In essence, transcending from the argument of chapter two, this chapter argues that although the anti-trafficking regime provides frameworks for inter-state cooperation against trafficking, compliance to the principles it sets out require learning, shared knowledge of norms beyond legal parameters for anti-trafficking to prevail within the context of this study.

As previously demonstrated, international law is an important bedrock for interstate cooperation especially in reaffirming obligations of states to fulfil the human rights of anti-trafficking. However, where states' interests are in conflict with existing laws and certain circumstances surrounding the issue area transcends legality, regimes have to undertake measures that secure human rights/concerns by converging states behaviour towards the reality of the issue. Although regimes can provide an important source for international law, they

¹ Megan Brand, *International Cooperation And The Anti-trafficking Regime*, (Working Paper Series No. 71, Refugee Studies Centre, Oxford Department of International Development, University of Oxford 2010).

can also be subjects of international law as many states base their cooperation on existing international laws. It is for this reason that the international anti-trafficking legal frameworks are explored in the first part of this chapter to demonstrate how these frameworks have influenced state's behaviour. As illustrated in this chapter, although several international legal frameworks have been enacted to deal with trafficking, it has not been sufficient for dealing with the issues that trafficking current presents between Nigeria and the UK.

Nevertheless, moving beyond existing international law, the second section of this chapter explores how and why states have cooperated so far within the anti-trafficking regime. The latter is based on major theories of international regimes and how they have influenced cooperation and anti-trafficking so far. Although these different views of regimes presented in this chapter proffer opportunities for cooperation, they do not all present the best conditions for interstate cooperation in the context of this study. For cooperating states with different identities like Nigeria and the UK, it is imperative that strategies for cooperation present a fora for continual interaction that considers knowledge, ideology, culture and learning of both states. Such constructivist approach better accommodates the human-centred approach as established in chapter two.

The Anti-Trafficking Regime and International Legal Frameworks

According to Young, "international laws and institutions have historically developed to address particular issues and objectives..." and the "disparate results are commonly described as 'regimes'."² Krasner defines international regimes as:

² Margaret A. Young, "Regime Interaction in Creating, Implementing and Enforcing International Law" in Margaret A. Young (ed.) *Regime Interaction in International Law: Facing Fragmentation* (Cambridge University Press 2012) 85.

"Implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations. Principles are beliefs of fact, causation, and rectitude. Norms are standards of behaviour defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice."³

Examples of regimes include the Basel Convention which governs international movement of hazardous waste; Biological Weapons Convention, Kyoto Protocol, amongst other examples of international regimes. Following Krasner's middle-ground definition of regimes, Haggard and Simmons assert that regime could be understood in different ways, including being seen as "multilateral agreements among states which aim to regulate national actions within an issue area."⁴ As a result of its various understanding, it has been long perceived to lack conceptual clarity.⁵ However, it has survived in its quest to address a central issue in international relations in the form of international cooperation. Regimes also vary in their degree of specificity, geographical scope and membership.⁶

As a global transnational problem, human trafficking has resulted to the emergence of an international regime set out to coordinate states' behaviour

³ Stephen Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables" in Stephen Krasner (ed.) *International Regimes* (University Press 1983) 1-21.

⁴ Stephan Haggard and Beth A. Simmons, 'Theories of international regimes' (1987) 41 *International Organization* No. 3, pp. 491-517.

⁵ Ibid.

⁶ Eric Brahm, "International Regimes" in Guy Burgess and Heidi Burgess (eds.), *Beyond Intractability* (Conflict Information Consortium, University of Colorado, Boulder) Posted: September 2005

<http://www.beyondintractability.org/essay/international-regimes> (Accessed 20th November 2013).

for the eradication of trafficking hence, the 'anti-trafficking regime' through the Organized Crime Convention and related international Conventions. The fight against human trafficking is not a new phenomenon. However, the principles rules and decision-making procedures within the regime have experience several changes overtime. As Hasenclever explains that from Krasner's definition "only if principles or norms are altered does a change of the regime itself take place; all other changes in regime content are changes within a regime."⁷ Given the multidisciplinary nature of anti-trafficking, its regime often interacts with other existing regimes or at the very least touches upon them. For instance, anti-trafficking can find basis within the human rights regime whose principles, norms, rules and decision-making procedure formed part of the argument that human trafficking is a human rights issues set out in chapter two. That said, the anti-trafficking regime has overtime set out it own rules through various international legal frameworks that this section aims to explore.

Through the twentieth and onto the 21st century, we have witnessed the emergence and proliferation of international legal frameworks and rules aimed at combating human trafficking.⁸ From 1904 to 2000, Treaties and Conventions have been initiated and modified to reflect the crucial elements of this global dilemma. Each framework had something more to offer the latter extending the scope of the former. For instance, the 1921 Anti Human Trafficking Convention avoided any reference to 'White Slavery' and applied a new notion of "immoral trafficking"; the 1933 Anti Human Trafficking Convention on the other hand expanded the end results of trafficking to include all sexual and immoral purposes, not just prostitution. The United Nations Convention Against Transnational Organized Crime (UNTOC) and its supplementary Protocols so far, is the most comprehensive universally accepted international legal framework

⁷ See Andreas Hasenclever, *Theories of International Regimes* (Cambridge University Press 1997) 13.

⁸ Brand, *International Cooperation And The Anti-trafficking Regime* (n 1).

specific to addressing human trafficking and ratified by at least 117 nation states.⁹

Brand carefully illustrates how these principles of the anti-trafficking regime have extended between the 1949 Convention and the 2000 Protocol.¹⁰ These principles moved from that which attempts to counter human trafficking from a feminist's perspective focused on prostitution to one that attempts to employ what she specifies as a 'comprehensive approach' but with emphasis on transnational organised crime and border control.¹¹ Here, a comprehensive approach connotes broadening the scope of protection (a) beyond women and children to include all trafficked persons (b) to include all forms of trafficking beyond sexual exploitation.¹² These principles, which stem from the understanding of trafficking from different perspectives, have clearly informed how states currently cooperate within the anti-trafficking regime. The upcoming sub-sections will elaborate on the existing international rules governing anti-trafficking starting with the Trafficking Protocol and followed by other regional legal frameworks relevant to this study. It clearly demonstrates the influence of the current anti-trafficking laws on the regime to eradicate trafficking whose vital strand of legitimacy is currently strained by national security concerns and negligence of states. This section sets to supports the argument that the existing

⁹ See the United Nations Treaty Collection available [online] at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en [Accessed 13th August 2013].

¹⁰ It is crucial to recognize that the 1949 Convention came out of a draft convention in 1937 by the League of Nations that was intended to unify all previous international documents on trafficking: the 1904, 1910, 1921 and the 1933 treaties. See UN Doc. E/1072 1948.

¹¹ See Brand, *International Cooperation And The Anti-trafficking Regime* (n 1) 11-26.

¹² Report of Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on its second session, held in Vienna from 8 to 12 March 1999, see UN Doc. A/AC.254/11 p. 4.

inconsistency in the rules governing anti-trafficking weakens the anti-trafficking regime.

The Trafficking Protocol

The Trafficking Protocol is based on a 3P model or the 3P approach as some may call it. It focuses on addressing human trafficking from the angle of 'protection', 'prosecution' and 'prevention' representing the 3Ps. They are foci areas in tackling the problem of trafficking and stands as the main objectives of the Trafficking Protocol. According to Article 2 of the Trafficking Protocol, the purposes of this Protocol are:

- (a) To prevent and combat trafficking in persons, paying particular attention to women and children;
- (b) To protect and assist the victims of such trafficking, with full respect for their human rights; and
- (c) To promote cooperation among States Parties in order to meet those objectives.¹³

The Protocol provided a universally accepted but debatable definition of human trafficking as illustrated in the introduction of this thesis. The Protocol not only focuses on the transnational nature of the problem but also insists that state parties ensure the criminalization trafficking within its domestic legislation.¹⁴ According to Coontz and Griebel, "criminalization is the centrepiece of the Protocol"¹⁵ with other key features including guidelines on protection, prevention and interstate cooperation. Article 5 of the Protocol obliges State Parties to impose measures to investigate and prosecute the crime of

¹³ Trafficking Protocol 2000, article 2(a-c).

¹⁴ Trafficking Protocol 2000, article (5).

¹⁵ Phyllis Coontz and Catherine Griebel, 'International Approaches to Human Trafficking: The call for gender-sensitive perspective in International Law' (2004) 4 *Women's Health Journal* p. 51.

trafficking.¹⁶ Although not directly stated within the Protocol, the Convention encourages State Parties to establish jurisdiction to investigate, prosecute and punish the crime within their territorial jurisdiction.¹⁷

With regards to victim protection, the Protocol suggested several protective provisions necessary to assist victims of trafficking.¹⁸ They include protecting the privacy and identity of trafficking victims in 'appropriate cases' under domestic law;¹⁹ as well as 'consider' implementing measures to ensure the physical, psychological and social recovery of trafficking victims.²⁰ This aspect of the Protocol is considered within the human rights dogma as being too 'soft'.²¹ The choice of words further establishes the vagueness of some of these provisions. For instance, state parties are required to "consider" certain measures; to "endeavour" to take action in "appropriate cases", "to the extent possible". The Protocol essentially relinquishes the aspect of protection to the disposition of states. Such vagueness also applies to the legal status and repatriation of victims. Both origin and destination States have to ensure the safe return of trafficking victims. While such return, "shall preferably be voluntary",²² states are not obligated to keep it so. Therefore, the rights afforded to trafficked persons within the Protocol remain dependent on existing domestic law/policies or the provisions made by bilateral or multilateral agreements signed by states.²³

¹⁶ Trafficking Protocol 2000, article (5).

¹⁷ Organised Crime Convention 2000, article 15.

¹⁸ Trafficking Protocol 2000, article 6.

¹⁹ *ibid* article 6 (1).

²⁰ *ibid* article 6(3).

²¹ Anne Gallagher, *International Law of human Trafficking* (Cambridge University Press 2010) 139; see also Tom Obokata, *Trafficking Of Human Beings From A Human Rights Perspective: Towards A Holistic Approach* (Martinus Nijhoff Publishers 2006).

²² Trafficking Protocol, 2000 article 8(2).

²³ Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, UNODC (2006) at 380.

In the area of prevention, Article 31 of the Convention outlines a list of measures to be taken by States to prevent, *inter alia*, trafficking in persons (this is supplemented in the Trafficking Protocol).²⁴ Article 9 of the Trafficking Protocol clearly emphasizes that State Parties shall establish comprehensive policies, programmes and other measures to prevent and combat human trafficking as well as protecting victims of trafficking from re-victimization. This aspect of the Protocol further requires States to cooperate either bilaterally or multilaterally to alleviate the factors that render persons vulnerable to trafficking and the demands that fuel such exploitation.²⁵ Preventing human trafficking as illustrated in chapter two encompasses a wider array of human rights factors, which requires the effectiveness of other national and international legislations. Although the Ad Hoc Committee did not directly address the potential use of national anti-trafficking measures for discriminatory purposes or results,²⁶ the interpretative notes clarify that “the protocol is without prejudice to the existing rights, obligations and responsibilities of state parties under other international instruments” such as the international human rights law, refugee law etc.²⁷

The provisions for anti-trafficking in the Trafficking Protocol could be seen to be in congruence with the international human rights regime in terms of the obligations it sets out for states whether strong or weak.²⁸ However, the anti-trafficking law has a distinctive difference from other human rights treaties because it explicitly addresses transnational crime. It is the inclusion of trafficking under the umbrella of transnational crime that raised the level of state's interest

²⁴ Organized Crime Convention 2000, article 31(7).

²⁵ Trafficking Protocol 2000, article 9.

²⁶ See Obokata, *Trafficking Of Human Beings From A Human Rights Perspective* (n 21) 87.

²⁷ See note 23 at 421.

²⁸ See Obokata, *Trafficking Of Human Beings From A Human Rights Perspective* (n 21).

in ratifying the Trafficking Protocol. In fact, for some scholars, a treaty on trafficking would not have been actualised if left within the realms of the human rights system.²⁹ While aligning the Protocol with transnational crime gives it more strength, it raises a number of limitations as potential threats towards meeting the objectives of the regime from a human-centred perspective. As Todres submits, one of the central failings in response to human trafficking has occurred at the design stage of its regime following the existing legal rules.³⁰ This radiates in the approaches it leaves room for: promoting the interest of states over human rights.³¹ In other words, it emphasises criminalization or law enforcement over the concerns of those at risk of being trafficked, victims and survivors of trafficking.

This emphasis has been demonstrated by the Protocol's strong obligations in its criminal law provisions, which creates an "anchoring effect", making it probable that subsequent efforts will be framed by a law enforcement approach.³² The Protocol encourages the framing of human trafficking as a security and migration or in some cases an issue of prostitution as seen in chapter two. It narrows existing approach and marginalizes other vital areas, which are of equal or even greater importance. According to Lee and Lewis, the "Protocol is

²⁹ Anne T. Gallagher, *Human Rights and Human Trafficking: Quagmire or Fir Ground? A Response to James Hathaway*, (2009) 49 *Virginia Journal of International Law* (4) 789; Susan Kneebone and Julie Debeljak, *Transnational Crime and Human Rights: Response to Human Trafficking in the Greater Mekong Subregion*, (Routledge 2012).

³⁰ Jonathan Todres, 'Widening Our Lens: Incorporating Essential Perspectives In The Fight Against Human Trafficking' (2011) 33 *Mich. J. Int'l L.* pp. 53-75.

³¹ James Hathaway, 'The Human Rights Quagmire of "Human Trafficking"' (2008) 49 *Virginia Journal of International Law* (1) pp. 1 – 59.

³² Todres, 'Widening Our Lens' (n 32) 63; see also Robert S. Adler, 'Flawed Thinking: Addressing Decision Biases in Negotiation' (2005) 20 *Ohio State Journal on Dispute Resolution*. p. 712. Anchoring from the field of negotiation demonstrates that initial step in negotiations (first offer), significantly influences and shapes the subsequent course of action and final outcomes.

a law enforcement instrument whose humanitarian provisions exist to enhance the effectiveness of law enforcement efforts".³³

While the existing principles of the anti –trafficking regime has been broadened, by recognising some of the scope of the problem, it has been inconsistent in ascribing stronger obligations on states to deal with the entirety of the scope.³⁴ From a border security perspective, the Protocol insists that "States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in persons."³⁵ The Protocol relegates the potential immigration issues that may arise from trafficking to the domestic discretion of the nation states concerned.³⁶ While border control measures are important to intercepting traffickers, it reinforces the longstanding agenda of nation states to protect their borders from illegal 'aliens'. The prediction that anti-trafficking will exacerbate anti-immigration responses to international migration has proven to be an accurate reality as seen with the focus of many Western States.³⁷ In the course of criminalizing the victim for offsetting immigration laws, sometimes traffickers are often misplaced, especially where trafficking has not even been identified. Criminalization of victim is the product of a wider criminalization focus of the anti-trafficking regime. Even where the focus is on dismantling organised

³³ Ivy C. Lee and Mie Lewis, 'Human Trafficking From A Legal Advocate's Perspective: History, Legal Framework And Current Anti-Trafficking Efforts' (2003) 10 *University of California* p. 187.

³⁴ Brand (n 1).

³⁵ Trafficking Protocol 2000, article 11(1).

³⁶ Trafficking Protocol, 2000 article (7) 1 – 'each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases'.

³⁷ John Morison and Beth Crosland, *The Trafficking and Smuggling of Refugees: The End Game in European Asylum Policy?* (Working Paper No. 39, New Issues in Refugee Research, 2001); Susan Kneebone and Julie Debeljak, *Transnational Crime and Human Rights: Response to Human Trafficking in the Greater Mekong Subregion*, (Routledge 2012).

criminal groups, victims are treated as a resource for the criminal justice system rather than as bearers of rights.³⁸

While “organised” trafficking networks that need to be intercepted exist, this does not describe the very nature of some perpetrators of trafficking. The Organised Crime Convention describes, “Organized criminal group” as;

“A structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.”³⁹

Within certain context, trafficking does not always require organized criminal groups especially in countries like Nigeria where trafficking could sometimes occur as a family-friendly transaction. For sending countries like Nigeria, criminalizing human trafficking from a criminal group lens may result to ill-directed investigations that exaggerate the true nature of the crime. The current perception of the crime, has not improved the rate of prosecution of actual criminal (traffickers).⁴⁰ Convictions are still difficult to achieve even in the best circumstances.⁴¹ Apart from the countless pitfalls that render the prosecution of traffickers ineffective especially in countries where trafficking is most prolific, a human-centred focus can be advantageous to the prosecution of traffickers.

³⁸ Susan Kneebone, ‘The Refugee–Trafficking Nexus: Making Good (The) Connections’ (2010) 29 *Refugee Survey Quarterly* No. 1, p. 137.

³⁹ Organized Crime Convention 2000, Article 2(a) Use of Terms.

⁴⁰ United Nations Children’s Fund (UNICEF), *Trafficking in Human Beings in South-eastern Europe* xiii (UNICEF 2002) 146.

⁴¹ Francesca Dina Haynes, ‘Used, Abused, Arrested and Deported: Extending Immigration Benefits to Protect the Victims of Trafficking and to Secure the Prosecution of Traffickers’ (2004) 26 *Human Rights Quarterly* p. 245.

Firstly, not only would an approach that address the interest/needs of victims protect victims but it would allow them become better potential witnesses simply from the virtue of securing their safety during the hearing; offering them justice and supporting their psychological capacity to testify.⁴² Consequentially, victims are able to regain control of their lives in a safe manner.⁴³ Secondly, it reduces re-trafficking which could potentially lead to the 'double victimization' amplifying the cost for states for revisiting the same case again. This also includes focusing attention on causes of trafficking including social mores, economic, legal and cultural practices as well as the social stigma that foster trafficking as stated in Article 9 (4&5) of the trafficking Protocol.

While this will entail a costly venture in addressing roots causes of trafficking, it is an investment worth pursuing following the wealth of untaxed profits traffickers profits from the business. An approach that leaves the human rights on the backseat as previously highlighted risk breeding more traffickers resulting from trafficked victim-cum-recruiter. These breeds of traffickers recruit other women either to pay off their debt bondage or establish their own brothels as 'they consider themselves already ruined', stigmatized as prostitutes.⁴⁴ Thirdly, it is easier to protect victims than prosecute the trafficker. Although, both objectives are important, its effectiveness is still limited. However, focusing more on the human rights of victims could at least offer the opportunity to remove the victim from his/her current exploitative situation. As a preventative measure, it could

⁴² *ibid.*

⁴³ Ann Jordan, *The Annotated Guide to the Complete UN Trafficking Protocol* (Global Rights 2002).

⁴⁴ Haynes, 'Used, Abused, Arrested and Deported' (n 41) 245; Fanny Polonia Molina, 'Japan, The Mecca for Trafficking in Columbian Women (2001) [online] available at: <http://www.libertadlatina.org/paper30ColombiaJapan.pdf> (Accessed 20th August 2013).

suppress trafficking from the root. That said, there is the aspect of prostitution to contend with in the analysis of the Trafficking Protocol.

From the stance of prostitution, the long and bitter feminists' debate were highly influential in the negotiation of the Trafficking Protocol. However, in the end, the Protocol's compromise within this debate invariably linked trafficking to prostitution "in an ambiguous and confusing manner".⁴⁵ This is most obvious on in the difficulty for some feminists to move beyond consent and how exploitation has been presented in the Trafficking Protocol's definition. As Jordan puts it,

"The terms 'exploitation of the prostitution of others' and 'sexual exploitation' are not defined in the Protocol or anywhere else in international law. They are undefined and included in the definition as a means to end an unnecessary yearlong debate over whether or not voluntary adult prostitution should be defined as trafficking. Delegates were unable to reach any agreement on this point and so finally compromised on the last day of the negotiations by leaving the terms undefined."⁴⁶

While the compromise proffered by the Protocol attempts to recognise the difference between forced and voluntary adult participation in sex work, it relegates the ultimate decision of the legitimacy of prostitution to individual states. The latter can have a conflicting impact in the treatment of prostitutes, as many states do not view prostitution as legitimate work. This is pertinent where the action of some states towards prostitutes contravenes international

⁴⁵ Jo Doezema, 'Now You See Her, Now You Don't: Sex Workers At The UN Trafficking Protocol Negotiations' (2005) 16 *Social & Legal Studies*, p. 79.

⁴⁶ Ann Jordan, 'Human Rights or Wrongs? The Struggle for a Rights-based Response to Trafficking in Human Beings' (2002) 10 *Gender and Development* (1) p. 32.

standards of human rights.⁴⁷ Therefore the Trafficking Protocol “leaves ‘room’ for sex workers to exist only outside the protected space carved out for trafficking victims”.⁴⁸ The narrow construction of trafficked victims within the Trafficking Protocol offers nothing to sex workers who are also prone to a number of human rights abuses including trafficking, for lack of the needed protection. The latter further strengthens some states’ criminalization of sex work as an anti-trafficking approach and other ways impacts of how states with different notions of prostitution work together in this regard. Additionally, it relatively preserves the ongoing law enforcement versus human rights approach debate within the anti-trafficking discourse which focuses on traffickers rather than those at risk.

Nevertheless, the constant dispute between the law enforcement focus and the human rights approach cannot be reduced to a ‘simplistic opposition between (good) human versus (bad) state interests.’⁴⁹ The interconnectedness of both approaches is important to ensuring the complete eradication of the problem of human trafficking and may simply require a balancing of approaches as Krieg highlights.⁵⁰ Law enforcement creates a platform for the direct prosecution of traffickers, offering the potential for concrete results.⁵¹ However, the current focus on criminal prosecutions ensures that ‘the international community would be stuck in an endless cycle seeking to prosecute perpetrators and therefore [would] only aid victims after trafficking has occurred’.⁵²

⁴⁷ Doezema (n 45) 80.

⁴⁸ *ibid.*

⁴⁹ Sarah H. Krieg, ‘Trafficking in Human Beings: The EU Approach between Border Control, Law Enforcement and Human Rights’ (2009) 15 *European Law Journal*, No. 6, pp. 775–790.

⁵⁰ *ibid.*

⁵¹ Elizabeth Bruch, ‘Models Wanted: The Search for an Effective Response to Human Trafficking’ (2004) 40 *Stanford Journal of International Law*, p. 14.

⁵² Todres ‘Widening Our Lens’ (n 30) 65

Ironically, the current limitation of the Protocol's victim protection provisions undermines the effectiveness of the law enforcement framework.⁵³ The uninhibited cooperation of victims of trafficking is highly crucial for the successful prosecution of traffickers. Nevertheless, it is one thing to promote the interest of victims and others at risk of trafficking but without cooperation amongst states, it is all futility. States cannot tackle the dilemma of human trafficking alone. Suppressing trafficking depends on the ability of states to cooperate with one another by enforcing and implementing anti-trafficking through fulfilling their human rights obligations. In order to monitor and coordinate the cooperation of State Parties, the Organised Crime Convention established the Conference of Parties (CoP) to oversee and support the implementation of the Trafficking Protocol.⁵⁴ At the moment, the United Nations Office on Drugs and Crime (UNODC) has taken up the CoP's coordinating role but continues to face the challenge of states complying with the regime beyond their national interest or negligence. Nonetheless, anti-trafficking regime is not just dependent on the Trafficking Protocol but on other regional coordinating frameworks, bilateral/multilateral agreements as well as the convergence of norms through informal means. Given that this thesis focuses on case study of Nigeria and the UK, regional institutions like the EU and the ECOWAS and their role in the global anti-trafficking regime are the most significant.

EU Anti-Trafficking Legal frameworks

Anti-trafficking laws in Europe are consolidated within the European Union (EU). The EU became actively involved in the issue of human trafficking from the mid-

⁵³ Ann Gallagher 'Human Rights and the new UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis' (2001) 23 *Human Rights Quarterly*, pp. 975-1004.

⁵⁴ Organized Crime Convention 2000, article (32).

1990s.⁵⁵ Starting with the release of the Joint Action on Trafficking in 1997,⁵⁶ the EU introduced a number of legislations against human trafficking binding on its members. These instruments include the 2000 EU Charter of Fundamental Rights;⁵⁷ the 2002 Framework Decision on Combating Trafficking in Human Beings;⁵⁸ and a Joint Action on short-term residency permits for victims of trafficking.⁵⁹ Another important EU instrument in this regard is the Council of Europe Convention Against the Trafficking in Human Beings, which addresses some of the omissions within the Trafficking Protocol on issues that it overlooked.

While the 2002 Framework Decision retained and in some respect significantly expanded the Trafficking Protocol's criminal justice focus for its European members, some of its enduring prominent criticisms were its weakness on victim protection as well as its lack of an anti-discrimination clause.⁶⁰ The 2004 Directive covered these weaknesses by granting short-term residency permits to third country nationals. However, this was subject to their cooperation with authorities towards the prosecution of smugglers and traffickers.⁶¹ The Directive, in granting such exchange demonstrates no concern for victims and this is made even clearer in the explanatory memorandum accompanying the initial proposal. It explicitly states that victim's protection is neither its aim nor legal

⁵⁵ Gallagher, *International Law of human Trafficking* (n 21) 96.

⁵⁶ 97/154/JHA: Joint Action of 24 February 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children.

⁵⁷ Art.5 of the EU Charter of Fundamental Rights which came into effect in November 2009, prohibits trafficking in human beings.

⁵⁸ This replaced the 1997 Joint Action on Trafficking and was further repealed for the adoption of a new Framework Agreement in 2009.

⁵⁹ Council Directive 2004/81/EC of 29 April 2004. The last two legal instruments were adopted by the Council of European Union.

⁶⁰ Gallagher, *International Law of Human Trafficking* (n 21).

⁶¹ Council of the European Union Directive 2004/81/EC on the residence permit issued to third country nationals who are victims of trafficking. The UK opted out of its provisions so it does not apply to the UK.

basis.⁶² With the intent to address the shortfall in the human rights of victims, the recent EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims proposed by the European Commission in March 2010 replaced the EU Framework Decision on Combating Trafficking of 2002.⁶³

Taking further measures, the Council of Europe Convention on Action against Human Trafficking came into force on the first of February 2008. The Convention sets out measures to protect and promote the rights of victims of trafficking of which states are obliged to implement. This included standards in relation to: identifying victims, providing assistance, putting in place a recovery and reflection period, residence permits, compensation and legal redress, and ensuring any return to the home country is safe and dignified.⁶⁴ According to the Secretary General of the Council of Europe, this Trafficking Convention is one of the most important achievements of the Council during its over sixty years of existence and most important human rights treaty in recent time.⁶⁵ In comparison to the Trafficking Protocol, the Convention embodies significant

⁶² Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities; see also the Explanatory Memorandum; see also R. Raffaelli, 'The European Approach to the Protection of trafficking Victims: The Council of Europe Convention, the EU Directive and the Italian Experience' (2009) 10 *German Law Journal* p. 205.

⁶³ See Directive 2011/36/EU Of The European Parliament And Of The Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF) [accessed 11th July 2012]. The UK opted into this Directive on 22 March 2011.

⁶⁴ Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report, Warsaw, 16.V.2005, Council of Europe Treaty Series - No. 197 - Chapter III: articles 10-17.

⁶⁵ THB-GRETA, LD1, Group Of Experts On Action Against Trafficking In Human Beings, Strasbourg (27 February 2009) at par. 2 cited in Gallagher, *International Law of human Trafficking* (n 21) 126.

improvement in recognition of the rights of victims irrespective of their nationalities as well as the connection between the protection of those rights and the improved criminal justice.⁶⁶

In contrast with the Trafficking Protocol, the Convention is specific on States' obligation to ensure mandatory recovery and reflection periods for victims of trafficking. According to Gallagher, the Convention represents a 'revolutionary' way of thinking about trafficking and its victims.⁶⁷ States are obliged to ensure a minimum standard of assistance to all victims irrespective of their willingness to cooperate with criminal justice authorities.⁶⁸ In the realities of the current immigration regime, the Convention is limited by the natural reluctance of Member States to grant victims immigration provisions. There is nothing substantial to stop States from criminalizing victims and prosecuting them for the violation of labour and migration laws within their jurisdiction.⁶⁹ So far, there has been additional attention placed on the aspect of victims' criminalization relevant to the case study utilised in this thesis which will be further explored in a later chapter. Despite the limitations of the EU legal frameworks for anti-trafficking, the EU provides for a more robust regime than the Trafficking Protocol offers. As a result, it has been a source of attaining justice for victims of trafficking as highlighted in chapter two through Article 4 of the ECHR. However, the strength of its regime is limited by its membership and can only extend to other countries based on jurisdiction. Therefore, for the purpose of this study, it is necessary to explore the provisions of the African regional legal frameworks on trafficking.

⁶⁶ Gallagher, *International Law of human Trafficking* (n 21) 126.

⁶⁷ Gallagher, *International Law of human Trafficking* (n 21) 127.

⁶⁸ Proposal for a Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA /* COM/2010/0095 final - COD 2010/0065 */ at para. 11.

⁶⁹ Gallagher, *International Law of human Trafficking* (n 21) 127.

Anti-Trafficking Legal frameworks in Africa

In light of the EU anti-trafficking legal frameworks, it would be expected that the African Union will take the front seat in promoting anti-human trafficking in Africa. Although the institution has not introduced legal frameworks directly focused on human trafficking, it addresses it within the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 2003. Article 4 of this Protocol specifies the rights to life, integrity and security of the person. Paragraph 2 (g) states that State parties shall take appropriate and effective measures to prevent and condemn trafficking in women, prosecute the perpetrators of such trafficking and protect those women most at risk.⁷⁰ This Protocol is limited in its representation of the problem of trafficking in Africa, as it focuses on women and does not specify on measures through which prevention, prosecution and protection can be achieved.

Following this shortcoming in the African region, sub-regional organisations have taken up the responsibility of tackling the problem across their sub-regions like the Southern African Development Community (SADC) and ECOWAS. Relative to the scope of this thesis, ECOWAS has been more significant than the African Union (AU) in promoting anti-trafficking within West Africa. Fighting human trafficking within the ECOWAS region has been a tricky dilemma. Some scholars like Sessay and Olayode, contend that trafficking has become more problematic because of traffickers abuse of the Protocol on Free Movement of Persons and the Right of Residence and Establishment, of May 1979.⁷¹ Free

⁷⁰ The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa can be found on the website of the African Commission on Human and Peoples' Rights, at: www.achpr.org/english/_info/women_en.html [Accessed 5th March 2013].

⁷¹ Amadu Sessay & Kehinde Olayode, *Regionalisation and the War on Human Trafficking In West Africa*, Presented at the GARNET Conference on "Mapping

movement within Africa potentially enables economic growth and relations between West African States but it is the limited provision to safeguard people in the course of migration that is one of the many problems of trafficking within this sub-region. Trafficking within West Africa has currently been on the increase and has been one of significant importance to the ECOWAS.

In order to address the problem that trafficking presents, ECOWAS adopted the Ouagadougou Action Plan on 28th of November 2002.⁷² This Plan requires its member States to fully implement vital international instruments to strengthen laws against trafficking in persons, especially women and children. The Plan, like the Trafficking Protocol make provisions along the lines of prevention; protection, monitoring and evaluation of the Plan of Action; information exchange, amongst others. ECOWAS Heads of States adopted the interim Plan of Action at the 25th ECOWAS Session in Dakar in December 2001. During its sub-regional expert meeting, ECOWAS recommended that national task forces of Member States should coordinate all national measures in the fight against trafficking in persons. Accordingly, the ECOWAS Executive Secretariat is required to assist member countries in their efforts to establish their national task forces and facilitate their coordination.⁷³

Integration and Regionalism in a Global World: The EU and regional Governance outside the EU", Bordeaux (September 17-19, 2008).

⁷² In 2002, the 2nd Africa-Europe Ministerial Meeting was held in Ouagadougou. During this meeting the "Action Plan to Combat Trafficking in Human Beings Especially Women and Children" also known as "The Ouagadougou Action Plan" was drafted. For the complete draft, see [online] available at: http://europa.eu.int/comm/development/body/eu_africa/docs/council_outcome_ouaga_2002_en.pdf [Accessed 20th July 2012]. This plan was adopted at the third Africa-Europe Meeting held in Addis Ababa in 2004.

⁷³ See sub-regional experts on trafficking in persons was held in Lome, Togo, from 2nd to 3rd December 2002 and jointly organised with the United Nations Office on Drugs and Crime (ODC).

Additionally, the ECOWAS Convention on Extradition⁷⁴ and the Convention on Mutual Assistance in Criminal Matters⁷⁵ was established as useful tools to aid cooperation amongst its members. The Convention on Extradition empowers national courts of law with an effective instrument to arrest, try and enforce penalties against offenders who flee one member Country to seek shelter in another. The Convention on Mutual Assistance in Criminal Matters allows member countries to assist in proceedings or investigations in respect to offences, which at the time, falls within the jurisdiction of other member states. Unfortunately, this Convention has not been signed and ratified by all the member states.⁷⁶ While the legal frameworks adopted within this sub-region relies on member states' cooperation, it is hampered by the low level of commitment of most of these countries, sporadic and uncoordinated actions, lack of adequate data and technical incapacity for surveillance and tracking down of traffickers, which comes as no surprise.⁷⁷ There is also no effective and practical framework for exchanging information between law enforcement and criminal justice agencies of member countries in the fight against trafficking.

Although the existence of bilateral agreements between states further extends the political will to coordinate counter-trafficking measures, the existence of corruption especially within major strategic national security agencies constitutes a serious impediment in the fight against trafficking within ECOWAS regions. Subsequently, this limits the integration of human rights, which is not relatively prominent within its framework. While, ECOWAS efforts against trafficking are limited to the scope of its member states, its anti-trafficking

⁷⁴ ECOWAS (A/PI/94) [online] available at: http://www.iss.co.za/AF/RegOrg/unity_to_union/pdfs/ecowas/4ConExtradition.pdf [accessed 20th July 2012].

⁷⁵ ECOWAS (A/PI/92) Convention on Mutual Assistance in Criminal Matters of 29 July 1992.

⁷⁶ Sesay & Olayode (n 71).

⁷⁷ *ibid.*

frameworks potentially supplements states obligations towards meeting the objective of the anti-trafficking regime. Similarly, the regime is further augmented by non-treaty instruments that are relatively significant as part of soft law to guide the actions of States.

Non-Treaty Instruments within the Anti-trafficking regime

Non-Treaty instruments often come in the form of bilateral or multilateral declarations, codes, memoranda of understanding, 'agreements' and United Nations resolutions, as important sources for guidance. As part of soft law, these instruments give the impetus to the development of legal norms and standards.⁷⁸ The 2002 United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking (Trafficking Principles and Guidelines) is one the most important non- legal international instrument in the area of trafficking, based on international treaty laws. While insisting on the primacy of human rights, parts of this document goes further by using accepted international legal standards to develop more specific and detailed guidance for States in areas such as legislation, criminal justice responses, international cooperation, victim detention and victim protection and support.⁷⁹ This Trafficking Principles and guideline was further updated in form of the 2010 Recommended Principles and Guidelines on Human Rights and Human Trafficking.⁸⁰ The latter guideline is one of the most detailed guideline on how

⁷⁸ UNODC, *Trafficking in Persons & Smuggling of Migrants, Guidelines on International Cooperation*, United Nations Office on Drugs and Crime Regional Programme Office for South Eastern Europe, 2010.

⁷⁹ *ibid*; see also Office of The High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1).

⁸⁰ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* (United Nations 2010).

states should integrate human rights in the way they address human trafficking. According to the OHCHR Commissioner,

“Despite the impressive achievements of the past decade, the rights of individuals and the obligations of States in this area are not yet widely or well understood. As a result, the potential of international law to guide and direct positive change is only partially being fulfilled. The Commentary seeks to remedy this situation.”⁸¹

Quasi-legal and non-legal instruments have also been developed at regional levels, expanding existing legal principles and sometimes going beyond what is formally agreed between States. They often ascertain the direction in which international law is moving with respect to a particular issue. These instruments extend support to states in form of guidelines on how to implement and enforce international rules and standards within their territory for the eradication of trafficking. While its non-binding nature does not instil any legal obligation for states, it complements the legal trend within the anti-trafficking regime towards promoting cooperation in keeping with the required norms. Non-treaty instruments alongside other international legal instruments as addressed within this chapter, despite their inherent limitations, provide the foundation for cooperation between states against trafficking.

However, it does not guarantee that states will comply with the obligations which it sets out. Consequently, regimes have taken different forms to ensure that its norms and principle are not just written obligations but ones that states take seriously. While the different international legal frameworks present a foundation for international cooperation to combat trafficking, the argument presented in chapter two asserts that some of the issues within anti-trafficking

⁸¹ *ibid* Foreword 4.

transcends legal groundings following political and social realities. Hence, international cooperation within the anti-trafficking regime needs to operate beyond its legal ramifications to address existing norms within the trafficking discourse. Non-treaty agreements (whether bilateral or multilateral) present opportunities for the latter. Both international law and international relation scholars have explored the extent of international cooperation through regime and compliance theories. Therefore, the subsequent chapter utilises this theories to elucidate how cooperation emerges within the anti-trafficking regime and its implication for anti-trafficking.

Anti-Trafficking Regime: International Cooperation and Compliance

According to Little, regimes are established to enable cooperation within the international system.⁸² Keohane defines cooperation as “when actors adjust their behaviour to the actual or anticipated preferences of others, through a process of policy coordination”.⁸³ Here, ‘policy coordination’ supposes that the policies of each state will be adjusted to reduce negative consequences for the other states.⁸⁴ For issues of international concern like human trafficking, cooperation is important in initiating collective action for the agreed outcome to suppress trafficking as stipulated within its legal frameworks, guiding principles and norms. Cooperation is the *raison d’être* of the Organised Crime Convention and its Supplementary Protocols. Article 1 of the Convention states “the purpose of this Convention is to promote cooperation to prevent and combat

⁸² Richard Little, *‘International Regimes’ in The Globalisation of World Politics* (4th edition Oxford University Press 2009) 296-311.

⁸³ Kenneth A. Oye, (ed.) *Cooperation under Anarchy* (Princeton University Press 1986); see other definition in A. J. R. Groom, “The Setting in World Society” in Groom, A. J. R. and Paul G. Taylor (eds.) *Frameworks for International Cooperation* (St. Martin’s Press 1990) 3-11.

⁸⁴ Helen Milner, ‘Review - International Theories of Cooperation among Nations: Strengths and Weaknesses Cooperation among Nations by Joseph Grieco; Saving the Mediterranean by Peter Haas’ (1992) 44 *World Politics* No. 3, 466-496.

transnational organized crime more effectively.”⁸⁵ In signing up to this Convention and its Protocols, states inherit the obligation to meet its objectives. Cooperation emphasizes the positive aspects of human activity as all participants in a cooperative effort are maximizing common interest and/or minimizing common aversions.⁸⁶ However, despite the existence of international anti-trafficking laws created to eradicate human trafficking, states still find it difficult to cooperate in this regard. The extent to which states will obey this international law through the way they relate is contingent to a number of factors grounded in their political, social and economical identities.⁸⁷

The concept of cooperation is often used loosely as ‘political propaganda’ by state leaders seeking to build favourable political images of themselves. As Seong-Woo Yi puts it,

“Politicians often use the term “international cooperation” to describe an agreement between two or more countries. When leaders exchange opinions at summits, they emphasize “reinforcement of mutual cooperation and peaceful resolution of internationally present conflict or potential conflict” as a final conclusion of a summit.”⁸⁸

Such rhetorical usage of cooperation can be confusing when politicians mention international cooperation. To an extent, this sort of ambiguity in the conceptual treatment of cooperation by politicians seems to be generally

⁸⁵ Organise Crime Convention 2000, Art. 1.

⁸⁶ See Brand (n 1).

⁸⁷ See above Oye (n 83): See also Helen Milner, ‘International Theories of Cooperation among Nations: Strength and Weakness’ (1992) 44 *World Politics* pp. 466-496; Seong-Woo Yi, ‘Why Do Nation-States Cooperate under Anarchy?: Domestic Factors for Interstate Cooperation’ (2007) *Jeju Peace Institute Research Series* [3] 1.

⁸⁸ Ibid Yi ‘Why Do Nation-States Cooperate under Anarchy?’ (n 87) 3.

accepted without critical thought.⁸⁹ In exploring international cooperation in the anti-trafficking regime, emphasis should be laid on how members of the international community comply by adjusting their domestic legislation and norms in positive contribution to the global public good provisions. Secondly, one must also explore ways through which States have intensified cooperation vis-à-vis bilateral or multilateral agreements.⁹⁰ By ratifying the Organised Crime Convention, States take the first step towards establishing cooperation. However, ratification does not always mean that states will comply with the principles of the anti-trafficking regime. Hence, it is the operationalization of international cooperation that is often the critical point for empirical analysis.⁹¹ Such analysis will include actions taken by cooperating states to comply with the anti-trafficking regime.

Raustiala and Slaughter defines compliance as 'a state of conformity or identity between an actor's behaviour and a specific rule'.⁹² The fact that States comply does not necessarily guarantee 'effectiveness' which occurs as a change in behaviour. As Raustiala and Slaughter asserts, "many international agreements reflect a lowest common denominator dynamic that makes compliance easy but results in negligible influence on behaviour".⁹³ Challenges of states' compliance with the anti-trafficking regime stems from different factors which includes how regimes are formed. Scholars have devoted time to literatures in explaining how regimes are formed and how they anticipate

⁸⁹ *ibid.* 3.

⁹⁰ Kenneth W. Abbott and Duncan Snidal, "Pathways to International Cooperation" in Eyal Benvenisti and Moshe Hirsh (eds.) *The Impact of International Law on International Cooperation: Theoretical Perspectives*, (Cambridge University Press 2004).

⁹¹ Yi 'Why Do Nation-States Cooperate under Anarchy?' (n 87) 2.

⁹² Kal Raustiala and Anne-Marie Slaughter "International Law, International Relations and Compliance" in B. A. Simmons (ed.), *International Law* (Vol. III Sage Publication 2008) 332.

⁹³ *ibid* 333.

regimes will enable compliance for international cooperation from three major standpoints.

Regime theory emerges from the neorealist, neoliberal and constructivist standpoints. Although these theories help explain why states cooperate, they do not guarantee the internalization of norms amongst all cooperating parties in certain issue areas. Neorealist regime theorists are of the view that state's self-interest and absolute/relative gains are an explanation for regime formation.⁹⁴ This rationalist focuses on the role of power structure in regime formation centred on the existence of a hegemon. In other words, they are of the view that a strong hegemon makes for a successful regime. Neorealist use 'hegemonic stability theory (HST)'⁹⁵ to best explain this regime formation, where a hegemon establishes the norms for conduct on several issues.⁹⁶ In this instance, compliance may occur for 'instrumental reasons' to avoid sanctions from powerful states.⁹⁷

A manifestation of the realist viewpoint on anti-trafficking could be demonstrated with the United States (US) anti-trafficking regime where the US has self-appointed itself as 'global sheriff or watchdog' for anti-trafficking.⁹⁸ This US mandate emerges from its domestic legislation as part of its foreign policy on

⁹⁴ Andreas Hasenclever, Peter Mayer, Volker Rittberger, 'Integrating Theories of International Regimes' (2000) 26 *Review of International Studies*, No. 1; Kenneth N. Waltz, *Theory of International Politics* (New York: McGraw-Hill 1979).

⁹⁵ Hegemonic Stability Theory (HST) is a theory of international relations that indicates that the international system is more likely to remain stable when a single nation-state is the dominant world power.

⁹⁶ Milner, *International Theories of Cooperation among Nations* (n 87) 470.

⁹⁷ Raustiala and Slaughter, *International Law* (n 96) 332.

⁹⁸ Janie Chuang, 'The United States as Global Sheriff: Using Unilateral Sanctions to Combat Human Trafficking' (2006) 27 *Michigan Journal of International Law*, p.158.

anti-trafficking through the Trafficking Victims Protection Act (TVPA).⁹⁹ This led to the Trafficking in Persons (TIP) report which sets out to monitor almost all states' response to anti-trafficking, ranking countries according to their compliance with the TVPA minimum standards from Tier 1 to as low as Tier 3.¹⁰⁰ In line with the TVPA and as a matter of policy, the US will not grant any humanitarian aid or related assistance to countries that does not comply with the TVPA.¹⁰¹ In addition, such countries are likely to face US opposition when seeking the assistance of the IMF and the World Bank.¹⁰² As Susan Strange points out, institutions such as the World Bank, International Monetary Fund (IMF), and other related organizations established after World War II are only tools of 'American grand strategy'.¹⁰³

While this sanction regime's 'name and shame' technique may have prompted how some states perceive themselves or are perceived by others within the anti-trafficking discourse, it does not essentially promote significant change in states' behaviour in tackling the reality of the issue essential for cooperation. Rather, it coordinates the actions of states towards principles and norms that are less legitimate for effective international cooperation.¹⁰⁴ Countries like Nigeria utilises the US sanction regime as a benchmark for its performance but most likely when it boost its reputation. Conversely, where it has reduced the status of Nigeria from Tier 1 to Tier 2, it seems unclear as to what difference it makes to Nigeria's

⁹⁹ Trafficking Victims of Protection Act 2000, section 10a.

¹⁰⁰ Trafficking Victims Protection Act of 2000, Div. A of Pub. L. No. 106-386, Section 108, as amended.

¹⁰¹ Trafficking Victims of Protection Act 2000, Sec. 110(d)(1)(B)); see also Anne Gallagher, "Human Rights and Human Trafficking in Thailand: A Shadow TIP Report" in Karen Beeks and Delila Amir (eds) *Trafficking and the Global Sex Industry* (Lexington Books 2006) 140-41.

¹⁰² Ibid.

¹⁰³ Susan Strange, 'Cave! Hic Dragoness: A Critique of Regime Analysis' (1982) 36 *International Organization* No. 2, 185 – 205.

¹⁰⁴ For regime legitimacy see Helmut Breitmeier, *The Legitimacy of International Regimes* (Ashgate Publishing 2008).

reputation and willingness to improve. International relations theorists and international lawyers have long argued that reputational concerns help ensure that states maintain their agreements.¹⁰⁵ However, this may be diluted through multiple reputations which some states possess.¹⁰⁶ According to Downs and Jones, states cannot afford to ignore the reality that failure to keep a particular commitment will affect other states' estimates of its reliability/value as a partner in other future agreement.¹⁰⁷ As a result, even if some states possess poor reputations within the anti-trafficking regime, they are not regularly excluded from new agreements in other issue area.¹⁰⁸ For a country like Nigeria rich in oil, the chances of its exclusion from economic-related agreements due to its poor compliance within the anti-trafficking regime are slim.

Furthermore, the US sanction regime depends on second hand data which inevitably breeds a negative impact on international cooperation by causing governments to downplay the seriousness of their trafficking problems in order to avoid the consequences of the sanctions. According to Chuang,

“In addition to sitting uncomfortably with the international cooperation ethic that pervaded the Vienna process, the sanctions regime exposes U.S. anti-trafficking foreign policy to standard critiques of U.S. unilateralism for its damaging effects on international law and institutions”.¹⁰⁹

¹⁰⁵ George W. Downs and Michael A. Jones, 'Reputation, Compliance, and International Law' (2002) 31 *The Journal of Legal Studies*, No. 1. 95-114.

¹⁰⁶ George W. Downs and Michael A. Jones, "Reputation, Compliance and Development" in Eyal Benvenisti and Moshe Hirsh (eds.) *The Impact of International Law on International Cooperation: Theoretical Perspectives*, (Cambridge University Press 2004).

¹⁰⁷ *ibid.*

¹⁰⁸ *ibid* 133.

¹⁰⁹ Janie Chuang, 'The United States as global sheriff: Using unilateral sanctions to combat human trafficking' (2006) 27 *Michigan Journal of International Law* No. 2, 456.

Similarly, Gallagher contends that the US sanction regime constitutes an incentive to comply that is coercively 'persuasive'.¹¹⁰ For Koh, coercive action through imposing sanctions is not the best way to enforce legal norms, but to change the way that people think about themselves.¹¹¹ Otherwise the critical factor, which is the eradication trafficking, may not be altruistic or normative.¹¹² The sanction regime, taking a realist route demonstrates some empirical realities within the anti-trafficking regime but does not proffer the best solution for cooperation in a way that addresses the dilemma of trafficking.

From a neoliberal assumption, cooperation cannot be hampered by a clash or imbalance of power but by a conflict of state interests. While relatively sensitive to the effects of power differentials, they emphasize the role of international institution in helping states actualize common interest. Compliance from a liberal approach is based upon self-interest and fairness.¹¹³ Liberalism focuses upon both state accountability and individual liberty.¹¹⁴ It emphasises the plurality of states in international law including institutions like the United Nations (specifically, the UNODC) taking up a coordinating role; individuals, NGOs; and multinational corporations (MNCs).¹¹⁵ Liberals base state cooperation on the concept of the 'public goods'¹¹⁶ and an anticipated concurrence between

¹¹⁰ Gallagher, *Human Rights and Human Trafficking in Thailand* (n 101) 139.

¹¹¹ Harold D Hongju Koh, 'How Is International Human Rights Law Enforced?' (1999) 74 *International Human Rights Law* pp. 1396 – 1417.

¹¹² *ibid.*

¹¹³ David Armstrong, Theo Farrell and Helene Lambert, *International Law and International Relations* (Cambridge University Press 2007) 109.

¹¹⁴ Susan Kneebone and Julie Debeljak, *Transnational Crime and Human Rights: Response to Human Trafficking in the Greater Mekong Subregion* (Routledge 2012) 184.

¹¹⁵ As mandated by the Organize Crime Convention; See also Armstrong et al., *International Law* (n 113) 106.

¹¹⁶ The international community concludes that there is a 'global public good' to cooperate against trafficking.

collective interest and the self-interest of states.¹¹⁷ Bett has used the liberal approach to demonstrate how the global North and South impasse has been addressed through issue-linkages for international cooperation in the refugee regime.¹¹⁸ The notion of issue-linkages here “refers to the way in which issues are grouped together in formal inter-state bargaining”.¹¹⁹ Therefore Bett hypothesize that “interests in linked issue-areas have been necessary for cooperation” and that international institutions like the United Nations play a massive role in helping states recognise their interest.¹²⁰

In this instance, Bett's hypothesis assumes that states can find a common interest/common gains to cooperate against human trafficking. However, in reality, ‘interest’ means different things for different states and therefore creates a clear disparity in the capacity of states to cooperate. When dealing with states with different identities, possessing different interests, it is often difficult to enable a change in their behaviour that does not consider their differences. Resonating from the basic maxim of international law, theorist like Slaughter and Moravcsik argue that democracies are more inclined to ‘do law’ with one another.¹²¹ Hence, human rights framework within the EU system may work better because it is made up of liberal democracies that share motivations for ‘collective obedience’.¹²² Hence, it is arguable that the EU frameworks, as demonstrated earlier in this chapter, remain more robust than the Trafficking Protocol even though they both conform to a liberal approach. However,

¹¹⁷ Kneebone and Debeljak, *Transnational Crime and Human Rights* (n 114) 185; See also Brand (n 1).

¹¹⁸ Alexander Bett, *International Cooperation in the Global Refugee Regime* (GEG Working Paper 2008/44).

¹¹⁹ Stein, A, ‘The Politics of Linkage’ (1980) 33 *World Politics*, no. 1 pp. 62-81.cited in *ibid* 9.

¹²⁰ Bett, *International Cooperation* (n 118) 11.

¹²¹ cited in Koh, ‘How Is International Human Rights Law Enforced?’ (n 111) 1404.

¹²² *ibid* 1405.

within the context of this study, the countries of interest differ in their identities and interest.

Although Nigeria and the UK have agreed to cooperate towards suppressing human trafficking as a common goal through the ratification of the Trafficking Protocol, complying upon ratification depends upon many different aspects.¹²³ These include questions on whether the provisions towards reaching that goal appeal to their identity. Hence, the real motivation for ratification is crucial. Some states may be 'sincere ratifiers' but also join a treaty to avoid criticism or even use the membership to disguise the abuse of such norms.¹²⁴ Given that not all aspects of human rights reflect the interest of many states, states take solace in other interest that the anti-trafficking regime makes available.¹²⁵ At best, member states try to signpost their interest within the anti-trafficking regime, in line with their diverse identity.

As previously illustrated, some states are able to align the Trafficking to their border control and national security agenda. For the latter states amongst others, the fight against such human rights violation falls in line with their identity as 'human rights crusaders'. At its best, it gives a 'humane face' in the pursuit of other selfish agendas. For this reason, some states have taken the cooperation against trafficking more seriously whether or not at the detriment of human rights. As seen in the first section of this chapter, the Trafficking Protocol is not only insufficient in dealing with the human rights factors in anti-trafficking but it is

¹²³ Seo-Young Cho and Krishna Chaitanya Vadlamannati, 'Compliance with the Anti-trafficking Protocol' (2012) 28 *European Journal of Political Economy* pp. 249–265.

¹²⁴ Oona A. Hathaway, 'Do Human Rights Treaties Make a Difference?' (2002) 111 *Yale L.J.* 1936; see also Cho and Vadlamannati (n 123).

¹²⁵ Krasner asserts that human rights Treaties are not optimistic from a realist viewpoint in Stephen Krasner, "Sovereignty, Regimes and Human Rights" in Peter Mayer and Volker Rittberger (eds.), *Regime Theory and International Relations* (Clarendon Press 1993) 1–22.

restricted by its legal parameters in dealing with the human-centred concerns of trafficking within the context of this study. Although the main objective of the Organised Crime Convention and its Protocols is to promote international cooperation against trafficking, it has not in practice guaranteed interstate cooperation beyond its legal ramifications nor even guaranteed compliance.

Since chapter two has demonstrated that a comprehensive measure in addressing the human rights of human trafficking requires broadening the right-based framework to include aspects that transcends legality, the anti-trafficking regime has to make provisions for the convergence of norms that are beyond international law in order to effectively promote international cooperation that reflects the identities of states it intends to influence. While states may have to adjust their behaviour to reduce negative consequences within this international issue, some aspects of these policy adjustments cannot be uniformed amongst various states given that they may not possess the same identity. Hence, policy adjustments should reflect the diversity of states towards addressing the reality of trafficking in those states rather than conforming to the foreign policies of powerful states that may result to negligible change in behaviour that is more coercive than normative.

In essence, the problem with dealing with a country like Nigeria whose limited interest in the reality of trafficking is defined by the foreign policy of funding states is to get the country genuinely interested in promoting the concerns of its citizens beyond the parameters of the anti-trafficking movement. In fostering interstate cooperation against human trafficking beyond just enacting laws, two questions are obvious; firstly, how do they see human trafficking? Secondly, what do they stand to lose or gain as a country within this issue area? These questions, essentially determines the interest of various states (whether source, transit or destination countries) in tackling trafficking. The interest of states which

are in line with the critique of the Trafficking Protocol seem to lean more to the interest of Western countries. Western states are largely major destination countries and as a result, they have more at stake mainly from the standpoint that their borders are challenged, they face economic losses from untaxed income made from trafficking within their domain and; they also have to bear the 'most' cost for anti-trafficking through the number of investigations and victims protection they have to undertake within their territories. Hence combating trafficking from a Western viewpoint is an urgent issue, for the most part, to reduce huge trafficking flows into their countries. As a result, major destination countries like those within the membership of the EU tend to cooperate better as they possess similar identity and interest – at the very least, to secure fortress Europe. It is for this reason that Western states tend to function as 'quasi-enforcement tool' to ensure compliance.¹²⁶ However, what do these states seek to use compliance to foster and for whose interest?

In contrast, sending countries, which are mainly non-Western countries, may not view anti-trafficking totally the same way as the West following what they consider to be at stake for the interest of their territory. Firstly, as sending countries, the exploitation occurs elsewhere, the problem is less noticeable and therefore less urgent.¹²⁷ In countries where there is high tolerance to human rights violation in general, the problem of human trafficking is likely to be ignored. According to Cho et al, some sending countries might also find concrete economic reasons not to comply especially to do with the expectation of remittance and /or population pressure¹²⁸ and the high cost of compliance.¹²⁹ From this viewpoint, sending countries may only comply due to

¹²⁶ Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009).

¹²⁷ See Cho and Vadlamannati (n 123).

¹²⁸ *ibid.*

¹²⁹ *ibid.*

external pressures whether from Western states, or other non-state actors. This does not mean that non-Western states may not bear some loss for not complying. They include the loss of human capital, damaged reputation and the violation of their borders. Despite, these potential losses, it is not in the highest priority for some of these states in comparison to developed countries. Driven by financial aid, some of these source countries are likely to fulfil the needs of the Western states at the lowest cost.¹³⁰ Following the difference in identity between the UK and Nigeria, to what extent does compliance with anti-trafficking norms underscores the diversity that exists in states' relations therein? Although the rationalist viewpoint makes valid points on how cooperation amongst states currently play out within the anti-trafficking regime, it does not present the best condition to fulfil the objective of the regime due to the inconsistency between the regime and the related behaviour of states. For this reason, the anti-trafficking regime as it stands may be considered weak within the context of this study. It is in the limitation of the rationalists' viewpoint that the constructivist position is emphasized to support the position that a constructivist approach presents a better condition for inter-states cooperation to address the diversity that often obstructs the success of the anti-trafficking regime in some instances.

Also known as the knowledge-based theorists, the constructivists assume that their central variable is based on norms and rationale for cooperation and is subject to collective identity formation. This theory encompasses a wider ontological stance, which examines how interests and identities are formed, and how they interact in the construction of reality.¹³¹ Thus, it adopts an approach that scrutinises paradigmatic aspects of rationalists' theories that are often overlooked. While the rationalists as illustrated above proffer an overview

¹³⁰ *ibid.*

¹³¹ Nilufer Karacasulu, Elif Uzgören 'Explaining Social Constructivist Contributions To Security Studies' (2007) *PERCEPTIONS* pp. 27-48.

of how and why states currently cooperate, it has stifled the progress and legitimacy of the anti-trafficking regime following existing conflating agenda especially between Western and non-Western states. As a result, constructivists are highly critical of the rationalists for their flawed assumptions which includes notions that state actors are forever rational; their interests remains static and; that the difference in interpretation of interest and power are not possible.¹³²

Constructivists approach regimes from a sociological or post-positivist viewpoint that considers 'learning' or 'knowledge'. Essentially, they are of the belief that state actors cannot be separated from their socio-political surroundings, which in turn forms their identity. Thus, states' foreign policy depends primarily on their identities and what they believe to be in their national interest.¹³³ Although trafficking from Nigeria to the UK is also a problem of the Nigerian state, they may not perceive the problem in the same light due to other factors that surrounds or make up their identity. These factors are often enthused by the endogenous beliefs and ideas often held by individual decision-makers. However, both their belief and interest are subject to change following increased learning.¹³⁴ Despite the criticism of rationalist, constructivists often describe itself as a 'middle ground' position especially because it does not dismiss the rationalist positions completely as they have also made some valid

¹³² Andreas Hasenclever, Peter Mayer, Volker Rittberger, 'Integrating Theories of International Regimes' (2000) 26 *Review of International Studies*, No. 1.

¹³³ Dmitriy Nikonov, *International Regimes in a Globalizing World: The Case of Nonproliferation Export Controls*, Center for International Trade and Security, University of Georgia – (A Paper Presented At The 43d Annual ISA Convention New Orleans, LA March 24-27, 2002) <http://isanet.ccit.arizona.edu/noarchive/nikonov.html> (accessed 12th April 2013).

¹³⁴ Hasenclever et al, *Integrating Theories of International Regimes'* (n 132) 136-139.

point in the matter.¹³⁵ A constructivist approach to international cooperation within the discourse of anti-trafficking allows for a more contextual articulation of how states can cooperate beyond legal limitations in order to eliminate the realities of human trafficking. The human-centred approach best illustrates these realities by setting the understanding and the solution of trafficking against the circumstance of the countries in question. In order to integrate such approach in inter-state cooperation a constructivist standpoint must be adopted. This includes the opportunities it presents for international cooperation and compliance.

Armstrong et al. suggest that constructivism presents three reasons for compliance; persuasion, norm congruence, and habit.¹³⁶ Persuasion in this context is explained as a process of 'social learning, information conveyance' or 'internalization of norms'.¹³⁷ Harold Koh, in stating his views on compliance, best explains 'habit' in this context. Although its emphasis on 'transnational legal processes' may seem to resemble a liberal approach, his description of the process is consistent with constructivism as its features are 'non-traditional, normative, dynamic and non-statist'.¹³⁸ Following Koh's assertion, compliance occurs when international law against trafficking is internalised in the domestic system through 'internalised obedience' or as Stavropolou puts it, 'internalisation of norms' rather than 'enforced compliance' as seen with the US sanction

¹³⁵ Steve Smith and Patricia Owens, "Alternative Approaches to International Theory", in John Baylis and Steve Smith (eds.) *The Globalization of World Politics*, (Oxford University Press 2001) 274; Emanuel Adler, 'Seizing the Middle Ground: Constructivism in World Politics' (1997) 3 *European Journal of International Relations*, No. 3, p. 319-363.

¹³⁶ David Armstrong, Theo Farrell and Helene Lambert, *International Law and International Relations* (Cambridge University Press 2007) cited in Kneebone and Debeljak, *Transnational Crime and Human Rights* (n 114) 185.

¹³⁷ Kneebone and Debeljak, *Transnational Crime and Human Rights* (n 31) 185.

¹³⁸ Harold Hongju Koh, 'Transnational Legal Process' (1996) 75 *Nebraska Law Review* p 184.

regime.¹³⁹ Koh's transnational legal process does not directly explain how and why states cooperate but instead proffers an empirical pathway to the internalization of international norms. The process explains how countries can internalize anti-trafficking norms into their domestic system to the point that they take it for granted. The latter remains essential to interstate cooperation.

Elements within Koh's process of internalization also resemble the 'spiral model' developed by Risse, Ropp and Sikkink. Essentially, Koh asserts that compliance is driven by the efficacy of domestic rules as part of 'bringing international law home'. However, the effectiveness of internalization is dependent of the norm at stake.¹⁴⁰ Within the anti-trafficking regime and as proposed in chapter two of this thesis, human rights norms at stake and evidentially has not been the easiest to internalize. While the domestication of international law is a positive step within the anti-trafficking movement, it does not guarantee that states and its citizen would change the way they see the problem of trafficking. Hence, a human-centred perspective as articulated in chapter two allows for a social constructive view point that allows states to incorporate their real concerns in the process of internalization. Such approach permits measures that touch upon the socio-cultural realities that are concomitant to the diversity of states and their experiences of trafficking.

Constructivists are also interested in argument. Risse defines arguing as "a mode of communication in which mutual assessment of the validity of the argument is geared towards a 'reasoned consensus' rather than imposed instructions"¹⁴¹ Arguing and persuasion can promote legitimacy by providing 'voice'

¹³⁹ Kneebone and Debeljak, *Transnational Crime and Human Rights* (n 114) 185.

¹⁴⁰ Kal Raustiala and Anne-Marie Slaughter "International Law, International Relations and Compliance" in B. A. Simmons (ed.), *International Law Vol. III*, (Sage Publication 2008).

¹⁴¹ Cited in Kneebone and Debeljak, *Transnational Crime and Human Rights* (n 114) 186.

opportunities to various stakeholders, broadening participation and ownership in the discourse.¹⁴² The role of [trans]national non-state actors as agents of socialization are crucial to persuading actors who oppose compliance.¹⁴³ This also includes the role of epistemic communities who provide the knowledge valid for such persuasion. Haas defines epistemic community as a “network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area.”¹⁴⁴ Epistemic communities are knowledge-based experts who can play a role in articulating the cause-and-effect relationships of complex problems, thereby helping states to identify their interest, framing the issues for collective debate, proposing specific policies and identifying salient points for negotiation.¹⁴⁵ Haas proposes that the diffusion of new ideas through knowledge sharing can lead to new patterns of state behaviour for international policy coordination.¹⁴⁶ Such diffusion of new ideas creates space for the exploration of a human-centred approach as a new consideration in addressing international cooperation against human trafficking that transcends legal parameters.

These communicative processes from a constructivist viewpoint consider states' history, current political environment and the reputation that state wishes to achieve as well as their ability to internalize the norms in question. Elements such as history, culture and religion which cannot easily be changed, has a profound consequence on the social reality of trafficking in any state. Within the anti-trafficking regime, some states still find it difficult to cooperate and comply in the

¹⁴² *ibid.*

¹⁴³ Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009).

¹⁴⁴ Peter M. Haas, 'Epistemic Communities and International Policy Coordination' (1992) 46 *International Organization*, No. 1, p. 3.

¹⁴⁵ *ibid.*

¹⁴⁶ *ibid.*

real sense of internalising regime's principle and norms due to a lack of shared knowledge. The 'carrot and stick' or 'logic of consequentialism' approach of the rationalist can only go so far as fulfilling the interests of the hegemon but will rarely change how state actors view what is appropriate and what needs addressing.¹⁴⁷ If states are to cooperate and comply to the anti-trafficking regime, [in]voluntary non-compliance states have to internalize new norms and rules of appropriate behaviour up to the point that it is "taken for granted".¹⁴⁸ Such internalisation often results in the redefinition of actors' interests and identities.¹⁴⁹

The diversity inherent in trafficking from Nigeria require the shared understanding of both Nigeria and the UK as to what trafficking constitutes across their territory otherwise, it is the rights of the victims that may suffer from existing skewed understanding. For instance, there was a constant reiteration by Nigerian officials that anti-trafficking is another 'invention' of the West and another method to 'blacklist' Nigeria.¹⁵⁰ Risse and Sikkink, recognise this attitude in their spiral model and attributed it as part of the socialization process.¹⁵¹ This does not mean that Nigerian authorities do not agree that trafficking exists but rather there is a lack of consensus with countries like the UK as to what it constitutes that remains challenged. Within the context of this study, the way both countries understand the issue in congruence with their identity affects how they currently address the issue. This becomes more complex from a human-centred viewpoint

¹⁴⁷ Tanja A. Börzel, *Why Do States not Obey the Law?* (Paper prepared for presentation at ARENA, University of Oslo, June, 2002)

¹⁴⁸ Thomas Risse, and Kathryn Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction" in Thomas Risse, Stephen C. Ropp and Kathryn Sikkink, (eds.) *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press, 1999) 5-6.

¹⁴⁹ see above Börzel (n. 147).

¹⁵⁰ Interview with Nigerian Officials in Abuja Nigeria [December 2011].

¹⁵¹ Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009).

where socio-cultural factors within countries like Nigeria reduce the recognition of rights; especially where UK stakeholder have to deal with victims affected by these factors. Attributing this to how states cooperate in the human rights regime, An-Na'im asserts that

“Restricting international human rights to those accepted by prevailing perceptions of the values and norms of the major cultural traditions of the world would not only limit these rights and reduce their scope, but also exclude extremely vital rights. Therefore, expanding the area and quality of agreement among the cultural traditions of the world may be necessary to provide foundation for the widest possible range and scope of human rights.”¹⁵²

International cooperation against human trafficking depends on states compliance and victims/survivors of trafficking depend on such cooperation to address their needs and circumstance utilising a human-centred approach. To meet the latter objectives, states have to adopt a human rights framework that incorporates existing perceptions and interpretations of cultural values and norms for cultural legitimacy founded on solid conceptual and empirical grounds.¹⁵³ While scholars like Alison Renteln suggests that a cross-cultural understanding will shed light on a common core of acceptable rights, a constructive element is needed to broaden and deepen cross-cultural consensus through the continual interaction of states.¹⁵⁴ In addition, Haas insists:

¹⁵² Abdullahi Ahmed An-Na'im " Towards a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment" in Mark Goodale ed. *Human Rights: An Anthropological Reader* (Wiley-Blackwell 2009) 69.

¹⁵³ Abdullahi Ahmed An-Na'im (eds.) *Human Rights and Cross-Cultural Perspectives: A Quest for Consensus* (University of Pennsylvania Press 1991).

¹⁵⁴ Alison D. Renteln, 'The Unanswered Challenge of Relativism and the Consequences for Human Rights' (1985) 7 *Human Rights Quarterly*, 514-540.

“How states identify their interests and recognize the latitude of actions deemed appropriate in specific issue–areas of policymaking are functions of the manner in which the problems are understood by the policymakers.”¹⁵⁵

External imposition of what anti-trafficking constitutes has been counterproductive towards ending the sale of human beings as it halts some states from recognizing the real issue. It also brands the ownership of the regime norms towards powerful states and undermines its legitimacy for the use of their cooperating counterparts. This thesis proposes that greater consensus on the international human rights standards in anti-trafficking for the protection of individuals against this cruel sale of human beings can be achieved by persuading states through internal cultural discourse and cross-cultural dialogue. This does not mean that states cannot cooperate in the absence of global cultural unity but rather suggests that it would create greater opportunity to achieve it. A cross-cultural measure reduces the prejudice linked with the ethnocentricity of ‘others’ and gently accommodates the human-centred approach as suggested in chapter two while adhering to the rule of law. A cross-cultural measure is not proposed to neutralize moral judgment or impair actions against injustice but rather, it should be seen as an ‘exchange of warnings’ in order to promote vital concerns of trafficked persons across borders.¹⁵⁶ When countries are aware of the diversity and importance in the socio-cultural factors that fuels trafficking then, it could serve as a starting point to effectively delineate the process of anti-trafficking in terms of identifying victims and preventing the crime.

¹⁵⁵ Haas, ‘Epistemic Communities’ (n 144) 2.

¹⁵⁶ Elvin Hatch, *Culture and Morality: The Relativity of Values in Anthropology* (Columbia University Press 1983) 12; Clifford Geertz, ‘Distinguished Lecture: Anti-Relativism’ (1984) 86 *American Anthropologist* p. 265.

This approach requires equal commitment from cooperating states from different world traditions. However, in light of significant disparities in socio-political identities and level of economic development some states/cultural traditions are unlikely to engage in internal discourse as much as others and as a result unable to participate in cross-cultural dialogue as effectively as others. As An-Na'im puts it, this measure requires a "certain degree of political liberty, stability, and social maturity as well as technological capabilities that are lacking in some parts of the world".¹⁵⁷ This is where Global Northern states and international organization should aim their humanitarian aid – towards continually creating opportunities knowledge sharing and inclusive participation with an attempt to expand the collective ownership in this fight against trafficking beyond the existing provisions of international law. How Nigeria and the UK adhere to such suggestion in the their bilateral cooperation as part of the anti-trafficking is further expounded in later chapters. In the meantime, it is crucial to elucidate the concrete nature of the problem it intends to address within the geographical expanse of this research study. It is in the concrete understanding of the operation of trafficking within this case study that anti-trafficking approaches should begin to emerge and in addition, inform the critical analysis of the anti-trafficking efforts of Nigeria and the UK so far.

Conclusion

Addressing human trafficking requires tackling the shortcomings of human rights that poses a challenge to anti-trafficking as demonstrated in chapter two. It would be anticipated that the Trafficking Protocol and other regional legal frameworks will support such protectionist framework. Instead, this chapter underscores that the principles of the anti-trafficking regime are not consistent

¹⁵⁷ An-Na'im (n 152) 82.

with the human rights framework, let alone a human-centred prescription. The Trafficking Protocol provides for a border control and criminalization approach that currently undermines human rights as seen with the analysis of the instrument. The EU anti-trafficking which is more robust to address the human rights aspect of trafficking depends on states' interpretation which is more state-centric than human-centred but also remains limited by its membership. On the other hand, measures employed by ECOWAS have had limited influence in securing the commitment of its member states. These instruments have set out the framework for international cooperation by obliging states to domesticate international law and set the foundation of how they cooperate. Nevertheless, why and how will states cooperate in promoting the anti-trafficking regime? This is especially when chapter two proposes that human rights should not only take primacy in addressing trafficking but be broadened beyond legal frameworks.

Each of the theories explored in this chapter namely realism, liberalism and constructivism offer an insight into why and how state cooperate within anti-trafficking regime. The US sanction regime is consistent with a realist framework while the Trafficking Protocol, EU and ECOWAS are consistent with the liberal approach with the assumption that states possess a common interest to combat trafficking. Without denying the points made by the rationalists, this chapter contends that state identity varies and this affects how they perceive their interest in addressing the dilemma of trafficking. The identity of states, which includes their history, culture and political terrain, is crucial to how they view trafficking and their interest to address the issue. Ignoring such diversity is a recipe for failure to counter-trafficking at least in a framework aimed at meeting the needs and circumstances of those at risk/victims and survivors of trafficking. It is for this reason that this chapter opts for a constructivist standpoint of international regime which allows for a more contextual framing and approach for cooperating within the anti-trafficking regime.

Cross-border trafficking is a process that involves at least two or more states at one time. Hence, the cooperation of states is crucial but cannot be addressed solely from the viewpoint of Western identity based on border control and securitization. The latter factors are crucial but limited to ending trafficking. Therefore, cross-cultural dialogue and the development of knowledge through epistemic communities and interstate interactions are many ways to overcome the Western and Non-Western impasse for cooperation in the anti trafficking regime. It is in need to build this knowledge that the next chapter explores the modus operandi of trafficking between Nigeria and the UK so that intervention by both states is evidentially positioned to address the real issues on the ground. Therefore, paving way for an evidence-based analysis of the efforts employed to deal with these realities by both states, illustrated in latter chapters.

Chapter Four - The Modus Operandi of Human Trafficking between Nigeria and the United Kingdom: An Empirical Background

Introduction

In order for Nigeria and the UK to address human trafficking across their borders, there is need to clarify the process at which trafficking operates across their borders. Essentially, the Modus Operandi (MO) of trafficking from both countries need to be explored. MO often used in the area of criminology, literally means 'way of operating'.¹ MO has been historically used by law enforcement agencies to analyse crimes through behaviours of the offender.² Hazelwood and Warren contend that "it encompasses all behaviours initiated by the offender to procure a victim and complete the criminal acts without being identified or apprehended."³ MO can be quite simple or very complex with different dimensions and degrees of sophistication.⁴ Within the context of human trafficking, Gozdzia and Bump insist that there is still a poor understanding on the modus operandi of traffickers and their networks.⁵ One of the best strategies to address this gap is for law enforcement and intelligence agencies to develop greater "local intelligence that currently exists and a deeper understanding of personalities, modus operandi [and] culture..."⁶ The latter is also useful for

¹ see Oxford Dictionaries [online] available at: <http://oxforddictionaries.com/definition/english/modus-operandi> [Accessed 20th August 2013].

² Robert R. Hazelwood and Janet I Warren, 'Corresponding Linkage analysis: modus operandi, ritual, and signature in serial sexual crime' (2004) 9 *Aggression and Violent Behavior*, Issue 3, 307–318.

³ *ibid* 308.

⁴ *ibid* 309.

⁵ Elzbieta M. Gozdzia and Micah N. Bump, *Data and Research on Human Trafficking: Bibliography of Research-Based Literature* (Institute for the Study of International Migration (ISIM), Walsh School of Foreign Service, Georgetown University 2008).

⁶ Thomas M. Sanderson, 'Transnational Terror and Organized Crime: Blurring the Lines' (2004) 24 *SAIS Review of International Affairs* (1) 56.

elucidating the human-centred perspective illustrated in chapter two. Within the context of this study, it broadens the indicators for allocating victimhood to persons affected, as it acknowledges elements that may not fit into general understandings of trafficking.

This chapter aims at injecting some clarity and insight into the particularity of trafficking between Nigeria and the UK, as a foundation to providing the appropriate interventions. The MO within the context of this study is explored through the different stages of trafficking as stipulated by different scholars and as founded in the formal definition of trafficking.⁷ In three sections, this chapter explores the three main stages of recruitment, transportation and exploitation. In the process of elucidating these stages, a socio-cultural lens is included in the analysis and in areas like the 'juju contract', a brief legal argument is made. Essentially, this chapter uses empirical data to unveil other existing elements within the process of trafficking in rejection of a one-size-fit-all lens. According to Lee, there is a great diversity in what trafficking constitutes.⁸ Thus, 'depending on the political winds and dominant social norms of the day, what is an illegitimate trade in one era may be a legitimate trade in another'.⁹ A generic understanding of the problem can result in a generic approach that is less than ideal for societies with certain uniqueness in case studies.

⁷ Kevin Bales, *Disposable People: New Slavery in the Global economy*, (University of California Press 2000); Aronowitz Alexis A, "Trafficking Nexus and the Myths Surrounding Human trafficking" in William Frank McDonald (ed.) *Sociology of Crime, Law and Deviance Volume 13: Immigration, Crime and Justice* (Emerald Group Publishing 2009); see also the United Nations Transnational Organised Crime Convention 2000.

⁸ Maggy Lee (ed.) *Human Trafficking* (Willan Publishing 2007).

⁹ Andreas Peter, 'Smuggling Wars: Law Enforcement and Law Evasion in a Changing World' (1998) 4 *Transnational Organized Crime*, 75-90, p.72; see also Lee (note 8).

Trafficking between Nigeria and the UK

Nigeria is a country made up of almost 160 million people.¹⁰ This former British colony is one of the world's largest oil producers but still inhabits some of the world's poorest citizens who are living on less than \$1 a day.¹¹ Up till date, the country has not had a respectable human rights record and human trafficking is just one of the many social issues prevalent in Nigeria.¹² The trafficking of human beings in Nigeria is an old phenomenon that has gained new attention in the last decade. Nigeria is a source, transit and destination country for the trafficking of people. According to the United Nations Educational Scientific and Cultural Organization (UNESCO), Nigeria has acquired a reputation for being one of the leading African source countries for human trafficking including cross-border and internal trafficking.¹³ Existing literature focuses more on cross-border trafficking even though trafficking within Nigeria is still on the increase.¹⁴

Similarly, this thesis is also limited to cross-border trafficking but points out that internal trafficking may also lead to cross-border trafficking as indicated by some survivors of trafficking.¹⁵ They are firstly trafficked from their rural villages to the urban areas and then susceptible to other levels of trafficking. As a source country, Nigerian victims are trafficked mainly to Europe, the Middle East and

¹⁰ World Bank - Nigeria (2010) [online] available at: <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/NIGERIAEXTN/0,,menuPK:368922~pagePK:141132~piPK:141109~theSitePK:368896,00.html> [Accessed 8th of May 2012].

¹¹ Joe Brook, 'Nigerian poverty rising despite economic growth' *Reuter* (February 13, 2012) [online] available at: <http://www.reuters.com/article/2012/02/13/us-nigeria-poverty-idUSTRE81C0KR20120213> [Accessed 8th of May 2012].

¹² Human Rights Report: Nigeria – US Department (2010) [online] available at: <http://www.state.gov/j/drl/rls/hrrpt/2010/af/154363.htm> [Accessed 8th of May 2012].

¹³ UNESCO, Human Trafficking in Nigeria: Root Causes and Recommendations (Policy Paper Poverty Series n° 14.2 (E) Paris 2006).

¹⁴ *ibid.*

¹⁵ Interview with survivors in Idia Renaissance shelter in Benin, Nigeria [13th March 2012].

across other African countries. While the trafficked persons originate from all parts of Nigeria, some regions tend to be more prominent than others. These regions include Ebonyi, Akwa Ibom, Cross-River, Edo, Imo, Kano, Delta, Ogun, Oyo and Lagos.¹⁶ According to UNESCO, about ninety-two per cent of Nigerians trafficked to Europe are from Edo State.¹⁷ There have also been records of recruitment from other Nigerian states such as Enugu, Anambra and Akwa-Ibom following the increased attention placed on Edo State.¹⁸

Europe is the major destination continent for trafficking from Nigeria. Prominent European destinations for trafficking from Nigeria include Italy, Belgium, Spain, the Netherlands, Germany and the United Kingdom. In the UK, human trafficking has received a great deal of attention in the last decade. The UK remains a major destination country for about fifty-one (51) countries around the world in various proportions. Many victims of trafficking in the UK come from Eastern Europe, Asia, Africa and South America as shown in the map below. However, Nigeria remains a major source country for human trafficking to the UK as proven by existing statistics.¹⁹

¹⁶ UNESCO (n 13).

¹⁷ Chritiana Okojie, Obehi Okojie, Kokunre Eghafona, Gloria Vincent-Osaghae and Victoria Kalu, *Trafficking of Nigerian Girls, Report of Field Survey in Edo State, Nigeria to Italy* (UNICRI, 2003); see also note 13.

¹⁸ UNESCO (n 13).

¹⁹ UKHTC report on the referrals made to the National Referral Mechanism (NRM) during the first 24 months of operation from 1st April 2009 to 31st March 2011 – Primary data received from the UKHTC on the 3rd of October 2011; UKBA & Matrix Knowledge Group, 'An evidence assessment of the routes of human trafficking into the UK' (Occasional Paper No. 127, Home Office, March 2012).



Diagram 1: Human trafficking route to the UK - Source: BBC²⁰

The estimated scale of the problem has been on a highly recycled figure of four thousand (4000) victims of trafficking.²¹ Exhibiting the similar problems associated with these statistics, the UK introduced the NRM and so far, has kept an annual account of trafficked persons identified in the UK. For 2012 alone, the UKHTC recorded 1,186 persons referred to the NRM. This figure however does not reflect the true scale of the problem due to the hidden nature of the problem; limited reporting and/or referrals; and the fact that not all victims referred into the NRM system are positively concluded as trafficked.

²⁰ Destination Route – UK Source 'Sex routes to the UK' BBC [online] available at: <http://news.bbc.co.uk/1/shared/spl/hi/guides/456900/456985/html/> (Accessed 8th May 2012).

²¹ For a good number of years the figure 'four thousand (4000)' victims has constantly been used in every UK government reports amongst other resources.

Like Nigeria, the UK also has a problem of internal trafficking, mainly of British girls.²² Without diving deep into the latter topic, it is worth mentioning that the awareness of internal trafficking within the UK ignited the increased focus on human trafficking in general within the UK. As the reality of the problem was increasingly identified close to home with British citizens affected, the level of moral panic for the issue also increased. Even though human trafficking has always existed in the UK mainly affecting non-citizens, the issue started to gain unprecedented attention, as soon as it became clear that British citizens in the UK were also significantly affected. As a result, the focus also extended to migrant trafficked victims, thereby provoking the need for the Government to understand the source, nature and depth of the problem. As one of the top source countries for trafficking into the UK, the need to understand the mode of operation (MO) of trafficking from Nigeria has been of great importance in the last five years especially after the Lord Laming report and the Victoria Climbié case.²³ The upcoming sections will focus on breaking down the MO of human trafficking in order to understand its process between Nigeria and the UK.

Human trafficking is a process that involves different stages rather than a single offence.²⁴ According to Naylor, "crimes follow 'scripts' which permit them to be broken down into a series of constituent acts regardless of the identity of the particular criminal".²⁵ Victims of trafficking pass through these various stages involving different persons at each stage of the process. The three major stages

²² Child Exploitation and Online Protection Centre (CEOP), 'Out of Mind, Out of Sight: Breaking down the barriers to understanding child sexual exploitation' (CEOP thematic assessment June 2011) Executive Summary.

²³ Laming Lord, 'The Victoria Climbié Inquiry Report' Crown Copyright. CM5730 (Presented to Parliament by the Secretary of State for Health and the Secretary of State for the Home Department by Command of Her Majesty, January 2003).

²⁴ Alexis A. Aronowitz, *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime* (OSCE 2010).

²⁵ R. Naylor, 'Towards a General Theory of Profit-Driven Crimes', (2003) 43 *British Journal of Criminology*, p. 81.

as identified within the Trafficking Protocol and most literature on trafficking are the recruitment, transportation and exploitation stages. However, as asserted by Van der Anker, the definition as presented by the Trafficking Protocol is too narrow and does not always fit into majority of trafficking cases.²⁶ For trafficking into the UK, Pennington et al., adds another stage which is called the 'victim disposal' stage.²⁷ At this stage, victims are 'disposed of' once they decline in value or are of no use to their final owner. From a law enforcement perspective, an additional stage would be the 'criminal proceeds', which may include money laundering, tax evasion and investing in other criminal activities.²⁸ While the stages of human trafficking might be universally known and accepted, the patterns of human trafficking is different across diverse societies. Trafficking in Africa alone is characterised by sub-regional differences.

According to Aronowitz, within West and Central Africa region, two major patterns of trafficking can be witnessed.²⁹ "One involves intraregional trafficking flow... [of children] for the labour market; the other, the trafficking and sexual exploitation of girls and young women in forced prostitution to destinations in Europe, the Middle East and the U.S".³⁰ In the coming sections, these three major stages of trafficking are used to establish the modus operandi pertinent to understanding Nigeria/UK trafficking. Recruitment within this context represents the sourcing and enlisting of persons to be trafficked. The transportation stage involves the systemic mode through which the trafficker facilitates the

²⁶ Christien van der Anker and Ilse van Liempt, *Human Rights and Migration: Trafficking for Forced Labour* (Palgrave Macmillan 2012) 211.

²⁷ Julia R. Pennington, A. Dwayne Ball, Ronald D. Hampton and Julia N. Soulakova, 'The Cross-National Market in Human Beings' (2009) 29 *Journal of Macromarketing*, Number 2, p. 119.

²⁸ Aronowitz, *Analysing the Business Model of Trafficking in Human Beings* (n 24).

²⁹ Alexis A. Aronowitz, The United Nations global programme against trafficking in human beings: Research and lessons learned, (2002) 26 *International Journal of Comparative and Applied Criminal Justice*, No. 2, 257.

³⁰ *ibid* 266.

movement of the victim. The exploitation stage entails the purposes of the trafficking of persons in completion of the human sale transaction. All of these stages are carefully illustrated below starting with the recruitment stage.

Recruitment Stage

Recruitment within this context refers to the process of sourcing/attracting, selecting, contracting and onboarding certain persons to be trafficked for different forms of exploitation. Recruitment according to the trafficking Protocol takes place in different ways including through deception, abduction and coercion.³¹ Recruitment in cross border trafficking takes place in the country of origin which, in this case, Nigeria. According to Bales, this process varies from case to case but there are many commonalities.³² In review of various cases of trafficking from Nigeria, there have been fewer cases of 'abduction' and more of coercion, deception and in most cases willing participants who volunteer out of ignorance. Although Nigeria is a major source country for trafficking there is a dearth in academic literature that clearly elucidates the process. Following empirical data gathered on the varying process of recruitment for trafficking in Nigeria, this stage is divided into two parts including the sourcing of potential victims and the agreement between traffickers and their victims (which would be referred to as 'juju contract' for the purpose of this study). Sourcing for victims takes different forms and involves different actors. Victims are sourced through travel agencies, employment agencies, grooming, media advertisements, peers, illegal adoption, families and even victims themselves. This often starts with deception or coercion with fraudulent promises of a better life in the UK, education and jobs. Potential victims are recruited from rural areas, universities or simply through word of mouth.

³¹ Trafficking Protocol 2000, Art 3(a).

³² Kevin Bales, *Understanding Global Slavery: A Reader* (University of California Press 2005).

Sourcing for potential victims very often depends on the level of the criminal network. The crime could be carried out by 'individual traffickers'³³, 'loosely connected criminal networks'³⁴ or what Friesendorf call 'small-scale informal networks'.³⁵ The latter takes the form of small groups of individuals within limited family networks or ethnic communities that may extend across borders.³⁶ Many cases of trafficking from Nigeria (especially child trafficking) often fall within the context of small networks. Sometimes, victims are sourced through word of mouth and informal introductions within their communities. Victims and their families may be deceived or coerced with fraudulent promises of a better life in the UK and education for the child. A survivor of trafficking (Nkem) who was trafficked at the age of eleven (11) years old for domestic servitude from Nigeria to the UK stated:

“My village is really small, everyone is related one way of the other. So, when this Aunty³⁷ came for me, my parents felt it was okay to go with her with the hope that this was an opportunity for me to be better educated, since I was doing so well in school...I knew I was expected to help out with chores but not to the point that affected my education.”³⁸

³³ Aronowitz (n 24) 20.

³⁴ Paola Monzini, 'Trafficking in Women and Girls and the Involvement of Organised Crime, with reference to the situation in Central and Eastern Europe' (no date) http://standinggroups.ecprnet.eu/crime/members_files/monzini.pdf [Accessed 17th of July 2013].

³⁵ Cornelius Friesendorf, *Strategies Against Human Trafficking: The Role of the Security Sector* (Geneva Centre for the Democratic Control of Armed Forces (DECAF) 2009).

³⁶ Ibid.

³⁷ 'Aunty' of 'Uncle' in Nigeria is often used to refer to an older person regardless whether or not they are related to the younger person.

³⁸ Interview with survivor of trafficking in London, [13th August 2011] for the purpose of this research, I have named her "Nkem".

Another survivor of trafficking, Efe (20 years old) stated:

“The Uncle told my parents that I am going to work as domestic help. I was deceived and taken to Lagos to go work as a babysitter... I don't know the way to Lagos... after, I was taken to abroad for prostitution.”³⁹

Parents blatantly offering their children were also evident during fieldwork in some of the rural areas visited in Nigeria, where at least two parents offered their daughters whilst promoting their [the girls] domestic work skills.⁴⁰ These parents did not seem to mention education as a motivating factor. Informal employment agents also take advantage of this ‘opportunity’ by recruiting girls from rural areas and offer them to those who need their domestic services. These informal employment agents may not be directly part of large criminal gang but tend to offer their services as part of the network. According to one of the survivors, the ‘madam’ tells the man how many girls she needs and the man supplies the girls and gets paid for it. Afterwards, the madam resells these girls to another trafficker.⁴¹

The large-scale criminal groups are more sophisticated and have more rigid hierarchies but do not work in isolation in the trafficking process. They often involve complex transnational criminal organisations that operate criminal distribution networks. They may also include several professionals that take part

³⁹ Interview with survivors of human trafficking (Efe, 20 years old) at Idia Renaissance shelter in Benin, Nigeria [13th March 2012].

⁴⁰ Author's observation and experience during fieldwork in Benin; See also United Nations Office on Drugs and Crime (UNODC) Measures to Combat Trafficking in Human Beings in Benin, Nigeria and Togo {UNODC September 2006}.

⁴¹ Interview with survivors of human trafficking (Rose, 19 years old) at Idia Renaissance shelter in Benin, Nigeria [13th March 2012].

in the business.⁴² According to Mozini, they include investors who are not directly involved, travel agents, debt-collectors brothel owners, forgers and lawyers.⁴³

According to a former Met Police officer with many years of experience investigating Nigerian cases of trafficking in the UK, there seems to be a 'large family network of traffickers' following the fact that traffickers recently identified have been related through family ties.⁴⁴ Traffickers within the context of this study are either Africans or Europeans;⁴⁵ men or women. Although most literatures portray men as the main offenders of trafficking, women are key players in the recruitment and exploitation phases. All the survivors interviewed for this study asserted that their traffickers were women. Additionally, the UKHTC Pentameter 2 statistics found that fifty-seven per cent (57%) of those arrested as suspected traffickers in the UK were Nigerian women.⁴⁶ These women; often called 'Madams' are sometimes former victims themselves. This puts them in positions to better understand the psyche of their prey.⁴⁷ Potential victims also take part in the sourcing by seeking the services of traffickers for migration

⁴² Specialists launder the profits. As operations become more sophisticated, other specialists such as forgers and lawyers are brought in.

⁴³ Paola Monzini, 'Trafficking in Women and Girls and the Involvement of Organised Crime' (n 34).

⁴⁴ Interview with now retired Met Police Officer (Andy Desmond) in Nottingham, UK (3rd August 2012).

⁴⁵ See the case of Thomas Carroll – BBC News, South West Wales – *Thomas Carroll's sentence is extended over prostitution fund* [online] available at: <http://www.bbc.co.uk/news/uk-wales-south-west-wales-17876691> Accessed 9th of May 2012

⁴⁶ UNICRI, Trafficking of Nigerian Girls to Italy; Report of Field Survey in Edo State, Nigeria (UNICRI 2004).

⁴⁷ See Hasan Buker, Transporting Women Sex Workers From Nigeria to Europe, Crime and Justice International Magazine - Sam Houston State University [online] available at: http://www.cjimagazine.com/index2.php?option=com_content&do_pdf=1&id=194 accessed 31st May 2012; see also UNICRI (n 46).

purposes or in some cases, they are aware of the sort of jobs they might undertake but not the gravity or real sense of the exploitation.

The second phase of recruitment peculiar to Nigeria cases of human trafficking is the juju contract involving oath taking rituals. This aspect of recruitment does not apply to all cases but seems to have taken the process of trafficking to a different dimension. For some cases, the phase is very crucial as to whether the trafficker would continue with the process or not. However, in some cases, it takes place at the destination country. According to a survivor, Mary (19 years old) in Pidgin English:

“When I reach there I swear make I no implicate her, I swear that I cannot send money home or tell anybody about the work you are doing... until you pay your debt.”⁴⁸

This is translated as:

“When I got there, I swore not to implicate her [trafficker], I swore that I would not send money home nor tell anyone about the work that I have undertaken until I pay my debt.”

Most of the oath taking ritual often happens at the source country – in this case, Nigeria. ‘Juju’, as most people call it, can be defined as a fetish or charm believed by West Africans to have magical or supernatural powers. According to Opara, “psychological coercion has proved [to be] most productive for traffickers of African women”, mainly due to the traditional belief in the

⁴⁸ Interview with survivors of human trafficking (Mary, 19 years old) at Idia Renaissance shelter in Benin, Nigeria (13th March 2012).

supernatural and ancestral spirits held by some African communities.⁴⁹ Before the traffickers procure the travel documents as part of the trafficking process, victims undergoes oath-taking rituals⁵⁰ at juju shrines declaring to payback their debts as well as obey their 'madam' or 'Oga' (traffickers) under all circumstances.⁵¹ The amount of this debt is sometimes agreed during or before the ritual is performed and can range between £500 and £12,000 or more.⁵² This juju ritual serves as a contract between the trafficker and the victim for the purpose of "allegiance, secrecy, confidentiality and repayment of the cost of her journey" and other expenses incurred in the process, as solely determined by the trafficker.⁵³ As a survivor indicated, "I did the voodoo oath in exchange for the transport." Another survivor said:

"I was obliged to do juju several times during the journey. I was obliged to do it; otherwise it would have been as if we didn't trust them. It was so that we wouldn't talk to the police."⁵⁴

⁴⁹ Victor Nnamdi Opara, "Trafficking Contracts: Myth or Reality?: Re-Examination of Consent in Human Trafficking" in Toyin Falola and Niyi Afolabi (eds.) *The Human Cost of African Migrations* (Routledge 2007) 230.

⁵⁰ Oath is defined as "a solemn, formal declaration or promise to fulfil a pledge, often calling on God, a god, or a sacred object as witness" See Oxford Dictionaries available [online] at <http://www.oxforddictionaries.com/definition/english/oath> (Accessed 29th November 2013).

⁵¹ 'Madam' and 'Oga' – Usually what the traffickers are called. Similarly, they are used as a form of respect to refer to a man or woman of superior social status in some parts of Africa.

⁵² UKBA & Matrix Knowledge Group, *An evidence assessment of the routes of human trafficking into the UK* (Occasional Paper No. 127, Home Office, March 2012).

⁵³ Opara, "Trafficking Contracts: Myth or Reality?" (n 49) 230.

⁵⁴ Cited in Maybritt Jill Alpes, 'The Traffic in Voices: Contrasting Experiences of Migrant Women in Prostitution with the Paradigm of "Human Trafficking"' (2008) 6 *Human Security Journal*, p. 40.

It is also not easy for women to refuse this oath taking.⁵⁵ This is for several reasons including that the victims often view the trafficker as an 'helper' or 'good Samaritan' and sometimes would volunteer to take the oath to reassure the trafficker of their allegiance.⁵⁶

According to Gbadamosi, this ritual often require personal clothing of the potential victim, their blood, pubic hair, finger nails etc.⁵⁷ The entire scenario of the ritual generates an aura of fear, coupled with the rites which can be rather violent and the implications of breaking the contract which is often sickness, misfortunes or death.⁵⁸ This 'Juju contract' breeds fear of reprisal on the African trafficked women and as a result, compelling them to endure their 'sufferings in silence'.⁵⁹ In some cases, some of the things taken from the victim's body are held by the traffickers, almost like owning a piece of the victim, so that no matter where he/she is, they are never far away. Hence, running away is usually not perceived by some victims as a safer option. A Metropolitan Police indicated that the use of juju as a control mechanism has made Nigerian cases of trafficking a unique and difficult one to crack.⁶⁰ This aspect in the process of trafficking does not only complicate law enforcement but also has implications for victims in terms of being properly identified and supported.

Presently, in destination countries like the United Kingdom, the element of oath-taking in a case of trafficking has been relegated as a form of 'brainwashing', which implicitly or explicitly dilutes the true effect of this control mechanism on

⁵⁵ Ibid.

⁵⁶ see also Opara (n 49).

⁵⁷ Olaide A. Gbadamosi, *International Perspectives and Nigerian Laws on Human Trafficking* (All Nations Press 2006).

⁵⁸ Opara (n 53).

⁵⁹ ibid 230 – 1.

⁶⁰ Detective Andy Desmond, *Investigating Nigerian Sexual Exploitation Human Trafficking Allegations* (Metropolitan Police SCD9 2009).

Nigerian trafficked victims who take this seriously as part of their belief system.⁶¹ It remains a tricky situation where law enforcement authorities are at the crossroad of either undermining the belief system of victims or denying them victimhood where it matters. Some of these women are detained because they are unable to give evidence and sometimes deported to their home country while the trafficker continues to run his/her business freely. Although current international laws insists that victims' support should not be dependent on their cooperation with the investigation of trafficking cases, such evidence is still needed to conclusively confirm these persons as victims of trafficking in line with the NRM. As indicated in chapter two, this is where a human-centred approach plays a crucial role in helping practitioners explore beyond legal provisions so that they do not miss out on actualizing the best outcome for anti-trafficking. Nevertheless, this aspect of recruitment could be prevented if Nigeria tackles this dilemma from the source as a preventative measure to protect potential victims before the trafficking process is completed.

In the meantime, it is important to highlight that this sort of traditional oath-taking ritual remains an acceptable and common feature of customary laws in Africa. Specific to Nigeria, Ikenga assert that "in spite of [W]estern influences, oath-taking has survived as a legitimate judicial method which the Igbo⁶² believe ... [to be] one of the assured ways of obtaining absolute justice".⁶³ Several matters

⁶¹ According to Mbiti, Africans take this believe seriously; see John S. Mbiti, *African Religions and Philosophy* (Heinemann Educational Publishers 1990).

⁶² Igbo is one of the major tribes in Nigeria – mainly in South-eastern Nigeria.

⁶³ Ikenga K. E. Oraegbunam, 'The Principles and Practice of Justice in Traditional Igbo Jurisprudence' (no date) *African Journals Online*, pp. 53-85 [online] available at:

<https://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CC8QFjAA&url=http%3A%2F%2Fwww.ajol.info%2Findex.php%2Fog%2Farticle%2Fdownload%2F52335%2F40960&ei=gdzUevVBaXP4QSc4ICYBw&usg=AFQjCNFiqVB6WHADwNC78YDynQJ58NGjPA&bvm=bv.49478099,d.bGE>

[Accessed 18th July 2013]; for further reading see A. A. Oba, 'Juju Oaths in

of arbitration have acknowledged the legal validity of oath-taking including in cases like *Charles Ume v. Godfrey Okoronkwo & Anor* and in *Ofomata & ors v. Anoka*.⁶⁴ According to Agbakoba;

“Oath-taking is a recognized and accepted form of proof existing in certain customary judicature. Oath may be sworn extra-judicial but as a mode of judicial proof, its esoteric and reverential feature, the solemnity of the choice of an oath by the disputants and imminent evil visitation to the oath breaker if he swore falsely, are the deterrent sanctions of this form of customary judicial process which commends it alike to rural and urban indigenous courts. It is therefore my view that the decision to swear an oath is not illegal although it may be obnoxious to Christian ethics....”⁶⁵

Regardless of the validity in Nigerian Law, juju contract in the context of trafficking is a ‘sham contract’.⁶⁶ While one would argue that the potential victim had agreed to the terms and conditions of the contract out of their own free will, “these supposed element of free choice, consent and freedom to leave technically negate the applicability of international instruments on the subject”.⁶⁷ One cannot renounce their liberty and freedom for the benefit of another party in a contract.⁶⁸ According to Kant, “a contract by which one party would completely renounce its freedom for other’s advantage would be

Customary Law Arbitration and Their Legal Validity in Nigerian Courts’ (2008) 52 *Journal of African Law*, I.

⁶⁴ *Ibid* in italics as in original document; see *Ume v. Okoronkwo* (1996) 12 SCNJ 404; *Onyenge & Ors v. Ebere & Ors* (2004) 6 SCNJ 126 at 141 – 43; *Ofomata & Ors v. Anoka & Anor* (1974) 3 ECCLR 251 at 254.

⁶⁵ cited in *Oraegbunam* (n 63) 76.

⁶⁶ *Opara* (n 49) 242.

⁶⁷ M. C. Bassiouni, *Enslavement as an International Crime*, N.Y.U.J. (1991) 23 *International Law and Politics*, p. 445.

⁶⁸ *Opara* (n 49) 227.

self-contradictory, that is, null and void".⁶⁹ Additionally, as mentioned in chapter two, trafficking as slavery has attained the status of *jus cogens* or peremptory norms as provided in the Vienna Convention on the Law of Treaties.⁷⁰ Hence, it opens doors for domestic and international instruments to intervene in the nature of slavery from Nigeria in this context regardless of an acceptance of juju contract.

Literacy of the law and ignorance also means that victims are often not aware of their options. It is therefore the obligation of the Nigerian government to protect its citizens from such psychological abuse and trap. The Edo state Criminal Code was amended to include the criminalization of the administration of any form of oath on a woman or girl to travel out of Nigeria for the purpose of prostitution.⁷¹ However, traffickers tend to resort to other unfounded strategies to bypass the legislation.⁷² Despite its analysis in contract law, it is the traditional belief of these women that "this contract is spiritually binding and will harm them if they deflate" that stands a threat and keeps them in their vulnerable situation. The traffickers use different shrines with different deities, some of whose concept of justice is limited to the agreement rather than the very nature and circumstance of the agreement. For instance, according to Metuh, whenever Arusi⁷³ is invoked on somebody, "it blindly kills him whether he is at fault or not".⁷⁴

⁶⁹ Mary J. Gregor (ed.) *Kant, The Metaphysics of Morals* (Cambridge University Press 1996) 66.

⁷⁰ See Vienna Convention on the Law of Treaties (1969) Article 53 and 64.

⁷¹ Edo State Criminal Code, section 233(A).

⁷² Opara (n 49)182.

⁷³ Arusi as termed by the Igbos in Nigeria are 'spirit forces'. Arusi are numbered in hundreds and can be found in many villages, each with its pantheon of Arusi. It can be the property of a clan, a family or even an individual. It could also be man-made, where an object made by man becomes an Arusi when the spirits abodes and manifest through it. Beings in the Igbo world-view are hierarchical.

⁷⁴ Emefie Ikenga-Metuh, *God and Man in African Religion: A case study of the Igbo of Nigeria* (Geoffrey Chapman Press1981) 55.

Consequently, such element within the process of trafficking from Nigeria produces an enormous fear factor that hinders victims from reporting their traffickers to law enforcement authorities. Even where these victims come to the attention of the authorities their stories have often been inconsistent because they often resort to lies as a way to protect themselves from the reprisal of the oath of secrecy taken. Without knowledge of this cultural influence on the results of victim identification, anti-trafficking as a whole within this context can be significantly undermined. Therefore, in articulating anti-trafficking approaches, the processes within recruitment cannot be overlooked by both countries. Chapter five and six presents the implications of the latter in their anti-trafficking measures but in the meantime, when these traffickers successful complete the sourcing for potential victims and establishing initial control with the juju contract, the trafficker starts to make arrangements to transport their new 'commodity'.

Transportation Stage

The transportation stage which involves moving the potential victim into the destination country, takes different routes depending on whether it would be through legal or illegal means. This stage of the trafficking process shares significant similarity with smuggling except for the part of exploitation.⁷⁵ The stage involves different players depending on the complexity of the operation. According to Bajrektarevic, several sub-units are involved in this stage including the 'navigating unit' (those who make arrangements in Nigeria); the 'logistic unit' (those who provide support services including food and accommodation) and the 'data collecting unit', (responsible for collecting the transportation fee and keep persons to be smuggled and trafficked in a safe house).⁷⁶ For the sake

⁷⁵ Bales, *Understanding Global Slavery* (n 32) 144-145.

⁷⁶ Anis, H. Bajrektarevic, *Trafficking in and Smuggling of Human Beings - Linkages to Organised Crime – International Legal Measures: Statement Digest*

of this case study, this stage has been divided into four phases including sourcing for documents, grooming, en-route and border crossing. Sourcing of documents involves distribution networks aforementioned in the last section. This may involve travel agents, black-market migration middlemen and corrupted government officials. In order to enter the UK from Nigeria; migrants need a visa for different categories as visitors or workers. Documents are either forged or legitimately retrieved.

Furthermore, it is often difficult to acquire this visas due to the stringent criteria often attached to them, even more for workers' visas. Hence, traffickers who want to take the legal route may apply for a visitors' visa. However, it would be made more difficult after the UK Home Office confirms its three thousand British pounds (£3,000) bond on anyone who intends to visit the UK.⁷⁷ In the case of domestic servitude, the traffickers sometimes present the potential victims as one of her/his children or purchase forged adoption papers. During this process the trafficker may decide to use a different name or illegally change the name and age for the victim. As it currently stands, traffickers often take advantage of the loophole in UK immigration system especially with regards to children. Therefore, traffickers often aim at reducing the age of the potential victim who might be an adult, to the age of a child. They pay exorbitant prices for these documents which mostly include allotting bribes to the government officials involved. The bribe continues at the airport where the victim's documents are neither properly checked nor scrutinized. During fieldwork visit at one of the immigration offices in Nigeria, samples of passports previously seized by

(International Centre for Migration Policy Development 2000) cited in Bales, *Understanding Global Slavery* (n 32) 144-145.

⁷⁷ Alan Travis, 'Nick Clegg forces rethink on visa bond plan: Lib Dems say details still being discussed after Theresa May proposes £3,000 bond to deter overstayers' *The Guardian* (25 June 2013) [online] available at: <http://www.guardian.co.uk/uk/2013/jun/25/nick-clegg-visa-bond-theresa-may> [Accessed 13 August 2013].

immigration officials from potential trafficked victims were observed. Some of these passports had legitimate visas but fake names and date of birth. For instance, one passport with a legitimate visa had a birthday for '30 February....⁷⁸

En route, (depending on the route taken) potential victims have different experiences, some of which may be detrimental to their health and life. Through illegal migration routes, trafficked persons are taken through longer routes and my encounter rape, illegal deprivation and forced prostitution in the process.⁷⁹ UNICEF painted a graphic picture of the tortuous journey stating that:

“Many Nigerian girls and women are obliged to take long routes across the Sahara to North Africa and make the hazardous journey across the Mediterranean in small boats. Several of them never reach their destinations either because they are abandoned en route or they drown. Those that reach their destinations are sold off to prostitution rackets and or engage in other forms of commercial sex work.”⁸⁰

Several television documentaries have shown how dangerous these routes can be for migrants. One of many filmmakers include Paul Kenyon whose sense on injustice at the plight of migrants trying to cross the border to Europe prompt his book entitled “I am Justice: A Journey out of Africa”⁸¹ Migrants from Nigeria as well as other African countries having to cross the Sahara desert and the coast of Libya to enter Europe. “Once there, they'd made contact with a gang of

⁷⁸ Author's observation during visit to Lagos Immigration Office in Nigeria on 26th of July 2010.

⁷⁹ Aronowitz (n 24)19.

⁸⁰ UNICEF, 'Child Trafficking in Nigeria: Analysis of Nigeria's Response to the Libreville Platform of Action' - Joint initiative between the UNICEF West and Central African Regional Office and UNICEF Nigeria Country Office (UNICEF 2000).

⁸¹ Paul Kenyon, *I am Justice: A Journey out of Africa* (Preface Publishing 2009).

people smugglers who'd packed them into a makeshift boat, and told them Europe was only a matter of hours away. Days later, having run out of food and water, their boat had capsized alongside a fishing net." ⁸² Some of them are captured and tortured in Libya jail before being deported. According to a reporter who interviewed one of the migrants and following his story for two years "... if I was faced with such grinding poverty, would I have the courage to do the same?"⁸³

Taking the legal route, transportation from Nigeria to the UK is often through Lagos Murtala Mohammed Airport to London Airports even though the level of security involved in air transportation is continually increasing. These days, traffickers tend to target smaller UK airports to avoid the increased surveillance operations in major UK airports like Heathrow.⁸⁴ That said, literature regarding the route of human trafficking specific to Nigeria often focuses on routes into Europe in general. A recent report by the UK Home Office discussing available evidence on the routes of trafficking to the UK, once again relied mainly on Europe focused reports, which does not directly give evidence on UK routes from Nigeria.⁸⁵ Traffickers may sometimes transport their victims to the UK as an initial destination but afterwards trade the same victim off to another trafficker in other parts of Europe.⁸⁶ The case of Anthony Harrison best demonstrates this.⁸⁷

⁸² *ibid.*

⁸³ Eamonn Walsh, 'Surviving the world's most dangerous migration route' *BBC* (Wednesday, 6 May 2009) http://www.bbc.co.uk/blogs/panorama/2009/05/surviving_the_worlds_most_dangerous.html (accessed 13th August 2013).

⁸⁴ UKBA & Matrix Knowledge Group - An evidence assessment of the routes of human trafficking (n 52).

⁸⁵ *ibid.*

⁸⁶ Aarti Kapoor, *A Scoping Project on Child Trafficking in the UK, Child Exploitation and Online Protection (CEOP 2007)*; Louise Selley, *Human Trafficking: A Global Perspective*, (Cambridge University Press 2010).

⁸⁷ *R v Anthony Harrison* at Woolwich Crown Court, July 2011.

Traffickers from Nigeria often use the UK as an entry point into other parts of Europe. Hence, it is not uncommon to come across cases of human trafficking where victims, after being exploited in the UK are transported into other parts of Europe like Spain, the Netherlands or Belgium. Due to the existence of the Schengen migration scheme, the use of the Eurostar (Train) from the UK and the laxity in the inspection of visas within Europe, traffickers take advantage of the opportunities which this may generate. While the UK does not participate in the Schengen visa scheme, fewer precautions are placed on the border where people emigrating from the UK to other European countries as opposed to the rigour placed on border security when the same persons are coming from Nigeria with a Nigerian passport.

As the UK Border Agency (UKBA) consistently change its policies and procedures to tighten their borders, so do traffickers endeavour to master the system for their criminal use. The tactics used by traffickers often depends on the purpose of trafficking. For domestic servitude, which often involves extended family members, the victim may travel with the trafficker as his/her child/dependant. For sexual exploitation, traffickers move their victims (especially as children) through the UK asylum routes. Here, traffickers intentionally arrange for the child to come to the attention of the authorities. The child is groomed prior to travelling to the UK to stick to a particular story for the benefit of the operation. This often happens after sourcing the document but played out upon arrival to the UK. According to Bales, the cooperation of the victim is often needed to 'successfully navigate border crossings and immigration controls'.⁸⁸ Sometimes victims are brainwashed to into thinking that the law enforcement authorities do not have their [victims] best interest as part of its mandate and will deport them if they were found out.⁸⁹

⁸⁸ Bales (n 32)146.

⁸⁹ *ibid.*

Generally, when children arrive from abroad and present themselves as unaccompanied or separated, local authorities are obliged to offer variety of services for their safety and wellbeing regardless of their nationality as predicated by international law.⁹⁰ The exclusion of rights that applies to non-citizens often does not apply to children. According to Gallagher,

“Of all the core human rights instruments, the Convention on the Rights of the Child (CRC) provides the most clarity on the point of its application to non-nationals... All trafficked children within the jurisdiction of the State Party would therefore be entitled to full protection of that instrument, irrespective of any other factor.”⁹¹

As the UK has ratified this instrument, the State is obligated to ensure the best interest of the child. This is manipulated by traffickers to get children into the country at the very least until the next stage of the trafficking process. These children often aged between fifteen and seventeen years old who arrive in the UK unaccompanied are initially taken into temporary care. Within a short period after being taken to care (in a matter of weeks), these children are reported missing.⁹² The 2007 report by Child Exploitation and Online Protection (CEOP) on child trafficking in the UK showed that fifty-five per cent (55%) of the total children within the data sample of their survey were indicated 'missing'.⁹³ According to a law enforcement officer, these potential victims often leave the safe house to meet their traffickers and never come back.⁹⁴ The UK government

⁹⁰ Aarti Kapoor, *A Scoping Project* (n 86).

⁹¹ Anne Gallagher, *International Law of human Trafficking* (Cambridge University Press 2010) 154.

⁹² se Aarti Kapoor, *A Scoping Project* (n 86).

⁹³ *ibid.*

⁹⁴ Interview with now retired Met Police Officer (Andy Desmond) in Nottingham, UK (3rd August 2012).

are yet to come up with the most appropriate methods to address the loopholes in the system that traffickers often prey upon. Once victims escape to meet their trafficker, then the exploitation stage commences.

Exploitation Stage

According to the Trafficking Protocol, “exploitation,... includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices, and the removal of organs.” Nigerian victims of trafficking found in the UK, both children and adult are mostly trafficked for forced prostitution and domestic servitude. In some situations, both forms of exploitation tend to overlap. The 2012 NRM report shows that at least fifty-three per cent (53%) of victims trafficked for sexual exploitation, thirty-seven per cent (37%) for labour exploitation and ten per cent (10%) for both.⁹⁵ However, specific to Nigeria and according to the 2012 NRM statistics as seen in table 3 below, adults seem to be trafficked more than minors. The NRM report does not aggregate exploitation specific to the different countries but shows that people are trafficked for sexual exploitation more than labour exploitation.

However, within labour exploitation, males were more affected than women while females dominated trafficking for sexual exploitation. The Poppy Project which supports women who have been trafficked, indicated that their shelters are mostly occupied by Nigerian women who have been trafficked for sexual exploitation.⁹⁶ Overall, SOCA statistics shows that out of the 1,186 persons referred to the NRM from thirty-nine (39) countries, over seventeen per cent (17%) of them were Nigerians. This makes Nigerian victims the number one

⁹⁵ Author's correlation of National Referral Mechanism Statistics Report between January and December 2012 produced by the Serious Organised Crime Agency (SOCA) and IPPR Report - Myriam Cherti, Jenny Pennington and Peter Grant, *Beyond Borders, Human Trafficking From Nigeria to the United Kingdom* (Institute for Public Policy Research 2013) 28.

⁹⁶ Sarah Richards Debora Singer and Mel Steel, *Hope Betrayed: An analysis of victims of trafficking and their claims for asylum* (Poppy Project 2006).

source country for trafficking into the UK for that year. Although, the positive conclusive decision of the NRM refutes the latter, it would be clarified further within the arguments of subsequent chapters.

Table 3 - Statistics of Nigerian Trafficked Victims referred to the NRM

Year 2012	Referrals	Nigeria	Minor	Adults	Positive Conclusive Decision
January – March	238	48	19	29	5
April - June	292	52	14	38	7
July – September	324	66	20	46	5
October - December	332	40	14	26	4
Total	1,186	206	67	139	21

Source: Author's correlation of National Referral Mechanism Statistics Report between January and December 2012 - Serious Organised Crime Agency (SOCA)

Once these victims cross immigration borders, the traffickers instil another form of control depending on the type of trafficking. Starting with sexual exploitation, Nigerian women or girls who fall within this category find it difficult to retell their experiences and at times can be quite defensive about it.⁹⁷ This form of exploitation often involves regular rape and sexual assaults by clients. Victims are taken from house to house and forced to have sex with as many men as

⁹⁷ See *R (on the application of Adebisi) v Secretary Of State For Home Department* (2011) QBD, ADMINISTRATIVE COURT 5 May 2011 Judgments 05/05/2011 *R (on the application of Adebisi) v Secretary Of State For Home Department* (2011); see also Maybritt Jill Alpes, "Escaping Statism: From the Paradigm of Trafficking to the Migration Trajectories of West African sex workers in Paris" in Tiantian Zheng, (ed.) *Sex Trafficking, human Rights and Social Justice* (Routledge 2010).

possible. These girls are sometimes drugged and clients may not use condoms, exposing the girls to deadly diseases like HIV.⁹⁸ According to one victim from Nigeria aged 22 years old trafficked for forced prostitution,

“... [I was] forced to have sex with about seven men a day, for about three to four months. I had no control over condom use. I fell pregnant and was forced to abort by drinking lots of whisky and taking tablets.”⁹⁹

Similarly, the case of Grace illustrates many cases of forced prostitution of Nigerian girls in the UK. Grace was 15 years old when she brought in the UK by a woman called Rose after her parents died in a car crash. She was told that she would work as a domestic worker in England but when she got to the UK, she found out that she was to work as a prostitute. The next day she was introduced to a man called John. According to Grace,

“He came round and he raped me – I was terrified; I hadn't had sex before. Rose said that if I didn't do what she said, then John would keep beating me until I did. She also told me that the passport she got me was fake, and if I went to the police for help I would be put in prison, and if I tried to go back to Nigeria, her family would find me and kill me. Rose left me in the house with John and she went back to Nigeria. John forced me to have sex with lots of different men who came to the house. It was horrible and I was desperate to leave. Some of them beat me and sometimes they didn't use condoms so I was given a pill to take everyday. The men were paying to have sex with me but I didn't get any of the

⁹⁸ Drugged and sexually exploited, see *R v O & anr* (2011) CA, CRIMINAL DIVISION 9 September 2011 Judgments 09/09/2011 R v O & anr (2011) Crime

⁹⁹ cited in Myriam Cherti, Jenny Pennington and Peter Grant, *Beyond Borders, Human Trafficking From Nigeria to the United Kingdom* (Institute for Public Policy Research 2013) 30.

money and I wasn't allowed outside. After about three months, I noticed that the front door was left open so I ran away. I slept on the streets for a few days until I was found by the police."¹⁰⁰

In another recent case, A Nigerian Osezua Osalase was convicted in the Canterbury Crown Court in the UK for inter alia trafficking young Nigerian orphan children for sexual exploitations.¹⁰¹ The victims were raped, sexually abused and had juju-rituals performed on them to control them. It was reported that Osalase told the teenage girls that they would die or never bear children if they tried to escape or revealed what had happened to them. Even though Osalase knew that he had HIV, he still raped the girls without using condoms. According to the Judge Williams who prosecuted him,

“You were dealing in exploitation and manipulation and degradation ... You are undoubtedly a very, very dishonest man. You are arrogant and manipulative, you are devoid of conscience, devoid of any compassion to your victims.”¹⁰²

Some Nigerian women that are trafficked to the UK to work as sex workers are made to believe that they were coming to the UK to work as hairdressers or

¹⁰⁰ Case study of Grace by the Poppy Project cited in Eaves for Women website [online] available at: <http://www.eavesforwomen.org.uk/case-studies/Grace> [Accessed 20th of July 2013].

¹⁰¹ 'Sex trafficker jailed for smuggling Nigerian orphans into Britain' *The Guardian* (Monday 29 October 2012) [online] available at: <http://www.guardian.co.uk/uk/2012/oct/29/sex-trafficker-jailed-nigerian-orphans> (Accessed 2nd January 2013).

¹⁰² Case number T20117301/T20127023 – Osezua Elvis Osolase (Defendant) Canterbury Crown Court – THELAWPAGES.COM, [online] available at: <http://www.thelawpages.com/court-cases/Osezua-Elvis-Osolase-9446-1.law>

seamstresses (of popular demand within the African communities in the UK).¹⁰³ Some were even told that they would be enrolled into school but are subsequently coerced or forced to work as prostitutes in the UK. Following the recent case of Thomas Carroll in the UK, some of these Nigerian women were further trafficked from the UK into Ireland to continue their work as prostitutes.¹⁰⁴ Such trafficking rings for the sale of Nigerian women run by White British citizens are not common, but recent evidence has shed a new light on the issue. Thomas Carroll was jailed for seven years at Cardiff Crown Court after being found guilty of controlling prostitution and money laundering. This was a business which he ran with his wife and daughter. Although he was not convicted specifically for trafficking, amongst the people he recruited for prostitution were Nigerian women who the law enforcement authorities believed were trafficked into the UK.

With respect to understanding trafficking for domestic servitude, Tohbecky's case is useful.

“My name is Tohbecky. I was born in Nigeria and came to the UK when I was 11 years old. I came to the UK on a visitor's visa. My mother sent me to live with my aunty and go to school here. I lived with my aunty and her husband and did to go to school near their house. I used to do all the housework. They made me do this. My auntie's new husband raped me twice when I was 15years old. He told me what would happen if I told anyone. He talked about juju and I was frightened. One day I could not keep quiet any longer and told my teacher. The social worker took me

¹⁰³ Department of Justice, Northern Ireland, 'Research Paper Investigating the Issues for Women in Northern Ireland Involved in Prostitution and Exploring Best Practice Elsewhere' (Department of Justice, Northern Ireland January 2011).

¹⁰⁴ BBC News, South West Wales, 'Thomas Carroll's sentence is extended over prostitution fund' [online] available at: <http://www.bbc.co.uk/news/uk-wales-south-west-wales-17876691> (Accessed 9th of May 2012).

out of the care of my aunty. Her husband is in hiding somewhere and is wanted by the police. My mother is in Nigeria. She does not believe me and has said I am troublesome. She does not want me back. My aunty does not want me back. I have nobody here. I do not know what is going to happen to me. I will be 16 years old soon."¹⁰⁵

Like Tohbecky's experience, domestic servitude can take different forms and deceptive tactics. This form of exploitation often involves the use of children as commodities to fulfil this role because they are often easier to manipulate and control for this form of exploitation. The story of persons trafficked to work as domestic servants often include being restricted from having any dealings outside the home to keep them hidden. They are usually required to do all the house chores. Most of the time, these children are not enrolled into education. In a situation where they are allowed to go to school, they tend to miss school mainly due to the amount of responsibilities assigned to them. This form of exploitation includes physical and emotional abuse. Similar to the case above, another Nigerian girl trafficked in the UK indicated that she was often beaten by her 'aunty'¹⁰⁶ and abused by other members of the family.¹⁰⁷ She also mentioned that she was sent out of the house when she turned 18 years old. Because she was a child when she first came to the UK she was unaware of the importance of an immigration status. Now as an adult, she has been trying ever since to regularise her stay in the UK while recovering from her experiences.

¹⁰⁵ Case study from CEOP, *Hidden Children The Trafficking and Exploitation of Children Within the Home*, (CEOP Report 2011) 19.

¹⁰⁶ 'Aunty' here may not necessarily mean the victim's parent's sister. This is just an expression used as a sign of respect for someone slightly other than the person using the expression. This often confuses practitioners as they take the word literally for what it means.

¹⁰⁷ See the case of five (5) girls trafficked for domestic servitude *OOO and others v Commissioner of Police for the Metropolis Queen's Bench Division* 20 May 2011; See also Account given by a victim of trafficking – AFRUCA DVD 'What is Child Abuse'.

Unlike cases of domestic servitude and sexual exploitation, cases of labour exploitation from Nigeria are not as visible in the UK. However, this does not deny its existence. Both adults and children from Nigeria are trafficked into the UK for this form of exploitation. Children may be found working in African shops, homes, restaurants or similar services while for the adults, they may be found working within the service industries (restaurants, hotels, cleaning), nursing and care homes.¹⁰⁸ According to Anderson, the exploitation experienced by migrant workers in the UK includes long hours of work with minimal pay while the constant immigration threats from their employers keeps them in exploitation.¹⁰⁹ A Nigerian woman who had been exploited in this way in her cleaning job indicated that she was made to work very long hours with very little pay. She mentioned that they (the workers) were made to complete and sign a form as an indication of their consent - in her words "you sign your life away".¹¹⁰ Women and men from Nigeria usually intend to immigrate to the UK to work as skilled labourers most times through the illegal route. Some employers tend to prey on their illegality which renders these migrants vulnerable to the exploitation they eventually experience. Labour exploitation often raises the constant conflict between smuggling and trafficking especially because in practice, the UK government tend to focus more on the illegality of migrants rather than the exploitation that these victims experience.¹¹¹ The latter may better explain the nonexistence of labour trafficking case law from Nigeria to the UK but an area of trafficking that is beginning to gain unprecedented attention in general.

¹⁰⁸ Klara Skrivankova, *Trafficking for Forced Labour UK Country Report* (Anti-Slavery International 2006).

¹⁰⁹ Bridget Anderson and Ben Rogaly, *Forced Labour and Migration to the UK* (Study prepared by COMPAS in collaboration with the Trades Union Congress, no date).

¹¹⁰ *ibid* 41.

¹¹¹ Anti-Slavery International, *Trafficking for Forced Labour in Europe: Report on a study in the UK, Ireland, the Czech Republic and Portugal* (Anti-Slavery International 2006).

Conclusion

The MO of trafficking between countries is necessary for exploring appropriate measures to address the problem that human trafficking presents. Whilst chapter two of this thesis has argued for a human-centred approach to trafficking that exposes the factors that fuel trafficking, this chapter presents empirical evidence to support how these factors are instrumental to the trafficking process from Nigeria. Hence, the MO was systematically broken down in stages of recruitment, transportation and exploitation. The recruitment stage which was divided into 'sourcing victims' and the 'juju contract', exposed the Nigerian criminal network and revealed the involvement of family members and victims themselves. It submits that the recruitment networks are informal and may not fit into the general understandings of the trafficking process. Nigerian victims are sourced from both rural and urban areas of Nigeria and include informal agents who are accomplices to the process including professionals. The juju contract is a unique element of trafficking from Nigeria and was briefly explored from the perspective of law and African traditional religion. Its importance in this study is related to its influence in controlling victims and restraining them from being instrumental to investigations. Thereby, keeping them in exploitation against their will due to a deep-rooted cultural belief in the fear of juju and its reprisals therein.

After sourcing and initiating potential victims through oath-taking rituals, they are groomed for the transportation process. This process which may be legal or illegal allows the trafficker to move persons as commodity to the destination where sales are completed. Nigerian traffickers abuse the loophole in the UK immigration systems and bribe Nigerian border officials in order to get victims across. They mainly decrease the age of their victims so that victims come across as children and the UK authority has no choice than to take initial steps to

safeguard these children. Once these “children” pass through the borders, they reconnect with their traffickers; after which the exploitation stage commences. Exploitation in this context takes the form of forced prostitution, domestic servitude and forced labour. An extensive number of case studies reflecting Nigerian victims’ experiences were utilised to shed more light to their first-hand experiences in the UK.

Following the empirical analysis presented in this chapter, it becomes important to ascertain how Nigeria has dealt with the problems highlighted from the source and how the UK has supposedly tackled it within the context of a destination country. The coming chapters attempt to answer this question by exploring the approaches employed by both countries through their laws and policies to intercept the different stages of trafficking in line with fulfilling their human rights obligations. The latter commences with the source country, in assessing the measures put in place by stakeholders in Nigeria to prevent and address the factors that fuel the recruitment of persons. More so, the next chapter goes further to identify and explore how Nigeria contributes to dealing with the other stages especially after exploitation has taken place.

Chapter Five - Addressing Human Trafficking From Nigeria: The Context of a Source Country

Introduction

Nigeria is a major source country for trafficking and poses a challenge to the global fight against human trafficking. With enormous pressures from the international community following the prevalence of Nigerian women trafficked for prostitution in Europe, there has been an increased focus on anti-trafficking in Nigeria. As part of cooperating with other states, Nigeria has ratified the necessary international legal instruments relevant to trafficking including the Organised Crime Convention and its Supplementary Protocols. As a result, the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 (hereafter, NAPTIP Act) was enacted in Nigeria. Ever since Nigeria has continued to enhance its response to trafficking through adjusting its existing laws and creating new policies along the lines of prevention, protection, prosecution and partnering with relevant stakeholders. Despite the adoption of international law to address human trafficking in Nigeria, there is still a huge gap in implementing anti-trafficking measures.

Although Nigeria is also a transit and destination country, chapter four of this thesis demonstrated the prevalence of Nigeria as a source country for trafficking into the United Kingdom. It exposes clear evidence for the need on the part of the Nigerian State to address trafficking from the source as a way to prevent and safeguard its citizens from being exploited in the UK. Additionally, where trafficking has already occurred, Nigeria has a massive role to play both exclusively and in collaboration with UK stakeholders to ensure the safe repatriation and protection of its citizens as well as assisting the UK to bring traffickers to justice. In this chapter, Nigeria's obligation towards addressing trafficking into the UK is assessed against the backdrop of past chapters

especially chapter four which sets the foundation of the nature of problem. Thus, this chapter is divided into two major sections. The first section briefly identifies and analyses the national legal frameworks that are relevant to human trafficking in Nigeria and how the NAPTIP Act emerged as the main domestic legislation to criminalize trafficking in Nigeria. Nevertheless, despite the existence of legal frameworks on anti-trafficking in Nigeria, in practice, it is limited in addressing of human rights violations that fuel trafficking and ignores the human-centred perspectives to approaching trafficking as it currently stands.

Section two of this chapter underscores the implementation of the Nigerian legal framework in addressing the trafficking from the context of a source country. These include exploring the extent to which the Nigerian government has fulfilled its obligations in tackling factors that may lead to human trafficking and how it ensures the safety of its citizens upon return after trafficking has occurred. It also elucidates the limitation of the law in meeting the needs of those vulnerable and affected by human trafficking from Nigeria to the UK. In recognition that states cannot work in isolation in addressing this transnational crime, this section also identifies areas that require shared responsibility between the countries of focus but reserves these identified areas for a latter chapter that investigates their direct collaboration and coordination within the regime.

National Anti-Trafficking Legal Frameworks in Nigeria

Nigeria has adopted a number of international legal instruments relevant to human trafficking as seen in table 4 but until 2003, there was no specific law that solely deals with human trafficking in Nigeria. Instead, elements of anti-trafficking were found within its existing national legal instruments. These legal instruments includes; the Nigerian Constitution; Criminal Code Act, Laws of the Federation of Nigeria, 1990 (the Criminal Code); and the Penal Code (Northern States) Federal Provisions Act, 1960 (the Penal Code); the Child Rights Act 2003 (CRA); the

Labour Act and the Immigration Act. For instance, the Nigerian Constitution 1999, section 34(1) prohibits the subjection of any person to slavery or servitude. It states that:

“Every individual is entitled to respect for the dignity of the person and accordingly a) no person shall be subjected to torture or to inhuman or degrading treatment b) no person shall be held in slavery or servitude; and c) no person shall be required to perform forced or compulsory labour.”¹

The Constitution allows Nigeria to ratify the required international and regional laws and Conventions on combating human trafficking. However, unless the National Assembly passes these international Conventions into law, they would not have the force of law in Nigeria.² Additionally, due to the system of government in Nigeria modelled after the United States, individual states within Nigeria have to adopt these laws in order to enforce them within their various regions. For instance, the Nigerian CRA was only adopted by fifteen (15) states out of thirty-six (36) states in Nigeria as of 2007.³ Section 30(2)(b) of the CRA provides that ‘a child shall not be used as a slave, or for practices similar to slavery such as trafficking of the child, debt bondage etc.’ However, the CRA allows extended family fostering in promotion of the traditional fostering and apprenticeship system in Nigeria.⁴

¹ The Nigerian Constitution 1999, section 34(1).

² Nigerian Constitution 1999, section 12 (1 -3) - “No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly”.

³ See UNICEF Information Sheet – The Child’s Rights Act (August 2007) [online] available at: http://www.unicef.org/wcaro/WCARO_Nigeria_Factsheets_CRA.pdf [Accessed 21st of February 2012].

⁴ Nigeria Child’s Rights Act 2003, sections 28(1) (b) (d); and 30(2)(a).

While the normalcy of this fostering and apprenticeship tradition in Nigeria has its merits in addressing the problem of development in the country, it has also created a loophole for traffickers who hide behind this system to recruit children as domestic slaves. According to a report by the Nigeria Federal Ministry of Women's Affairs, "The practice of extended family fostering and apprenticeship provide the framework for most cases of abuse of children as domestic workers."⁵ Similarly, Anti-Slavery International contend that the traditional system of educating children by initiating them into work has been distorted into a commercial transaction which may in turn led to child trafficking.⁶

Despite the fact that the aforementioned legislations touch upon elements of human trafficking, they are limited in scope and lack the potency to address the true nature of trafficking. Firstly, most of these legislations focus on females, marginalizes prostitution (more or less, criminalizing the act), and does not specifically or clearly define trafficking nor sufficiently include other forms of trafficking. Besides, where forced labour has been included, penalties are often inadequate in deterring traffickers.⁷ The value of the penalty is very low and as a result, traffickers find it easier to pay a fine and continue their trade. The word 'trafficking' is only mentioned in the Penal Code where it states that

⁵ Nigeria—Convention on the Rights of the Child: Second Country Report, Federal Ministry of Women's Affairs, (2004) 79 [online] available at: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.70.Add.24.Rev.2.pdf> [Accessed 13th April 2012].

⁶ Anti-Slavery International, 'Trafficking of children in West and Central Africa' (23 June–2 July, 2001) 1 cited in Thanh-Dam Truong, *Governance and Poverty in Sub-Saharan Africa: Rethinking Best Practices In Migration Management* (UNESCO, 2008) 703.

⁷ Section 270 of the Penal Code imposes a penalty of imprisonment, which may extend to one year or just a fine.

“Whoever imports, exports, removes, buys, sells, disposes, traffics or deals in any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine.”⁸

However, it does not define the term ‘traffic’. According to Pearson, the term ‘as a slave’ makes the provision extremely restrictive and may not be very useful in prosecuting traffickers.⁹ Edo State has been one of the few states that has adopted an anti-trafficking law, due to the high rate of trafficking from the state. Nevertheless, in June 2001, Nigeria ratified the Trafficking Protocol which led to the enactment of a new anti-trafficking law in Nigeria in form of the NAPTIP Act. This Act does not just meet the minimum standard of the Trafficking Protocol but also exists as a starting point towards complying with the anti-trafficking regime.¹⁰

Table 4: Nigerian Status on International Instruments Relevant to Human Trafficking

Relevant Legal Instruments to Human Trafficking	Signature	Ratification
ILO Convention No.182 on the Worst Forms of Child Labour (1999)		2 Oct. 2002
UN Convention against Trans-national Organized Crime (2000)	13 December 2000	28 June 2001

⁸ Section 279 of the Penal Code.

⁹ Elaine Pearson, *Human Traffic Human Rights: Redefining Victim Protection* (Anti-Slavery International 2002) 160.

¹⁰ UNODC, *International Framework for Action To Implement the Trafficking in Persons Protocol* (UNODC 2009).

UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol) (2000), supplementing the United Nations Convention against Transnational Organized Crime	13 December 2000	28 June 2001
1989 UN Convention on the Rights of the Child (CRC) 16 April 1991 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000)	8 September 2000	No ratification
Rome Statute of the International Criminal Court (2002) Article 7-165	1 June 2000	27 September 2001
UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956)		26 June 1961
Hague Convention no.33 on Protection of Children and Cooperation in Respect of Intercountry Adoption (1993)	No signature	No ratification
Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)	No signature	No ratification
Convention on the Elimination of All Forms of Discrimination against Women (1979)	23 April 1984	13 June 1985
Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women (1999)	8 September 2000	22 November 2004
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)	No signature	No ratification
Convention on the Elimination of All Forms of Discrimination against Women (1979)	23 April 1984	13 June 1985

Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women (1999)	8 September 2000	22 November 2004
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949)	No signature	No ratification
Regional Legal Instruments		
African Charter on the Rights and Welfare of the Child (1990)	13 July 1999	23 July 2001
African Charter on Human and People's Rights (1982)	31 August 1982	22 June 1983
Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (2003) 16	December 2003	16 December 2004
Source: Adapted from UNESCO (2006) Human Trafficking in Nigeria: Root Causes and Recommendations, Policy Paper Poverty Series n° 14.2 (E) SHS/CCT/2006/PI/H/2		

NAPTIP Act. 2003

The NAPTIP Act 2003 was a major legislative attempt by the Nigerian government to address the problem of trafficking from Nigeria. Two years after the adoption of the Act, the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) was created to oversee the operationalization of the Act. The NAPTIP Act did not come to existence in a vacuum. As Koh puts it, transnational legal processes are not 'self-activating' but often require 'transnational norms entrepreneurs' to be successful.¹¹ These transnational norm entrepreneurs are usually organisations or individuals whom without political positions "mobilize popular opinion and political support both in their host country and abroad".¹² The NAPTIP Act would not have materialized without the significant pressures

¹¹ Harold Koh, 'Bringing International Law Home' (1998) 35 *Houston Law Review*, 647.

¹² Ethan Nadelmann, 'Global Prohibition Regimes: the Evolution of Norms in International Society' (1990) 44 *International Organization* Issue 4, 479-526.

from Nigerian NGOs, the international community and the strong political clout that followed suit. Organisations including the United Nation agencies and Nigerian NGOs like the Women's Consortium of Nigeria (WOCON), Committee for the Support of the Dignity of Women (COSUDOW) and Women Trafficking and Child Labour Eradication Foundation (WOTCLEF) with a number of faith-based organisations, were all instrumental to the process of domesticating the Trafficking Protocol. This sort of advocacy is usually a process of great difficulty, especially in a country where the voices of non-state actors (in form of human rights activists) are hardly influential and often times, dangerous.¹³ Nevertheless, through transnational issues networks, their arguments were finally given some political backing which gave the anti-trafficking advocacy in Nigeria some backbone. Political offices like that of the wife of the former Vice President, Mrs. Titi Abubakar and some Senators in the House of Assembly were influential for the adoption of the NAPTIP Act.

The NAPTIP Act sets the framework at which its Agency is managed but most importantly establishes how Nigeria intends to address the 3Ps for anti-trafficking against the backdrop of existing relevant international law. The Act provides a more comprehensive national legislation dedicated to fight human trafficking beyond the Penal and Criminal code as previously highlighted. The NAPTIP Act synthesizes all the prior anti-trafficking and related offences provisions in the various criminal codes but there remains uncertainty as to the status of the Criminal and Penal Codes with respect to the NAPTIP Act. The Act provides more severe penalties for human trafficking up till life imprisonment especially for the sex trafficking of minors. As adapted from the Trafficking Protocol, the NAPTIP Act defines human trafficking as:

¹³ Laurie S. Wiseberg, 'Protecting Human Rights Activists and NGOs: What More Can be Done' (1991) 13 *Human Rights Quarterly*, 525.

“All acts and attempted acts involved in the recruitment, transportation within or across Nigeria borders, purchases, sale, transfer, receipt or harbouring of a person involving in the use of 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 force or bonded labour or in slavery like conditions.”¹⁴

Although the Act focuses on the 3Ps, its protection mechanism is limited with respect to victims, especially during prosecution. It does not provide enough protection for witnesses or victims (especially when victims have been involved in a crime under duress). For instance, section 45 of the NAPTIP Act provides that:

“Where a person volunteers to the Agency or an official of the Agency any information, which may be useful in the investigation of an offence under this Act, the Agency shall take all reasonable measures to protect the identity of that person and the information so volunteered shall be treated as confidential.”¹⁵

However, this is contradicted by the requirement that trials be conducted in public (except where children are involved), which poses a threat to victims and adult witnesses especially in the absence of witness protection programmes in Nigeria. With regards to the treatment of victims, under section 36, the Agency is obliged to protect victims without discrimination however, the loophole in section 37 contradicts this provision with the clause ‘where the circumstances so justify’.¹⁶ This leaves the decision to detain or not to detain victims in the hands of

¹⁴ NAPTIP Act 2003, s 50.

¹⁵ NAPTIP Act 2003, s 45.

¹⁶ NAPTIP Act 2003, s 37 - “Where the circumstances so justify, trafficked persons shall not be detained, imprisoned or prosecuted for offences related to being a

law enforcement officials who may often lack substantive training enough to effectively identify and protect victims.

Similarly, as with other related human trafficking laws, the Act focuses mainly on sexual exploitation and neglects other forms of human trafficking. In the first two years of its existence, NAPTIP only convicted two traffickers under this law, which is a stark underachievement when viewed in comparison with the prevalence of trafficking in Nigeria within that timeframe.¹⁷ To this extent, the law did not fully comply with the UN High Commission for Human Rights' Recommended Principles and Guidelines on human Rights and Human Trafficking (Guidelines 6 and 9).¹⁸ In acknowledgement of the shortcomings of the 2003 NATIP Act, the Act was amended in 2005. The amended act addressed administrative issues in line with membership of the Agency's board and which ministry it belongs to. It also included the Victims of Trafficking Trust Fund which is funded by seized assets from traffickers. Additionally, it creates the provisions to prohibit employing forced labour and punishing employers responsible for the unlawful employment of a child.

With the specific mandate to coordinate all laws and activities relating to trafficking in persons in Nigeria, NAPTIP created four operational departments to undertake investigation, legal, public enlightenment, counselling and

victim of trafficking, including non-possession of a valid travel or stay permit or use of false travel or other documents.”

¹⁷ Victoria Ijeoma Nwogu, “Nigeria” in *Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* (Global Alliance Against Traffic in Women (GAATW) 2007) 149.

¹⁸ Office Of The High Commissioner For Human Rights Recommended Principles and Guidelines on Human Rights and Human Trafficking - presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1) [online] available at: <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf> [accessed 21st of February 2012].

rehabilitation responsibilities. Section 4 of the NAPTIP Act vests upon the NAPTIP agency a wide range of functions including coordinating and reinforcing all national, regional and international regulations and agreements on trafficking and related offences; adopting measures to protect and assist victims; facilitating cooperation and dialogue with key stakeholders; strengthening investigation and prosecution of traffickers and; promoting international cooperation and coordination on anti-trafficking measures. According to the ILO, NAPTIP's innovativeness resides within the agency's founding approach to address the problem of trafficking.¹⁹ NAPTIP's approach attempts to be both 'comprehensive and integrated', "taking into consideration the multifaceted dimensions and the different institutional levels (national and international)".²⁰ Despite its existing shortfall, the agency should be acknowledged as one of few government institutions in Nigeria attempting to address human right issues in the country.

In the past few years of its existence, the initiation of NAPTIP as a national agency overseeing the implementation of anti-trafficking laws has led to a number of prosecutions, rescue and prevention programmes. As of 2009, Nigeria maintained a Tier 1 status under the US anti-trafficking regime.²¹ According to this report, NAPTIP reported that it investigated 209 trafficking cases, 37 of which were prosecuted and resulting to 23 convictions.²² NAPTIP also reported to have identified 1819 trafficking victims between 2007 and 2009.²³ All of these follow alongside prevention programmes geared towards preventing human trafficking. However, from 2010, Nigeria was reduced to Tier 2 on the grounds

¹⁹ ILO – NAPTIP, Nigeria [online] available at: http://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=40 [accessed 21st April 2012].

²⁰ *ibid.*

²¹ United States Department, Trafficking in Persons (TIP) Report – Nigeria (2009).

²² *ibid.*

²³ *ibid.*

that it has not made significant progress in addressing the prevalence of trafficking. Although the US TIP report also suffers from accruing accurate data on trafficking, it still establishes some obvious shortfalls of anti-trafficking from Nigeria. Such shortfall can also be attributed to trafficking from Nigeria to the UK where there seems to be an unacquainted focus. Literature on trafficking from Nigeria has always focused on certain countries mainly in West Africa and South Europe and thus, does not provide a rounded analysis of trafficking from Nigeria.

Following the existence of laws, policies and programmes initiated to tackle trafficking from Nigeria, there has been insufficient effort in dealing with the prevalence of Nigerian trafficked victims found in the UK. Statistics of the UK NRM estimates Nigeria to be UK's number one of the top five source countries of trafficking into the UK. However, in Nigeria, the UK is not seen as a major destination country and has not been accredited the same focus as seen with other destination countries. That said, the UK could still benefit from general prevention programmes employed in Nigeria that could fuel the supply of vulnerable persons to trafficking. The UK and Nigerian citizens can also benefit from provisions that enable and enhance their safety upon return.

Despite the existence of the national legal frameworks explored so far, it does not guarantee effective implementation in practice. The existing framework exhibits some inherent limitations from human rights perspectives. Subsequently, this calls to question the extent to which Nigeria and its acting agents have incorporated a human-centred understanding into the current approach utilised towards anti-trafficking. The next section utilises empirical data gathered from the field to explore the level of intervention from Nigeria operationalized in accordance to the reality of the problem. This will stem from how existing construct of migration and understanding of trafficking by victims and communities in Nigeria has framed or affected the current outlook and

intervention on trafficking. It is in line with the obligation of states and in taking a human-centred approach that the coming section explores the extent to which Nigeria has taken practical measures in addressing trafficking.

The Extent of Nigeria's Anti-trafficking Measures in Practice

Addressing Vulnerabilities

Chapter two of this thesis evidently pointed out that situation of vulnerability is one of the major reasons why the supply of trafficking remains in abundance. In this regard, addressing the vulnerabilities of persons in Nigeria can serve as a preventative strategic option towards addressing human trafficking from Nigeria to the United Kingdom. The responsibility to oversee the latter commences from states. Based on the principles of state responsibility, it is the duty of States to prevent the occurrence of internationally wrongful acts. Specifically, States are required to take "all reasonable or necessary measures to prevent a given event from occurring."²⁴ Within the context of trafficking, this would involve addressing the root causes of trafficking specifically tackling causal factors that increases the vulnerability of persons or potential victims; create and sustain the demand for different forms of trafficking; and creates or sustains an environment where traffickers and their accomplices can operate with impunity.

The Trafficking Protocol requires States Parties to take positive steps to address the underlying causes of trafficking by alleviating factors that make persons vulnerable to trafficking including poverty and under-development.²⁵ The Protocol also requires State Parties to initiate awareness raising programmes and other related measures to minimise the high risk of victimization. Although the Protocol is not specific as to which State does what, some States are more likely

²⁴ International Law Commission's draft articles on responsibility of States for internationally wrongful acts with commentaries, Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 (A/56/10) Art. 14 (3).

²⁵ Trafficking Protocol 2000, Art. 9(4).

to address some issues in a meaningful way than others directly or indirectly. With regards to prevention, the Protocol insists that states shall “take or strengthen measures...,” insinuating a shared responsibility. In order to prevent the trafficking of Nigerian persons to the UK from occurring, it is the responsibility of the Nigerian state as a source country to take all measures to address the vulnerability of potential victims. According to Gallagher, a number of contextual factors help shape the vulnerabilities of these individuals, which lead to their recruitment into trafficking, as identified in chapter two and four of this thesis utilising a human-centred approach.²⁶ The question is, to what extent has these factors been integrated in the measures adopted from the Nigerian side, to address human trafficking.

Many, including those interviewed in Nigeria and the UK for this study have insisted that a better life syndrome fostered by poverty and greed is the underlying factors that drive trafficking from Nigeria.²⁷ Similarly, a situation assessment on child trafficking in eleven Southern Nigerian States indicated that major causes of human trafficking includes poverty, greed and low level of education amongst many factors.²⁸ While, they both proffer a broad explanation, they oversimplify the root causes of trafficking and may not capture the complex dimensions of the problem. There are a number of social exclusion issues that increases the vulnerabilities of persons in Nigeria that most be tackled as part of preventative steps. They include, forced marriages, inequality, traditional servitude, homelessness, family instability and others forms of violence that may increase insecurity. Some of the victims seen in the UK are

²⁶ Anne Gallagher, *International Law of human Trafficking* (Cambridge University Press 2010)415.

²⁷ NAPTIP, *The Dynamics and Contexts of Trafficking in Persons: A National Perspective* (Nigeria: NAPTIP, undated).

²⁸ UNICEF, *Situation Assessment On Child Trafficking In Eleven Southern Nigerian States* (UNICEF 2004).

often people who tried to escape abusive relationships and are subjugated to a continuum of exploitation when they arrive the UK.²⁹

Other factors include the general knowledge that forms the perception of trafficking and migration, existing socio-economic ills, social exclusion perpetrated by violence, inequalities and the issue of internal trafficking that affects mainly women and children in Nigeria.³⁰ The Nigerian states possess the positive obligation to ensure that the social, economic and political rights of its citizens are met following a human rights approach.³¹ While addressing these human rights issues is highly significant to anti-trafficking in Nigeria, vulnerability to trafficking often transcends the actualisation of these rights. This includes sociocultural issues that form part of the belief and mind-set of many Nigerians that shape their attitude to elements of trafficking or their vulnerability to it. Adopting a human-centred approach means exploring ways to change how Nigerians view elements of trafficking like migration, exploitation, wealth, and the culture of servitude, associated stigmatization amongst others in a way that inculcates their circumstances and understanding.

The National Policy on Protection and Assistance to Trafficked Persons in Nigeria (hereafter, National Policy), implores that identified social factors need to be addressed by “empowering citizenry to reduce vulnerability”.³² Implementation strategies included conducting aggressive sensitization/awareness programmes for families; implement compulsory Universal Basic Education (UBE) policy;

²⁹ Myriam Cherti, Jenny Pennington and Peter Grant, *Beyond Borders, Human Trafficking From Nigeria to the United Kingdom* (Institute for Public Policy Research (IPPR) 2013).

³⁰ UNESCO, *Human Trafficking in Nigeria: Root Causes and Recommendations* (Policy Paper Poverty Series n° 14.2 (E) Paris 2006).

³¹ Jonathan Todres, ‘Widening Our Lens: Incorporating Essential Perspectives In The Fight Against Human Trafficking’ (2011) 33 *Mich. J. Int’l L.* 53-75.

³² NAPTIP, *The National Policy on Protection and Assistance to Trafficked Persons in Nigeria* (NAPTIP 2012) 20.

introduce social security schemes for vulnerable groups etc.³³ Furthermore, the National Plan of Action on Trafficking in Person 2009-2012 was introduced in 2008, sponsored by UNDOC, UNICEF and supported by the Governments of Finland, Switzerland and Norway to address prevention.³⁴ It included an empowerment programme which focused on vulnerable women and youth by providing them with micro-credit, skills acquisition and vocational trainings. Activities such as this were carried out through NAPTIP, NACTAL and international organisations like the IOM. About 388,000 British pounds (£) was invested in programmes like this covering the entire country. NGOs like Idi Renaissance, Girl Power Initiative (GPI) and Network for Justice and Democracy have all initiated programmes to raise awareness. Government programmes like the National Poverty Eradication Programme (NAPEP) and those initiated by the National Directorate of Employment (NDE) and the local governments, have also been involved in addressing socio-economic issues. However, there has been an inherent lapse in implementing government projects in Nigeria including technical limitations and the fact that some officials are corrupt.

NAPTIP, independent NGOS and a number of external actors have employed various prevention programmes on the logical premise that vulnerabilities to trafficking exists due to a lack of knowledge of the reality of life in Europe and the deception of traffickers. Hence, focus has largely been placed on awareness raising programmes. In spite of the high level of awareness programmes employed in Nigeria, there is still a low level understanding of trafficking in Nigeria. This is mainly due to the fact that many people in Nigeria still associate trafficking with prostitution. Therefore, they may not perceive other forms of trafficking as trafficking or associate certain countries with trafficking. As a result, victims who are lured into trafficking to the UK do not perceive any

³³ *ibid* i-vii.

³⁴ NAPTIP, *National Plan of Action on Trafficking in Person 2009-2012 Costed and Prioritized* (Published by UNODC and NAPTIP 2008).

inherent dangers of exploitation. Awareness raising programmes also suffer the difficulty for potential victims to comprehend the true situation of the exploitation that they might face in the UK which often conflicts with the success stories of those who have migrated to the UK. As a result, many communities in Nigeria maintain their deep rooted beliefs that going to the UK is one of the routes out of destitution and hence, it becomes difficult to turn down offers from traffickers. This way of thinking has posed a huge challenge for NGOs working against trafficking through their various awareness raising programmes. For the vulnerable people being sensitized in communities at risk for trafficking recruitment, there is often no replacement or alternative to aspirations of emigration and as a result, sensitization programmes are not usually well accommodated by community members.

According to an NGO official, “some of these people just think that you do not want them to enjoy the opportunities abroad” hence, they are not easily dissuaded.³⁵ Mostly, trafficking from Nigeria to the UK originates from Benin but the UK is not publicised as a major destination for trafficking. According to a research carried out in Benin, at least seventy per cent (70%) of the respondents admitted to the fact that trafficking has not reduced despite the counter trafficking measures applied.³⁶ Reasons for this include the lack of government's efforts to produce basic amenities, the high level of illiteracy and the inadequate sensitization strategies in the community.³⁷ Additionally, families who have been enriched by the ‘profits’ of trafficking do not often support anti-trafficking projects.³⁸ This is mainly due to the apparent ‘community

³⁵ Interview with NGO Official in Abuja, Nigeria [February, 2011].

³⁶ UNIBEN Observatory, Prevailing Perception of Trafficking, Prevention and Anti-Trafficking Activities among Community Leaders in Edo State, Nigeria, Survey Report (Benin - University of Benin Observatory 2011); 57 respondents (community leaders) were interviewed for this report.

³⁷ *ibid.*

³⁸ *ibid.*

development' brought about by these females who have been labelled as trafficked by NGOs. This above-mentioned report identified some houses, commissioned by victims/survivors of trafficking alongside boreholes, second-hand vehicles claimed to be proceeds from these trafficked persons who are members of these communities.³⁹ According to this report, "these proceeds from relatively successful trafficked victims have drowned the voice of reasoning in communities."⁴⁰ In so doing, awareness programmes have not effectively discouraged trafficking.

Additionally, existing prevention programmes are often short-term, unsustainable and dependent on international agencies whose presences are often short-lived. Communities are not properly engaged in prevention programmes as they often perceive interventions as an 'outsider thing' or as 'foreign projects'.⁴¹ Anti-trafficking stakeholders including NAPTIP continue to be challenged by the pervasive perception of trafficking by certain communities. A number of community leaders in Benin apparently go as far as supporting the decisions of those who choose to be recruited by "traffickers" without referring to the process as trafficking and questioning the very consensus that a quest to 'hustle' is seen as 'trafficking'. Some of these community leaders are of the belief that "it is not a bad way of survival, as it is better than armed robbery or murder".⁴² In this context, traffickers are perceived as 'sponsors' and it is asserted that people (especially women) engage in it to cater for their families while reducing poverty in their community.⁴³

³⁹ *ibid.*

⁴⁰ *ibid* 11.

⁴¹ *ibid* 11.

⁴² *ibid* 41.

⁴³ *Ibid* 41.

Such construct of survival skews the local understanding of trafficking and is further challenged by the value system of these societies where dignity of womanhood has been eroded and values associated with labour, skewed.⁴⁴ With the current twisted perception of wealth acquisition in Nigeria, sources of wealth are hardly investigated nor questioned and the 'end is believed to justify the means'. Hence, trafficking becomes highly contingent to these social views and processes. According to a report assessing why Benin is a prominent source for trafficking in Nigeria, "family values have been eroded to the extent of 'he who pays the piper dictates the tune'."⁴⁵ As a result, communities mainly respond to economic opportunities and, hence, they have no concept of illegal migration. More so, this way of thinking is not just limited to those vulnerable to trafficking but also extends to some NGO officials and government authorities who are equally sceptical about forms of trafficking like domestic servitude; questioning, "Is that really trafficking? Is that not like housemaids?"⁴⁶

From a human-centred viewpoint, these various perceptions (no matter how outrageous) cannot be overlooked while initiating measures to deal with trafficking from Nigeria. While a human-rights approach is necessary to safeguard these communities from trafficking, a human-centred approach acknowledges the existing knowledge of the people whose rights it intends to safeguard. It does this by attempting to incorporate the underlining root of the problem and why communities do not welcome trafficking whether due to culture, economic problems and social trends. The national anti-trafficking framework in Nigeria is more concerned about the act of trafficking rather than the needs of the people it intends to protect. Within this context, it is apparent that for the Nigerian state and its agents to address trafficking in Nigeria, some

⁴⁴ UNIBEN Observatory, *Why Benin City? An Assessment of Edo State and Benin City Endemic Areas in Nigeria*, (Benin - University of Benin Observatory 2011).

⁴⁵ *ibid* 10.

⁴⁶ Interview with NGO official in Lagos Nigeria [December 2011].

underlying issues need to be addressed in a way that fulfils the essential economic needs of these communities and address some outstanding misconceptions.

In addition to the latter, these communities need to be re-educated about forms of trafficking prompted by socio-cultural believes. This should be done without condemning the culture itself but by demarcating the positive and harmful elements of this culture rather than relegating them all to trafficking. Domestic servitude in Nigeria is typical of making such demarcations as carefully illustrated in the labour typology analysis elucidated in chapter two. Thus, taking a human-centred approach would involve changing the conflicting language between domestic servitude/traditional fostering/apprenticeship and ensuring that such demarcation reflects in the existing laws and policies in Nigeria. This means, critically adapting programmes which are sponsored and initiated by international organisation (often using a Western approach) to the local context of anti-trafficking which may not necessarily require a direct use of the word 'trafficking'. Such locally centred measures are most crucial for address the unique elements of trafficking in Nigeria which transcend Western knowledge like the oath taking element.

As highlighted in chapter four, the oath-taking phase often takes place in Nigeria before the victim arrives in the UK. Although NAPTIP endeavours to denounce the practice of juju contract as one of the indicators of trafficking and Edo state Criminal Code criminalizes it, no one has been actively prosecuted on this ground. Furthermore, it is challenged by an ingrained cultural belief of oath taking in Nigerian communities, which a claim of Christianity does not totally alter. Accordingly, the trafficking transactions are sealed with this oath taking to dismay and frustrate law enforcement agents both in Nigeria and the UK, as victims vehemently refuse to give any information for fear of

repercussions. In the past, NAPTIP has initiated 'reversal ceremonies' which were aimed at investigating and finding the 'native doctors' who have performed the oath taking ceremonies and getting them to reverse the 'cause' placed on the victim as, it is only then, that most of these victims are invigorated to speak.⁴⁷ While the uniqueness of such approach cannot be denied for incorporating the needs of the victims beyond legal understandings, it still struggles with intrinsic limitations in terms of its validity and its international acceptance for international cooperation

So far, the validity of this technique has not been measured in terms of the questions of ethics that it raises, as well as its absence in the existing National Policy. However, while this anecdotally eliminates aspects of the fear factor that affects some victims, it is more reactive than proactive. Based on the points raised so far, it is obvious that the current prevention programmes focused on raising awareness and microcredits are limited in dealing with the current factors that increases vulnerabilities. While the Nigerian government reserves the obligation to ensure that the socio-economic needs of its citizens are met, there is a need to address the growing perception and attitudes of the Nigerian society towards trafficking. Whilst such a change of mind-set is highly needed, an environment that sustains the trafficking business challenges measures employed. Tackling such enabling environment is as important as tackling trafficking directly.

Tackling Enabling Environments: Corruption and Complicity

Human trafficking from Nigeria cannot be tackled without dealing with structural issues that enable the recruitment and transportation of these victims from Nigeria to the UK. In Nigeria, one of the biggest issues that stand in the way of anti-trafficking is corruption. Corruption has been defined by the World Bank as

⁴⁷ Interview with NGO official in Abuja, Nigeria [December 2011].

“the abuse of public power for private benefit”.⁴⁸ Taking a broader approach, Transparency International defines corruption as “the misuse of entrusted power for private gain”.⁴⁹ According to Demas, “Nigeria presents a prominent example of a country reputed to possess a ‘culture of corruption’. Many who work or live in Nigeria say it is impossible to carry out any transaction without paying bribes.”⁵⁰ Corruption has always been addressed as a separate phenomenon. Although it has been mentioned as a key factor of human trafficking, there has been no strategy devised to directly tackle its effect on the problem.⁵¹ For one, there has been a lack of integration in the approaches between the circles of anti-trafficking and anti-corruption.⁵² According to Gallagher, it is only recently that corruption has been linked to human rights violations.⁵³ Despite the lack of substantial literature on the parallel of corruption and trafficking, there are consistent indications that corruption plays a vital role in human trafficking following data gathered for other purposes; especially through the accounts of victims.⁵⁴

It has been made clear from several testimonies by Nigerian victims in the UK that traffickers engage the active involvement or complicity of public officials to

⁴⁸ World Bank, *Deterring Corruption And Improving Governance In The Urban Water Supply & Sanitation Sector: A Sourcebook*, Water Working Note No. 18, p. 4, (2008) [online] available at: <http://www.unwater.org/downloads/468290REPLACEMENT10WN181Sourcebook1rev.pdf> (Accessed 13th May 2012).

⁴⁹ *ibid.*

⁵⁰ Reagan R. Demas, ‘All Hands on Deck: Collaborative Global Strategies in the Battle Against Corruption and Human Trafficking in Africa’ (2008) 6 *University of St Thomas Law Journal* No.1, 208.

⁵¹ UNODC, *Issue Paper: The Role of Corruption in Trafficking in Persons* (UNODC 2011) 4.

⁵² *ibid.*

⁵³ Gallagher (n 26) 442.

⁵⁴ Interview with survivors of human trafficking in Idia Renaissance shelter in Benin, Nigeria (13th March 2012); they all asserted that their trafficker was not convicted for the crime they committed.

move individuals across international borders for the purpose of trafficking. Some victims claimed that security agents connived with the traffickers who let them pass through security checkpoints at the airports or land borders unchecked.⁵⁵ According to one survivor of trafficking in the UK (Female, 24),

“We arrived at the airport in Lagos and it seemed that he was well-known there. He was greeted by many of the officials. We handed over our papers and everything was stamped and no one asked any questions.”⁵⁶

According to Agbu, tackling human trafficking in Nigeria by the government means engaging with corruption directly.⁵⁷ The National Tasks Force was created to work with institutions like the Nigerian Police and the Nigeria Immigration Services to address issues relating to intercepting traffickers at borders. The work of NAPTIP in this area could be perceived to be complimented with the official struggle to eliminate corruption in Nigeria by statutory organisations like the Independent Corrupt Practices Commission (ICPC), created in 2000, and the Economic and Financial Crimes Commission (EFCC) created in 2004. In 2009, the Federal Government mandated the International Agency Task Team on Anti-Corruption (IATT) supported by NAPTIP, UNODC and the United Nations Development Programme (UNDP) to address the existing overlap in anti-corruption functions in meeting the requirements of the Organised Crime Convention.⁵⁸ Hitherto, it is not clear how the work of

⁵⁵ Dave-Odigie, Chinenye Patience, 'Human Trafficking Trends in Nigeria and Strategies for Combating the Crime', (2008) 1 *Peace Studies Journal*, Issue 1, 63.

⁵⁶ Myriam Cherti et al. (n 29) 44.

⁵⁷ Osita Agbu, 'Corruption and Human Trafficking: The Nigerian Case' (2003) 4 *West African Review*, No. 1, 1-13; Emmanuel Joseph Chukwuma Duru, 'Combating Human Trafficking in Nigeria: An Evaluation of State Policies and Programmes' (2012) 3 *Mediterranean Journal of Social Sciences*,(3) 161 – 164.

⁵⁸ UNODC, Country of Nigeria Newsletter (2011) [online] available at: http://www.unodc.org/documents/nigeria//Newsletter/CONIG_Newsletter_APRIL_2011.pdf [Accessed 15 June 2012].

these organisations has been directed towards reducing trafficking. Despite the quest to fight corruption related to trafficking, there is no existing statistics of any trafficker intercepted en route to the UK nor have the Nigerian government initiated any investigations or convictions of government officials for corruption related to the trafficking of human beings.⁵⁹

The existing nature of corruption in Nigeria poses a challenge to the fight against trafficking by preventing the power of legal protection from becoming reality in the lives of vulnerable persons. According to the UN,

“New laws and new government agencies and commissions to control and reduce corruption have had less impact than expected at their often very public and vocal launch.... Anticorruption campaigns are not a substitute for the difficult tasks of public sector reform and capacity-building.”⁶⁰

Although NAPTIP collaborates with the Nigerian Police for anti-trafficking purposes, they are challenged by the general perception of the police in Nigeria. Nigerian citizens see police in Nigeria as oppressors instead of protectors and as a result dissuaded from reporting, due to the belief that they may not be protected from the consequences.⁶¹ For victims of trafficking, corruption related to trafficking breeds mistrust between anti-trafficking authorities and agents.

Immigration officials in Nigeria have not made reasonable attempts to identify trafficked victims despite the intensive training programmes initiated by NAPTIP

⁵⁹ US TIP 2012, Nigeria.

⁶⁰ U.N. Econ. Comm'n For Africa, *Striving For Good Governance In Africa: Synopsis Of The 2005 African Governance Report Prepared For The African Development Forum IV*, at 21, [online] available at: <http://www.uneca.org/agr/> (Accessed 20th August 2013).

⁶¹ Demas, 'All Hands on Deck: Collaborative Global Strategies' (n 50) 214.

and other international organisations to build their capacity in this area. There is an existing collapse of a protective environment at the Nigeria border as a result of the laxity of security agents in discharging their duties. They exercise negligence in detecting fake visas at security checkpoints. Such negligence of duty may be attributed to poor salary for the security agents.⁶² Nevertheless, the work of this officials are also challenged by the fact that some of the potential victims travel with valid visas obtained from the British Embassy in Nigeria which gives them the permission to leave the country for their intended destinations. There has also been no existing measure to dismantle the middlemen who assist the trafficking process in Nigeria including those involved in document forgery in local governments and other institutions. According to an NGO official in Nigeria "It is so easy to get any document you need in Nigeria, whether birth certificates etc. ..."⁶³

Following what currently exists, there is a need for NAPTIP to integrate its work into the larger anti-corruption framework and overtly work with specific Nigerian institutions to address the concerns of corruption linked with anti-trafficking. As it stands, current limitation with regards to the latter hinders anti-trafficking efforts. It obstructs international cooperation, the protection of victims, prevention and the prosecution of traffickers/trafficking accomplices. The issue highlighted in this sub-section have been significant to deterring the repatriation of victims. Repatriation should normally form part of reintegrating victims back into their society (country of origin) but with an environment where authorities collude with the highest bidder through bribery, it is very difficult for victims to survive. Traffickers can often pay off some authorities who should normally protect victims and therefore can harass/assault their victims or even re-traffic them. As

⁶² Dave-Odigie, Chinenye Patience, 'Human Trafficking Trends in Nigeria and Strategies for Combating the Crime' (2008) 1 *Peace Studies Journal*, Issue 1, 63-75.

⁶³ Interview with NGO official in Lagos, Nigeria [February 2012].

a result, Nigerian victims identified in the UK often deter from returning back to Nigeria for fear of reprisal. The latter is yet to find commonplace in repatriation strategies in Nigeria, which requires facilitating an environment for the safe repatriation of victims.

Enabling Repatriation: Protecting Survivors and Preventing Re-trafficking

A human-centred approach in terms of repatriation goes beyond just fulfilling obligations set by law but also provides that the contextual needs of repatriated persons must be mainstreamed in the returns programmes. Article 8(3) of the Trafficking Protocol obliges origin States to receive returning nationals without undue or unreasonable delay. Specifically, Nigeria is obliged to facilitate and accept such return with due regard to the safety of the person being returned.⁶⁴ The Trafficking Protocol thereby imposes a positive obligation on states to ensure that those who been repatriated are protected from intimidation, retaliation or other harm that they could face upon returning home, such as violation of the laws of the origin country.⁶⁵ In keeping with these obligations, Nigeria made provisions for the protection of victims of trafficking upon return in Section 36 of the NAPTIP Act 2003. However, it does not explicitly imply facilitating the return of victims who have been trafficked outside Nigeria. For their protection upon return, it states:

“The use by any person’s history of being trafficked to discriminate or cause harm to any trafficked person or his friends in any way whatsoever, particularly with regards to freedom of movement, marriage or search for gainful employment is not encouraged.”⁶⁶

⁶⁴ Trafficking Protocol 2000, Art. 8(1-2).

⁶⁵ UN Office on Drugs and Crime (UNODC), Model Law against Trafficking in Persons (5 August 2009) [online] available at: <http://www.refworld.org/docid/4a794e432.html> [accessed 19 October 2013].

⁶⁶ NAPTIP Act 2003, section 36(h).

This provision partially focuses on reintegration rather than ensuring an appropriate and holistic returns mechanisms. Even where Nigeria has been engaged in the repatriation of trafficked persons, it has been limited in scope and has not included the UK. Nigeria's National Action Plan made provision for the return of Nigerian nationals but focuses mainly on West and North Africa and specifically on rehabilitation programmes. During fieldwork in Nigeria, it was impossible to identify any survivor of trafficking who has been repatriated from the UK. Many officials from NAPTIP as well as NGOs in Nigeria insisted that they had not identified survivors repatriated from the UK and therefore, do not have any in their care.⁶⁷ However, another official from NAPTIP indicated that NAPTIP has in the past identified victims of trafficking returned from the UK but they were not repatriated but rather deported.⁶⁸ A couple of explanations emerge from this testimony. Firstly, many destination countries do not follow the recommendations of the Trafficking Protocol to identify victims and enable safe repatriation of foreign nationals especially from third countries.

Due to the difficulty in identifying Nigerian persons as trafficked in the UK, especially those who are illegal migrants, trafficked persons may be treated as criminals, detained and deported with other criminals, making it difficult for them to be identified by Nigerian authorities. According to NAPTIP,

“They [i.e. the UK authorities] usually just send a list of names of deportees to various Nigerian agencies or institutions.... A copy is sent to the Nigerian Police, the executive Secretary of NAPTIP, NDLEA, Nigerian Immigration Services, SSS, and Nigerian Intelligence Agency.... Sometimes, there are victims on this lists but it is not made known to us.... When they send these

⁶⁷ Interview with NAPTIP Counseling and Rehabilitation Department; Interview with NGOs in Abuja, Nigeria [February 2012].

⁶⁸ Interview with NAPTIP Official in Abuja, Nigeria [February 2012].

people back home with other criminals this way, the victims are brainwashed by these criminals not to own-up to being trafficked... it makes our work difficult when we send our staff out with this list to go and check for potential victims at the airport." ⁶⁹

Secondly, most of the victims from Nigeria identified in the UK usually prefer to remain in the UK permanently in most cases and therefore may not be identified by NAPTIP.⁷⁰ This is mainly due to the limited nature of care and protection that are readily available to them upon return as indicated by one victim seeking to remain in the UK.⁷¹ Following the extract from PO (Trafficked Women) Nigeria CG [2009] UKAIT 00046,

(a) A very careful examination of the circumstances in which the victim was first trafficked must be undertaken and careful findings made. If a victim has been told that she is required to earn a particular sum of money ("target earnings") for the trafficker or gang, before being free of any obligation to the trafficker or gang, then, if the victim should escape before earning the target sums, there may well be a risk to the victim that on return to Nigeria she may be re-trafficked if found. The extent of the risk of the trafficking will very much depend on the circumstances in which the victim was originally trafficked.⁷²

There are limited provisions made by the Nigerian government to enable the safe return of their nationals who have been trafficked to the UK. For these

⁶⁹ Interview with NAPTIP Official in Abuja, Nigeria [February 2012].

⁷⁰ Interview with NAPTIP Official in Abuja Nigeria [December 2011].

⁷¹ See PO (Nigerian) v Secretary of State for the Home Department CA, CIVIL DIVISION 22 February 2011 Judgments 22 FEBRUARY 2011 PO (Nigeria) v Secretary of State for the Home Department.

⁷² Ibid; Appendix [Risk To Victims Of Trafficking In Being Re-Trafficked On Return To Nigeria].

reasons amongst others, some identified victims of trafficking appeal to remain in the UK indefinitely. These reasons include the fear that they may not be protected from intimidation at the hands of their traffickers if returned to Nigeria; insufficient rehabilitation, reintegration and reintegration capacity; return to worse economic situations that may enable re-trafficking; or simply arising from the fact that UK offers more opportunity for their future well-being. This has been used as evidence for the asylum application appeals of Nigerian victims of trafficking in the UK. However, its parallel to the non-refoulement principle as indicated in chapter two of this thesis has not be duly utilised to obtain the needed justice for trafficked persons to be exempted from repatriation for protection reasons.

In addition, although victims of trafficking repatriated from the UK were not identified during fieldwork in Nigeria, the evidence for limited returns support can be substantiated by the level of support received by other repatriated survivors from Mali documented in this study. A number of issues were identified during fieldwork which makes repatriation to Nigeria unsafe, despite the efforts of NAPTIP. These issues include, the protection of victims' identity upon return as stipulated by NAPTIP's Act; insufficient shelters to meet demand; rehabilitation capacity to meet the needs of the victims; unsatisfactory reintegration that engages communities, stigmatization; lack of police protection in Nigeria and economic insecurity.

As seen through many pictures publicized by the Nigerian Press and NAPTIP, the identities of returnees are hardly protected.⁷³ Section 36(g) of the NAPTIP Act 2003 stipulates that the identity of the victim must be protected, yet, this is hardly taken seriously. Revealing the identities of victims without any ethical caution could obstruct effective reintegration within their various communities.

⁷³ For ethical reasons, a sample picture is not attached.

According to an NGO official in Nigeria, reintegration into the community is a gradual process, as the officials have to counsel the family of the victims to allow the victims back into the family.⁷⁴ One of the survivors during interview revealed that her family and community did not accept her when they found out she was trafficked.⁷⁵ Another revealed that, “up till today, my family is not aware that I was trafficked for prostitution. If they find out, they will kick me out because of the shame”.⁷⁶ Some of these trafficked persons lacked the essential Police protection against their traffickers whilst in Nigeria. This is more prominent where these trafficked persons have been unable to pay off their debt before they were rescued. According to one victim,

“I am afraid [of going back] because I haven’t paid back the money yet. If I am in Nigeria, the man can do anything for [to] me. I have no money. The police only believe those who have money. The police is not protecting you in Nigeria.”⁷⁷

Even after being rescued, victims fear for their lives because their traffickers have not been apprehended. Whilst the law provides for the prosecution of these traffickers, victims have to grapple with the reality of prosecution limitations that sustains their vulnerability as a continuum of trafficking.

Some of these victims have complained that they did not receive adequate support to meet their needs after they were repatriated. Firstly, there was

⁷⁴ Interview with NGO official in Benin [February 2012].

⁷⁵ Interview with survivors of human trafficking in Idia Renaissance shelter in Benin, Nigeria (13th March 2012).

⁷⁶ Interview with survivors of human trafficking (Onome, 21 years old) in Idia Renaissance shelter in Benin, Nigeria (13th March 2012).

⁷⁷ Maybritt Jill Alpes, “Escaping Statism: From the Paradigm of Trafficking to the Migration Trajectories of West African sex workers in Paris” in Tiantian Zheng, (ed.) *Sex Trafficking, human Rights and Social Justice* (Routledge 2010)128.

insufficient shelter to meet the number of returnees, which may have resulted to quick turnovers regardless of recovery needs. There are 293 available bed spaces thinly spread across eight NAPTIP shelters in Nigeria. The length of stay is limited to six weeks and those who require longer stay are referred to shelters owned by collaborating NGOs like WOTCLEF. With about 949 victims identified in 2011, limited shelter capacity remains an ongoing problem.⁷⁸ Secondly, despite the measures put in place to rehabilitate the survivors of trafficking, the programmes have not prevented survivors from vulnerable situations that could enable re-trafficking. Idia Renaissance, an NGO in Benin is one of NAPTIP's partner organisations that undertook the rehabilitation of about 93 victims returned from Mali in 2011.⁷⁹ Rehabilitation of Victims in Nigeria usually involves vocational skills training like dressmaking, hairdressing, jewellery making and catering as confirmed by Idia Renaissance and NAPTIP Counselling/rehabilitation department. Education was also included as part of rehabilitation for victims who wanted to go back to school. One victim confirmed that the latter was rarely fulfilled instead she was advised to get on with one of the vocational skills programs while her quest for higher education was being considered.⁸⁰

Victims confirmed that they were persuaded to take up these skills with the promise of gaining support to establish their own businesses. Unfortunately, some survivors have been known to drop out of rehabilitation centres and its programmes for several reasons including; access to the rehabilitation centre as some complained that the centre was a long distance from home and they

⁷⁸ US, TIP Report 2012 – Nigeria.

⁷⁹ 104 Nigerians Involved in Sexual Slavery Evacuated from Mali, Pilot Africa Published On: Tue, Nov 15th, 2011, [online] available at: <http://www.pilotafrica.com/2011/11/15/104-nigerians-involved-in-sexual-slavery-evacuated-from-mali/> (Accessed 5th April, 2012).

⁸⁰ Interview with survivors of human trafficking in Idia Renaissance shelter in Benin, Nigeria (13th March 2012),

could not afford the transport fares to the centre; lack of motivation; mortification of undertaking the kind of skills offered through the rehabilitation programme were amongst the many complaints from victims. According to an official at the centre, “not all survivors want to be hairdressers or caterers but this is what is available to them”.⁸¹ Although some of the returnees were glad to be rescued, many returned to their traffickers due to their dissatisfaction with rehabilitation as they felt that staying with their trafficker seemed more profitable to them.⁸²

Apart from their experiences of rehabilitation, reintegration was often difficult for some of these victims. The narrow-minded perception and expectations held by community members/leaders of these trafficked persons makes reintegration difficult. Trafficking survivor repatriated from abroad are not expected to come back empty-handed. As a result, these survivors are pressurised to be economically viable upon return to avoid shame but given their exploitation, economic viability is hardly guaranteed. In addition, trafficked women often have to deal with the shame of being perceived by their communities as carriers of deadly diseases contracted abroad and bringing dishonour to their families.⁸³ Bamgbose contends that trafficking affects the reputation of the origin states and therefore increases the prejudice these women experience upon return.⁸⁴ The trauma experienced by these survivors is often increased as a result of

⁸¹ Interview with an officer at Idia Renaissance in Benin, Nigeria (13th March 2012),

⁸² see note 80.

⁸³ Adepou 2003: 83- 4 cited by May-Len Skilbrei and Marianne Tveit, “Mission Impossible? Voluntary and Dignified Repatriation of Nigerian Victims of Trafficking” in Thanh-Dam Truong, D. Gasper (eds.) *Transnational Migration and Human Security: The Migration-Development-Security Nexus* (London: Springer 2011) 142.

⁸⁴ Bamgbose Olyuemisi, ‘Teenage Prostitution and the Future of the Female Adolescent in Nigeria’ (2002) 46 *International Journal of Offender Therapy and Comparative Criminology*, 5, 587.

community stigmatization. According to the UNODC, “Fighting trauma and stigmatization experienced by victims is a particular challenge”.⁸⁵ Being blacklisted in their community often mean that they are unable to marry, gain employment or generally unable to lead normal lives in their communities. As such, they lack the family or community support network they once had before leaving for the UK and therefore find themselves in worse economic situations which drives them back into trafficking.

Survivors like Ada, submit that she was back in poverty and that she has been worse-off after repatriation. She added,

“I’m still going to find a way out of here even if I have to suffer to get the money together... my family depends on me... other girls that I came back with have left the shelter back to the madam.”⁸⁶

Similarly, Dina added

“If I were deported to Nigeria, I would of course go back to Europe as soon as possible. I would have to borrow more money. That would be difficult because I still have only paid US\$ 20,000 of the other money (owned to trafficker for the first trip), but I would still find a way to go back to Europe. I know girls that are deported; they come back to Europe again.”⁸⁷

⁸⁵ UNODC, ‘Measures to Combat Trafficking in Human Beings in Benin, Nigeria and Togo’ (UNODC 2006)108.

⁸⁶ Interview with survivors of human trafficking (Ada, 21 years old) in Ida Renaissance shelter in Benin, Nigeria (13th March 2012),

⁸⁷ Case study cited in May-Len Skilbrei and Marianne Tveit, “Mission Impossible? Voluntary and Dignified Repatriation of Nigerian Victims of Trafficking” in Thanh-

In essence, the stigmatizations by their communities as well as the economic difficulties they face bring them back to the level of vulnerability that often lead to re-trafficking. These social conditions have prompted the asylum appeals of many Nigerian victims to remain resident in the UK rather than be repatriated, so that they do not fall back into the hands of their traffickers or get ostracized by their various communities. However, it is often difficult to prove in the court of law. The safe repatriation of victims of trafficking is not an isolated obligation of one state but more of a shared responsibility between origin and destination states.⁸⁸ NAPTIP insists that the UK has to properly identify Nigerian victims and inform NAPTIP of any plans for repatriation. At moment, NAPTIP lacks mechanisms for accepting returnees but at the time of this research, it proposed to consider developing one.⁸⁹ In this regard, NAPTIP requires not just the collaboration of the UK but also that of stakeholders in Nigeria in order to better address anti-trafficking problems in Nigeria as part of mutual co-operation to integrate the needs of trafficked persons in their anti-trafficking movement beyond just advocating for laws that looks like a paper tiger.

National inter-agency collaboration and cooperation

The Trafficking Protocol encourages cooperation at all levels, to enable these agencies to exchange information and expertise in tackling trafficking.⁹⁰ While international cooperation and coordination is important, a mechanism that

Dam Truong, D. Gasper (eds.) *Transnational Migration and Human Security: The Migration-Development-Security Nexus* (Springer 2011) 140.

⁸⁸ Anne Gallagher and Nicole Karlebach, *Prosecution of Trafficking in Persons Cases: Integrating a Human Rights-Based Approach in the Administration of Criminal Justice*, United Nations High Commissioner for Human Rights, Expert Meeting of the UN Special Rapporteur on trafficking in persons, especially women and children, Ms Joy Ngozi Ezeilo, 4th July, 2011, Geneva, Switzerland.

⁸⁹ Phone interview with NAPTIP Official, Abuja Nigeria [12th of August 2013].

⁹⁰ Trafficking Protocol 2000, Art. 10.

enhances national coordination is essential. The UNODC insists that “Anti-trafficking National Coordination Mechanisms (NCMs) are a core element of an effective anti-trafficking response.”⁹¹ Similarly, the OSCE defines NCMs as the process of

“Identifying and integrating essential expertise and authorities needed to combat THB [Trafficking in Human Brings] [...and that they] are meant to provide leadership for the coordination of concrete anti-trafficking efforts and activities [and] organize the collective efforts of a country to produce the most effective [...] results.”⁹²

NAPTIP has adopted a multi-agency approach aimed at overseeing the partnership and coordination of relevant stakeholders in Nigeria such as the police, immigration services, relevant Ministries, international/regional organisations and NGOs. In the connection, NAPTIP established a National Consultative Forum (NCF) in its early days. The forum was formed to bring together stakeholders working on issues related to trafficking. There was participation from the office of the Special Assistant to the President on Human Trafficking and Child Labour, Ministry of Women Affairs, Ministry of Labour and Productivity, Ministry of Cooperation and Integration in Africa, Ministry of Foreign Affairs, Ministry of Justice, and Ministry of Information. Other participants include representatives of Nigeria Immigration Services, Nigeria Police Force, National Human Rights Commission, ECOWAS, ILO/IPEC, IOM, UNODC, UNICEF, USAID, WOTCLEF, media organisations and other NGOs.⁹³ The forum was instrumental to developing and reviewing the National Action Plan on Trafficking in Persons;

⁹¹ UNODC, Human Trafficking in the Baltic Sea Region: State and Civil Society Cooperation on Victims' Assistance and Protection (UNODC 2010).

⁹² OSCE, Annual Report of the Special Representative and Coordinator for Combating Trafficking in Human Beings (OSCE 2008).

⁹³ NAPTIP, Nigeria Country Response On Trafficking In Persons Especially Children And Women 2002-2007 (UNICEF 2008).

creating a network of partners and harmonizing resources and programmes to avoid duplication.

As a strategy for coordinating the projects and programmes of NGOs, the Network of NGOs against Child Trafficking, Abuse and Labour (NACTAL) was established with support from UNICEF in 2004. The network with over fifty members from the six geo-political zones of the country provides a forum for the coordination of NGOs and enables an integrated approach to be adopted for addressing issues of child trafficking, child labour and child abuse in Nigeria.⁹⁴ The existence of cooperation and coordination amongst various agencies in Nigeria was aimed at optimizing resources in meeting the needs of trafficked victims. For instance, NAPTIP works with NGOs like WOTCLEF and Idia Renaissance within the area of victim rehabilitation. These NGOs within their capacity supplement the limited bed space in NAPTIP shelters.

Despite the national coordinating efforts of NAPTIP, it has been criticized for not being as cooperative as was naturally expected following testimonies from other stakeholders that it dominates all work on anti-trafficking.⁹⁵ As a result, the organisation selfishly closes the window for coordination. Some NGOs have criticized NAPTIP for working with only NGOs that it could manipulate to suppress any potential challenge to its competence.⁹⁶ Due to the position of NAPTIP, NGOs in Nigeria find it difficult to access funds as many international organizations focus their grants towards supporting NAPTIP. As a result, these NGOs often lack the resources to work together or independently access the work of NAPTIP and anti-trafficking in Nigeria.

⁹⁴ *ibid* 10.

⁹⁵ Interview with NGO official in Abuja, Nigeria [December 2011].

⁹⁶ Interview with NGO official in Abuja Nigeria [December 2011].

In spite of the attempt to avoid duplication, the lack of strategic coordination meant that this has not been successfully avoided. This duplication of efforts also extends to the work of international partners in Nigeria. According to one official, resources from international donor agencies could be better coordinated.⁹⁷ However, due to lack of communication and fragmented agenda, resources are mismanaged and do not show any value for money in meeting the objectives of anti-trafficking in Nigeria. The bureaucracy that characterises relevant institutions in Nigeria impedes any progress towards an effective national anti-trafficking coordination. Nevertheless, in addition to establishing necessary collaboration, Nigeria also extends cooperation to other countries through the signing of bilateral and multilateral agreements. So far, Nigeria has entered bilateral agreements with a number of countries including Benin, Niger, Italy and the United Kingdom. The question of how significant such an agreement has been and how it has impacted on the UK in promoting the anti-trafficking regime is most relevant to this thesis.

Conclusion

Nigeria is the only ECOWAS country that has taken tangible measures towards addressing human trafficking and therefore should be commended for its effort. It has done this by adopting the necessary legal frameworks to tackle the problem. While this is fair on paper and demonstrates minimum compliance to the anti-trafficking laws, it has not sufficiently materialized in practice. Nigeria still remains a challenge to the global fight against human trafficking and those who suffer most from this poor performance are Nigerian citizens at risk or affected by the trade. Despite the amount of funds invested in anti-trafficking measures in Nigeria, the business of human trafficking still flourishes. As long as the Nigerian government fails in its obligations to fulfil, respect and promote the

⁹⁷ Interview with an international donor official (Netherlands Embassy) in Abuja Nigeria [February 2012].

socio-economic rights of its citizens, the vulnerabilities to trafficking would continue to be on the increase. Such vulnerabilities continue to create/increase the market for human commodity, which traffickers have preyed on.

Aside from legal obligations, there is the need to address traditional practices, cultures and social trends that provide the lethal ammunition to the trafficking operation. This includes the culture of fostering, which is not well addressed in the Nigerian Child Rights Act; the aspect of 'juju contract', which acts as a control mechanism for trafficking; and the elements of greed. These peculiarities associated with Nigerian human trafficking are well understood by Nigerians but at the same time inadvertently overlooked by Nigerian authorities hence, certain aspects of trafficking tend to be ignored or not given the required attention. This comes into light in the way trafficking is constructed in Nigeria in spite of the increased awareness of the crime. Furthermore, the government has not done much in tackling factors that usually encourage human trafficking. Nigeria is one of the most corrupt countries in the world and this affects the extent to which anti-trafficking enforcement is carried out by the state. Traffickers depend on the complicity of corrupt officials to carry out their business and as long as this exists, any effort to address trafficking in Nigeria would continue to end in abysmal failure.

In Nigeria, trafficking is mainly understood to imply forced prostitution. This is contrary to what is obtainable in destination countries. It is evident from empirical findings that the UK is a not a significant destination and concern for Nigerian authorities. This has significantly affected the framing of interventions. Additionally, the difficulty in identifying repatriated victims from the UK does not help matters. Equally, the lack of a safe environment for safe repatriation of victims could also be a severe constraint. This lacuna is not just due to lack of police protection but also to the communities' reluctant acceptance to the

integration of survivors. This partly explains why victims who face repatriation from the UK may not voluntarily take the option of repatriation to Nigeria.

Arising from what has been discussed earlier, the need for collaboration both internally and internationally cannot be over-emphasized. Nigeria has demonstrated significant coordinating abilities especially with NAPTIP as a pioneer coordinating body. However, its efforts are constrained by the creation of an amalgam of well-intentioned committees and networks that appears to work at cross-purposes with each other. On the international front, international organisations and governments mainly focused their attention on the aspect of prosecution. The lack of coordination amongst these external actors has led to duplication of efforts and waste of resources. In the context of this thesis, the UK also has an obligation to address other aspects of the trafficking process to ensure a holistic approach to stem-tide human trafficking across borders. Therefore, the next chapter discusses the UK's response as a destination country.

Chapter Six - Addressing Human Trafficking in the United Kingdom: The Context of a Destination Country

Introduction

Over the last seven years, the United Kingdom has been at the forefront of formulating anti-trafficking policies and legislations, most of which emerged from the ascent of the UKHTC in 2006. Like Nigeria, the UK has signed and ratified different international and regional legal instruments that are relevant to addressing trafficking. The European Union laws have been largely instrumental to the UK's legal response to human trafficking. After the ratification of the Trafficking Protocol, the UK introduced ad hoc legislation covering not only sex trafficking, but also other forms of trafficking as defined by the 2002 Framework Decision.¹ The US TIP report has also ranked the UK as Tier 1 to show that the UK fully complies with the minimum standards for the elimination of trafficking.² Despite the efforts employed by the UK to address human trafficking it has been criticized for failing to assist victims especially those who are non-citizens of the EU. Victims of trafficking from Nigeria top the list of those trafficked into the UK and the complexity of its cases remain one that has captured the attention of UK anti-trafficking stakeholders.

Whilst the UK government claims to include a human-rights approach among other strategies in addressing trafficking within its territory, the operationalization of this approach is still discriminatory and in some cases, structurally insufficient in dealing with the nature of trafficking from Nigeria. Specifically, aside from the pursuit of its national interest in form of its anti-immigration and security agenda,

¹ See Art. 1(1) of the Council Framework Decision 2002/946/JHA on the Strengthening of the Penal Framework to Prevent the Facilitation of Unauthorized Entry, Transit and Residence.

² United States Department of State, 2013 Trafficking in Persons Report - United Kingdom, 19 June 2013, available at: <http://www.refworld.org/docid/51c2f37a14.html> [accessed 2 August 2013].

UK authorities are challenged by a lack of a human-centred approach required to address the 3Ps of anti-trafficking. So far, the socio-cultural realities involved in cases of trafficking from Nigeria has made it difficult for the UK authorities to properly identify victims and successfully prosecute traffickers

Like the previous chapter, the extent of addressing anti-trafficking in the UK is explored from the context of a source country divided into two major sections and sub-sections. The first section explores the provisions of the national legal framework of the UK concerning trafficking including its policies. The second presents an empirical analysis of the extent to which the UK anti-trafficking approaches have incorporated a rights-based approach expounded within a human-centred perspective in dealing with trafficking from Nigeria. This chapter forms part of the foundation for chapter seven which teases out the implication of the UK anti-trafficking approaches to international cooperation within the context of this study.

Anti-trafficking Law and Policies in the UK

The UK does not have a specific law that solely addresses human trafficking, but has criminalized the offence in its existing criminal, immigration and labour legislations. This includes the 1989 and 2004 Children Act; The Nationality, Immigration and Asylum Acts introduced in 2002; The Sexual Offences Act 2003; the Asylum and Immigration Act 2004; The Gangmasters Licensing Act 2004; The Immigration Asylum, and Nationality Act 2006; The Proceeds of Crime Act 2002; The Coroners and Justice Act 2009; The Convention Relating to the Status of Refugees (1951) and; the UK's Human Rights Act, 1998. These legislations have led to a number of policy guidelines for practitioners to take the appropriate actions as stipulated by law.

The Sexual Offences Act 2003 (hereafter referred to as SOA 2003) is a major criminal law against human trafficking in the UK, primarily focused on sex trafficking. Prior to the SOA 2003, sex trafficking was criminalized under the Sexual Offences Act 1956.³ However, it did not make any provisions towards recognising trafficking with the use of force, deception and coercion. The SOA 2003 addresses sex trafficking specifically within Section 57 to 60. It criminalizes human trafficking into, within and out of the UK for sexual exploitation and attracts a prison sentence of up to 14 years.⁴ While the Children Acts 1989 and 2004 are one of the primary laws in the UK aimed at protecting children from significant harm, they are further strengthened by the SOA 2003 to protect children from sexual exploitation.

The SOA 2003 makes it an offence to intentionally arrange or facilitate the movement of a person either across international borders or within the UK for the purposes of committing an offence by: paying for the sexual services of a child;⁵ causing or inciting child prostitution or pornography;⁶ controlling a child prostitute or a child involved in pornography;⁷ arranging or facilitating child prostitution or pornography.⁸ The SOA 2003 also strengthens the Nationality, Immigration and Asylum Act 2002 in criminalizing the trafficking of people for the purpose of prostitution.⁹ So far, 267 people have been prosecuted under sections 57-59 of the Sexual Offences Act 2003.¹⁰ A total of 106 convictions

³ Sexual Offences Act 1956, Sections 22,24,30 -31.

⁴ *ibid.*

⁵ Sexual Offences Act 2003, s.49.

⁶ Sexual Offences Act 2003, s.50.

⁷ Sexual Offences Act 2003, s.51.

⁸ Sexual Offences Act 2003, s.52.

⁹ Nationality, Immigration and Asylum Act 2002 see Part 7 (offence) Substance 145.

¹⁰ Figures from the Crown Prosecution Service - HC Deb 24 June 2009 c890W, [online] available at:

including three for conspiracy to traffic, have been achieved under this Act.¹¹ This piece of legislation is limited to sexual offences as the title suggests and in essence, does not deal with all aspect of trafficking.

On the 1st of December 2004, the UK government introduced the Asylum and Immigration (Treatment of Claimants, etc.) Act.¹² This Act goes further than the SOA 2003 to criminalize trafficking for all forms of labour exploitation including organ trafficking. It is the first UK law to make trafficking for forced labour an offence. Exploitation is defined as slavery or forced labour, the use of threats or deception to obtain a service, or a request or inducement to get someone to undertake an activity that someone who was not young, disabled or a family member would be likely to refuse.¹³ The guidance on the interpretation of this Act is still limited and unclear in terms of labour practices of traffickers and the industries in which they operate.¹⁴ Provision (d) of Section 4 was amended in the Border, Citizenship and Immigration Act 2009, following concerns raised regarding the original wording, which implied that children could give their consent to be subjected to one of the forms of exploitation associated with

<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090624/text/90624w0003.htm#090624125000033> (accessed 15th April 2012).

¹¹ Ibid.

¹² Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

¹³ For the purposes of the offence, a person is exploited if (s)he is:

- the victim of behaviour contravening Article 4 of the European Convention on Human Rights (slavery or forced labour);
- encouraged, required or expected to do something which would mean an offence is committed concerning organ removal;
- subjected to force, threats or deception designed to induce him/her to provide services or benefits or enable another person to acquire benefits; or requested or induced to do something, having been chosen on the grounds that (s)he is ill, disabled, young or related to a person, in circumstances where a person without the illness, disability, youth or family relationship would be likely to refuse or resist.

¹⁴ Klara Skrivankova, *United Kingdom in Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the World* (Global Alliance Against Traffic in Women (GAATW) 2007).

human trafficking.¹⁵ This Act is of particular concern especially to victims who are non-EU nationals with respect to the nature of their migration into the UK.

In addition to enhancing the existing legislation against trafficking for forced labour, the UK Government introduced the Gangmasters (Licensing) Act 2004 after the death of some Chinese migrant workers who worked as cockle pickers in the UK.¹⁶ According to a BBC report, the 'snakehead' gangs smuggled these Chinese migrants into the UK for a fee of \$30,000 and placed them in unsafe and exploitative labour conditions.¹⁷ The Act led to the establishment of the Gangmasters Licensing Authority (GLA) in 2005, which came into force in 2006. The agency is responsible for setting up and operating a licensing scheme for labour providers in agriculture, shellfish gathering and associated processing and packaging sectors. The Employment Agencies Act already made it illegal for agencies to charge workers for finding them employment,¹⁸ while the Gangmasters Act makes it an offence for gangmasters to operate without a valid license.¹⁹ The Act enables assets of perpetrators to be seized from its

¹⁵ The subsection use to be (d) he is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that-

(i) he is mentally or physically ill or disabled, he is young or he has a family relationship with a person, and

(ii) a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement."

See [online] available at: <http://www.legislation.gov.uk/ukpga/2009/11/section/54> (Accessed 16th of April 2012).

¹⁶ See Morecambe Bay: One year on – 5th February 2005, [online] available at: <http://news.bbc.co.uk/1/hi/uk/4238209.stm> (accessed 30th April 2012).

¹⁷ *ibid.*

¹⁸ Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

¹⁹ Gangmasters (Licensing) Act 2004, s. 6.

perpetrators. Any attempt to avoid GLA regulation carries criminal sanctions not only for the gangmasters but also for others who use the gangmasters' workers.²⁰

Some experts have indicated that the GLA has transformed the sectors which it regulates.²¹ So far, the GLA has received over 3,000 reports of related cases since it was established in 2006.²² It launched Operation Ajax, a series of unannounced, intelligence raids, which took place between 2008 and 2010.²³ Despite efforts to suppress forced labour, the agency has been criticized for its limited focus on few sectors which does not address the complete reality and prevalence of labour exploitation in the UK. For instance, the GLA does not cover other related sectors that also require similar scrutiny. Sectors like the social care, construction and hospitality still remains without sufficient scrutiny within this context. Even where licenses of illegitimate operators have been revoked by the agency, some of these operators continue to operate in non-GLA regulated sectors aforementioned.²⁴ There has been evidence of

²⁰ Gangmasters (Licensing) Act 2004, Section 12 and 13.

²¹ Almut Gadow, *Protecting migrant workers in unprecedented times: Why little has changed for Gangmasters Licensing*, Centre on Migration, Policy and Society, University of Oxford Annual Conference 2009 New Times? Economic Crisis, geo-political transformation and the emergent migration order, [online] available at: http://www.compas.ox.ac.uk/fileadmin/files/Events/Annual_conferences/conference_2009/D_Gadow_Gangmasters%20Licensing.pdf (accessed 30th April 2012)

²² House of Commons Home Affairs Committee The Trade in Human Beings: Human Trafficking in the UK Sixth Report of Session 2008–09 Volume I, Report, together with formal minutes Ordered by the House of Commons, HC 23-I [Incorporating HC 318-i–vi, Session 2007–08] (Published on 14 May 2009) 23.

²³ See BBC news – Thousands Abused by Gangmasters, [online] available at: <http://news.bbc.co.uk/1/hi/uk/7432644.stm> (accessed 27 April 2012)

²⁴ Evidence given by the GLA cited in House of Commons Home Affairs Committee (n 22) 24.

unscrupulous operators who swing to sectors where there is less regulation so that they can continue to exploit migrant workers.²⁵

The Act does not extend to the private sphere where exploitations like domestic servitude are evident.²⁶ Apart from its limitations in scope, the Act does not make provision for exploited persons who may be undocumented and do not have the legal right to work in the UK. According to Anti-slavery International,

“Very often it is just the workers [migrants] that are being targeted: they are deported without anybody asking about the conditions [of their work] and the employer gets away with a fine, sets up a new company the next day and the whole thing goes on.”²⁷

In order to offer specific guidelines on how relevant practitioners along the lines of NGOs, solicitors, and social workers amongst others can utilise these laws in practice, the identified UK anti-trafficking laws have been translated into policies. The UK Government launched a consultation in 2006 on the UK's Action Plan on Tackling Human Trafficking. There were 206 submissions made to the Home Office from various stakeholders including individuals.²⁸ The consultation highlighted some shortcomings including the insufficient emphasis on human

²⁵ Scullion, L. and Morris, G., *A study of migrant workers in Peterborough* (University of Salford 2009).

²⁶ Lorena Arocha, *The Wrong Kind of Victim: One Year On – An Analysis of UK measures to Protect Trafficked Persons*. *The Anti Trafficking Monitoring Group* (Anti-Slavery International 2010).

²⁷ Evidence given by Anti-Slavery International cited in House of Commons Home Affairs Committee *The Trade in Human Beings: Human Trafficking in the UK Sixth Report of Session 2008–09 Volume I, Report*, together with formal minutes Ordered by the House of Commons, HC 23-1 [Incorporating HC 318-i-vi, Session 2007–08] (Published on 14 May 2009).

²⁸ Klara Skrivankova, *United Kingdom in Collateral Damage* (n 14).

rights and victim protection within the draft Action Plan.²⁹ The Action Plan, which was finally launched in 2007 after a year of consultation, was expected to put in place appropriate structures and systems that were missing in the existing anti-trafficking structures. The intent of the Action Plan was to address the issue of human trafficking in four main areas including the 3Ps and child trafficking. The Action Plan also indicated that a human rights approach would be applied stating, “a strong enforcement arm is not effective unless the corollary victim protection and assistance is in place”.³⁰ The Action Plan also recognised that victims have been failed in areas of immigration where victims have been wrongly charged due to lack of awareness and identification.

“We acknowledge that there have been cases where victims of trafficking have faced charges under immigration legislation for offences committed whilst in a coerced situation and this is largely due to a lack of awareness and identification. The increased awareness raising, guidance and training will reinforce the message that victims of trafficking should not be treated as immigration offenders, which will hopefully lead to a decrease in these incidents”.³¹

On a fairly positive note, the Action Plan included trafficking on the list of indicators by which police performances are measured. The UK Metropolitan Police, Specialist Crime Directorate (SCD) 9 Unit was mandated to oversee the law enforcement aspect of anti-trafficking in the UK. This was followed by the establishment of the United Kingdom Human Trafficking Centre (UKHTC) in 2006 as a national coordinating agency for the UK anti-trafficking strategy which operates under the Serious Organised Crime Agency (SOCA).

²⁹ *ibid.*

³⁰ Home Office, *UK Action Plan on Tackling Human Trafficking* (Home Office 2007) 8.

³¹ *ibid* 57.

The former Home Secretary's preface to the 2007 Action Plan indicated that the Action Plan was intended to be a 'living document', which would be updated regularly. Accordingly, the Action Plan was updated in 2008 and 2009. The 2008 Action Plan took the protection and identification of victims a little further by introducing a 45 days minimum reflection and recovery period for all identified trafficked persons following UK's adoption of the Council of Europe Convention against the trafficking of persons.³² It also addressed the issue of victims' immigration status by implementing temporary residence permit for victims. The National Referral Mechanism was introduced at this time as a mechanism to better identify victims of trafficking. The 2009 Action Plan went further to introduce ten new measures. Prominent among these measures is the monitoring and evaluation of the NRM and preparing for the possible threats of trafficking in the staging of 2012 Olympics Games.

This updated plan of action considers a number of issues arising in the UK relating to eradicating trafficking. Certain policy guidelines were initiated before, in between and after these plans of action. These policy guidelines includes the 'Secure Borders and Safe Haven', a White Paper published in 2002 which sets out Government's proposed strategy on tackling human trafficking. This was followed by several old and withdrawn United Kingdom Border Agency (UKBA) policies like the Asylum Police Instruction: Victims of Trafficking – Guidance in 2005; Detained Fast Track Processes; Asylum Process Guidance: Human Trafficking Supplementary Guidance and the continually changing Crown Prosecution Service Guidance amongst others. It is almost becoming difficult to keep up with the constant changes in immigration related policies in this regard.

³² Home Office, *Update to the UK Action Plan* (n 30).

Whilst the UK is not short of new policies, NGOs within the UK have been instrumental to the achievements of the UK Government in adopting international legal instruments and internalizing them into its domestic system. Major UK anti-trafficking NGOs have been consistent with their various campaigns and interactions with the UK Government. Different networks and forums were formed in the UK as a platform to discuss the case for improved anti-trafficking measures of which the human rights of victims has been a priority. For instance, the UK did not opt into the 2010 EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting Victims (hereafter, The Directive) that makes further provision for victims' protection and cooperation amongst member states until NGOs intervened. A public campaign led by Anti-Slavery International alongside other NGOs like 38 Degrees, ECPAT UK led to the UK government adopting the Directive on the 9th of May 2011.³³

The Directive broadens the definitions of trafficking to include people forced into illicit activities and ensures comparable standards across the EU for the prosecution of traffickers and the protection of victims within criminal proceedings.³⁴ The UK anti-trafficking legislation as aforementioned does not specify the protection of victims as it does with the criminalization of the offence committed by the trafficker. However, opting into the Directive, makes provision for this omission. For instance, Article 10 of the Directive makes provision for the assistance and support for trafficking victims before, during and after criminal

³³ See Anti-Slavery website [online] available at: http://www.antislavery.org/english/campaigns/eu_trafficking_directive.aspx [Accessed 2nd August 2013].

³⁴ EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting Victims – Article 9 -16; Article 2: the legal definition of trafficking in the UK are in line with the Palermo Protocol but the Directive expands on the Palermo definition by including people forced into begging or illicit activities. The UK is therefore broadly compliant in terms of guidance but not legislation.

proceedings (i.e. witness protection). Although, the UK is relatively compliant in practice, it is not in legislation.

The coalition of Civil Society Organisations (CSOs) in the UK were not only instrumental to the adoption of the Council of Europe Convention against trafficking by the UK government in 2008 but also acted as independent monitoring network to ensure its enforcement and implementation. The Anti-Trafficking Monitoring Group (ATMG) was established in 2009 for this purpose. The group comprises of nine (9) leading UK-based anti-trafficking CSOs or NGOs and operates on the basis of a human rights-based approach to protect the well-being and best interest of trafficked persons. As an independent monitoring mechanism on UK's efforts against human trafficking, the group has produced several reports which strategically analyses and criticises the work of the UK government against traffickers. It also serves as an advocacy tool for actors within the anti-trafficking movement in the UK.

On the 19th of July 2011, the new Coalition Government (Conservative/Liberal Democrat) published a strategy to deal with human trafficking. A political change of power within the UK government often goes hand in hand with new agendas on different issues and anti-trafficking is no exception. According to the Immigration Minister, Damien Green, "the strategy ... aims to better co-ordinate our border and policing law enforcement efforts to prevent traffickers from entering the UK".³⁵ A key aspect of this government's approach is the establishment of the proposed National Crime Agency (NCA), which is intended to play a pivotal role in spearheading the fight against organised crimes including human trafficking. This Agency which was proposed to commence in 2013 intends to adopt strategies that includes working with the private sector to

³⁵ HC Deb 19 July 2011 [online] available at: <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110719/wmstext/110719m0001.htm#11071985000036> (Accessed 15th April 2012).

strengthen the overall approach to anti-trafficking, working to implement the EU Directive on Human Trafficking by April 2013, as well as raising the quality of NRM and international cooperation.

NGOs have complained that the new strategy focuses more on border control and less on victim protection.³⁶ These organisations further assert that the new strategy does not contain the necessary details to offer effective protection for trafficked people even though a positive step was taken by the Government to agree to opt into the EU Directive. Activists contend that the proposed strategy does not consider the complexity of trafficking in the UK. Thus, “the strategy is no more than a Ministerial statement”.³⁷ Other commentators added, “while well intentioned, this strategy is too narrowly focused”.³⁸ Some others see the strategy as a ‘missed opportunity’, following the government’s inconsistent policies and guidelines often motivated by a change in power.³⁹ The introduction of these policies/strategies cost money and time, and such ‘political statements’ by governments do not help matters, unless positive action are taken to make a realistic change in the way human trafficking is perceived and tackled in the UK. Given the timing of this research, it is difficult at this point to attempt a future prognosis of this new government strategy.

However, following what currently exists, the numerous legislative efforts of the UK government cannot be discounted. Chapter two and four of this thesis have highlighted the nature and extent of trafficking between Nigeria and the UK, emphasizing that Nigeria remains a challenge to the current efforts to address trafficking in the UK holistically. The coming section presents an analysis of the

³⁶ ECPAT UK - Focus of government's new trafficking strategy will not help victims <http://www.ecpat.org.uk/media/focus-government's-new-trafficking-strategy-will-not-help-victims> (Accessed 16th of April 2012).

³⁷ *ibid* comment by Christine Beddoe, ECPAT, UK.

³⁸ *ibid* comment by Aidan McQuade, Anti Slavery International.

³⁹ *ibid*.

anti-trafficking measures employed by the UK to address the menace it presents and the factors that continue to challenge the existing measures employed. This section considers a human-centred prescription in assessing the current anti-trafficking approaches adopted by the UK government in dealing with Nigeria related cases.

The Extent of the UK Anti-trafficking Measures: An Empirical Analysis

Although the UK has made remarkable efforts to address the problem of trafficking, it has continued to experience considerable difficulties in addressing trafficking in persons from Nigeria especially from the protection front. This aspect includes identifying, supporting and ensuring the protection of victims from harm or re-trafficking. This has hindered measures to investigate and prosecute traffickers accordingly. Following the MO of trafficking from Nigeria, the UK's jurisdiction in respect of anti-trafficking commences as soon as the potential victim arrives at the UK border or on board a UK registered mode of transport. The Council of Europe Convention on Trafficking in Human Beings states that State Parties shall establish jurisdiction of the offence of trafficking when it is committed;

“On board a ship flying the flag of that Party... on board an aircraft registered under the laws of that Party; ... by one of its nationals or by a stateless person who has his or her habitual residence in its territory ... against one of its nationals”.⁴⁰

Since the exploitation within the context of this chapter takes place within the UK, the state must exercise due diligence in ensuring that the human rights of trafficked victims are not undermined in the process. A number of factors continue to stand in the way of the latter as well as undermining cooperation

⁴⁰ Council of Europe Convention on Trafficking in Human Beings, Art 31 (1).

with the source country. This section explores the overlapping factors including the disproportionate focus on immigration as an anti-trafficking strategy; the challenges of identification; the accessibility to victim support; the criminalization of victims; the prosecution of traffickers; prevention and repatriation. All of these factors play massive roles in addressing trafficking in the UK but migration within the context stands out as an overarching factor in the extent to which the problem is tackled.

Disproportionate Migration Focus: A 3D Approach

The failure in the approach to deal with the human trafficking of non-citizens like Nigerians in the UK, mostly begins with the conflict of anti-trafficking with anti-immigration as demonstrated in chapter two. For the UK, the quest to reduce the inflow of non-EU nationals into its borders has dominated ongoing debates especially in this current coalition government. This agenda reflects in the way the UK deals with Nigerian cases of trafficking in practice where it utilises what Rankin and Kinsella refers to as, the '3D approach'. According to Rankin and Kinsella, the UK's adoption of a 3D approach of detention, deportation and disempowerment makes clear its priority in this category. The use of this approach in detaining and deporting trafficked victims emerges from its immigration policies that are yet to appreciate the contemporary nature of human trafficking.⁴¹ In line with such response, "governments may act out of self-interest in ridding themselves of potential burdens... or claim is the "best interest" of the foreign victims".⁴² Detention models not only critically disempower a victim's sense of freedom but also undercut any chance of rapport service providers and law enforcement authorities may build with victims in order to prosecute traffickers. According to one victim,

⁴¹ Glynn Rankin, Nick Kinsella, Human Trafficking in The Importance of Knowledge Information Exchange, Intelligence Management Advanced Information and Knowledge Processing (2011).

⁴² *ibid* 171.

“I’m not a thief or a terrorist; I didn’t do anything wrong. I was trafficked here, given a fake passport, beaten and forced to be a prostitute. Then they sent me to a detention centre. In detention they forget you are human. They lock you up. You can stay there forever if there’s no one to help.”⁴³

An NGO in the UK found that around twenty-five per cent (25%) of its current trafficking referrals were received from detention centres and prisons where trafficked women were unfairly detained.⁴⁴ Furthermore, ninety-five per cent (95%) of its clients lost their freedom because their traffickers gave them a ‘fake passport or where they have stolen food to survive.’⁴⁵ According to this NGO,

“These individuals were lied to and harmed in the UK, but instead of protecting victims and focusing on prosecuting the traffickers, these exploited individuals are often unfairly put in prisons and detention centres for crimes they were forced to commit by their traffickers.”⁴⁶

As a result, NGOs in the UK continue to campaign against detaining victims in detention centres and prisons, urging that it is an unfair treatment to those who have already suffered exploitation at the hands of their traffickers.⁴⁷ In addition to detaining victims, an approach based on deportation will not only prevent law enforcement from arriving at critical facts but will also leave room for potential re-trafficking. This also deters some NGOs from bringing their clients to the attention of the authorities. Simply put, the immigration status of Nigerian

⁴³ Mimi, 21 years old, Poppy Project service user; See Eaves 2011 Annual Report, p.7.

⁴⁴ *ibid.*

⁴⁵ *ibid.*

⁴⁶ *ibid.*

⁴⁷ *ibid.*

victims of trafficking has been instrumental to the treatment they receive from their identification to their repatriation.

As most scholars have observed, an immigration approach to anti-trafficking has not made any significant impact in suppressing human trafficking but instead, it has become a boomerang especially on victims.⁴⁸ Blinded by its immigration focus, the UK's action has fallen short of expectation in a number of critical areas. Firstly, UK authorities are still unable to identify Nigerian victims of trafficking especially given the nature of their recruitment as demonstrated in chapter four. Secondly, without proper identification, victims may be criminalized for crimes committed in the process of trafficking and therefore may not be given the expected support that they would normally require. Consequently, this often means that their traffickers may not be prosecuted while the trafficked person is doubly victimized.

Although an anti-immigration approach is not favourable to anti-trafficking as iterated in this study, it is crucial to also affirm that the UK's fear on immigration related to trafficking is not far-fetched. This is mainly due to the fact that some people have claimed (are still claiming and could still claim) to be trafficked as a way to abuse the UK immigration system. This is problematic for anti-trafficking as it makes it difficult to demarcate actual victims from those who fake their way through the system. These bogus victims may say the right things to the authorities to fulfil UK authorities' knowledge of trafficking. With the increasing awareness of juju in trafficking, many of these bogus victims use it as a default statement to avoid further interrogations of their victimhood in some occasion.

⁴⁸ Jyoti Sanghera, "Unpacking the Trafficking Discourse" in Kamala kempadoo, jyoti sanghera and Babara pattanaik (eds.) *Trafficking and Prostitution Reconsidered: New Perspectives on Migration Sex Work, and Human Rights* (2nd edition paradigm publishers 2012).

Most times, genuine victims will not say the right things and are often overwhelmed by fear when confronted by authorities and therefore may not be ascribed victimhood as required. Well-intentioned practitioners with the aim to identify and help victims are continually challenged with making this demarcation. As a result, the proper identification of genuine victims from Nigeria remains problematic.

In order to address the problem of identification as well as estimate the scale of human trafficking in the UK, the NRM was introduced in 2009. The mechanism was intended to introduce a standardised procedure for the identification of victims of human trafficking as well as a key tool for data collection with regards to the scale of trafficking.⁴⁹ As shown in the diagram below, the process of the NRM referral starts with "first responders" such as the police, immigration officials, and number of chosen NGOs in the UK. These first respondents are obliged to refer suspected trafficked persons to the appropriate competent authority, in this case, the UKHTC and UKBA. These competent authorities make the preliminary decision on whether there are "reasonable grounds"⁵⁰ to believe that a person has been trafficked or not. In some cases, this may be followed by a positive decision at which stage, the victim is granted a 45-day extendable

⁴⁹ The Government Reply To The Sixth Report From The Home Affairs Committee Session 2008-09 HC 23. The Trade in Human Beings: Human Trafficking in the UK. Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty (August 2009).

⁵⁰ When a presumed trafficked person is referred to a Competent Authority, the first step in the official process is the 'reasonable grounds' decision assessment. If the Competent Authority decides there are 'reasonable grounds' to suspect that the person concerned has been trafficked, they may issue a letter of positive 'reasonable grounds' decision and the person concerned is granted a period of 45 days to recover and reflect (which can be, and sometimes is, extended), during which they should be entitled to various forms of assistance. If the initial decision is negative, the person concerned is not entitled to the protection or assistance available to trafficked persons.

⁵⁰ This is a total of trafficked victims to the UK as it excludes potential victims who refused to be referred

“recovery and reflection” period, at which time, they can access support and no action can be taken to remove them from the UK.

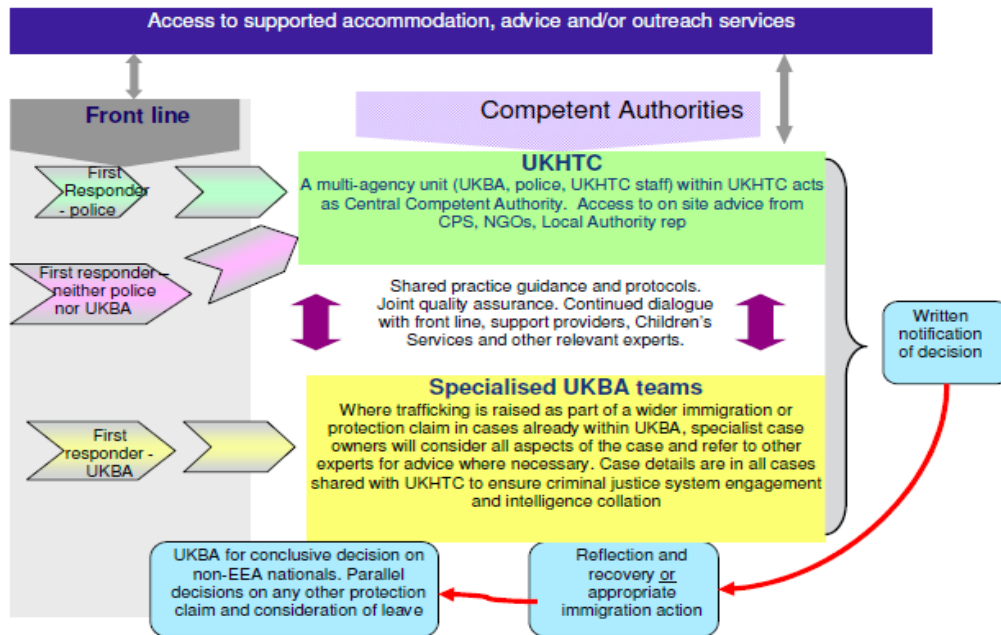
This slightly differs for children, where safeguarding measures are put in place first before the child is referred to the NRM.⁵¹ During the 45 days recovery period, a more rigorous assessment of whether the person is “on the balance of probabilities”, believed to be trafficked is also conducted. A positive conclusive result⁵² at this stage enables the person to apply for a one-year UK residency permit either to assist with a criminal investigation or on humanitarian grounds. The NRM gives victim only one shot for identification, as there is no right of appeal at any stage in the event of a negative decision. A negative NRM decision can have a serious effect on the outcome of a trafficked person’s asylum application. According to Rachel Witkin, “if this parallel system is not revised, it will negate rather than strengthen protection...”⁵³ Whilst the NRM is not mandatory, it is the only way that victims can be formally identified and supported.

⁵¹ The first responder makes a referral to the local authority children services so they are aware of the child and can put in place any necessary safeguarding measures. See NSPCC (first responder) factsheet on the NRM (October 2011) https://www.nspcc.org.uk/Inform/resourcesforprofessionals/childtrafficking/national_referral_mechanism_wda84858.html [Accessed 2, August 2013]

⁵² Positive Conclusive result indicates that a referred person is identified definitively as ‘trafficked’. The reverse is a negative conclusive decision

⁵³ Rachel Witkin, “Human Rights Protection in the Return of Trafficked Persons to Countries of Origin” Human Dimension Implementation Meeting 1 October 2009, Warsaw. ODIHR Anti-Trafficking Programme p. 3.

Diagram 2: The NRM Process



Source: Lorena, Arocha. *The Wrong Kind of Victim: One Year On – An Analysis of UK measures to Protect Trafficked Persons*. The Anti Trafficking Monitoring Group. (Anti-Slavery International, 2010)

As explained in chapter two of this thesis, the identification of victims of trafficking from Nigeria is beyond the scope of human rights of victims. Human rights are vital for anti-trafficking in the UK but the challenge in this context stems from actualising these rights. A human-centred approach allows for the latter to be clearly articulated so that authorities set viable grounds in pursuit of other aspects of the 3Ps. In taking the important steps to identify victims of trafficking with its current NRM, UK authorities are hindered by their limited knowledge of the socio-cultural underpinnings of human trafficking from Nigeria and the mindset of victims they attempt to assess. Additionally, they are also limited by the priority of their mandate that could potentially blindfold authorities to look beyond law enforcement in order to identify victims of trafficking. In order to look beyond law enforcement, it might be useful to reconsider the existing UK competent authorities conducting victims' identification processes.

As it stands, the UK Border Agency as one of the “competent authorities” for the NRM mainly identifies victims of human trafficking from non- European Economic Area (non- EEA) nationals and naturally would handle the identification of victims from Nigeria. The first mandate of UKBA is border control, therefore assigning the agency responsibility as competent authority not only conflicts with a human-centred approach to anti-trafficking but also places an element of fear on the victim from the onset of identification. Todres explains this conflict using a multi goals theory, contending that law enforcement authorities would likely prioritize arrests, prosecutions and convictions over human-centred concerns, given their specific departmental expertise and the incentives and pressures they face to deliver their assigned mandates⁵⁴ thus, demonstrating that it is simply insufficient to ask law enforcement authorities like the UKBA to adopt human-centred approach when their departmental agenda has not changed from strengthening immigration measures.

In line with their border control mandate, UKBA officers may inevitably create a hostile environment that breeds mistrust between themselves and victims. Coupled with the fear of deportation, Nigerian victims often find it difficult to relate to law enforcement authorities especially because of their negative experiences with similar authorities in their home country. The lack of trust stems from the belief that they will be unfairly assessed due to their immigration status. In some cases, victims claim that they are threatened with deportation if they do not cooperate with law enforcement authorities. A Nigerian female survivor (aged 23) explained that;

⁵⁴ Jonathan Todres, ‘Widening Our Lens: Incorporating Essential Perspectives In The Fight Against Human Trafficking’ (2011) 33 *Mich. J. Int’l L.* 64.

“The police continued to ask me questions; they shouted at me saying I would be deported or arrested if I didn't tell the officers R's address, or any address they could take me to. I didn't know any address to be taken to and could not recognise R's house. The police officers then brought me to [the] police station where I was questioned again and arrested.”⁵⁵

In addition to this fear, these victims often find it difficult to give evidence that would help their identification as victims because of the fear of the oath they have taken during the recruitment phase as demonstrated in chapter four. Due to the limited understanding of this African traditional belief by UK law enforcement authorities, these victims may be perceived to be lying. As a result, some of them did not receive positive conclusive decisions as trafficked victims through the NRM assessment. While the evidence from UK authorities (including first responders) may point to the fact that Nigeria is the number one source country for trafficking following the number of referrals, the estimated statistics of formally identified victims through the NRM refutes this claim as seen in latest NRM reports. Following the interviews with UK anti-trafficking stakeholders, while the NRM final statistics may seem inconsistent in terms of its conclusive result, they seem to believe that there is a case to be made for trafficking from Nigeria. They added that the inconsistency in the NRM results stems from a lack of knowledge in dealing with these cases effectively, starting with proper identification that underscores the diversity of victims and their countries of origin. This shortcoming does not just affect victims identification but skews the estimation of trafficking and the 3Ps.

An annual collation of the NRM for 2012 which was published in 2013 shows that although 206 victims from Nigeria have been referred to the NRM by first

⁵⁵ Myriam Cherti, Jenny Pennington and Peter Grant, *Beyond Borders, Human Trafficking From Nigeria to the United Kingdom* (Institute for Public Policy Research (IPPR) 2013) 60.

responders, only twenty-one (21) received a positive conclusive decision.⁵⁶ According to a report by the ATMG, there is a disproportionate representation of victims who received a positive conclusive result in the NRM from developing countries especially from West Africa. The report found that out of 527 potential victims referred to the NRM between April and December 2009 only fifty-five per cent (55%) were met with a positive 'reasonable grounds' decision.⁵⁷ Within this fifty-five per cent (55%), twenty-nine per cent (29%) had received a positive conclusive decision, which is just sixteen per cent (16%) of the total referral.⁵⁸ The report highlighted the patterns in decisions correlating to the place of origin of presumed victims. It found a significant contrast between the 'positive identification' rate of UK citizens (76%), EU Nationals (29.2%) and nineteen per cent (19%) from other country nationals.⁵⁹ Although the data was not interpreted as discriminatory by the ATMG, they insisted that there is still cause for concern and thus, warrants further investigation.

The UK NRM symbolizes the Government's commitment to addressing the problem of human trafficking. However, some commentators insist that it is 'not fit for purpose' especially for identifying third country nationals.⁶⁰ Apart from its difficulty in identifying victims, the statistics gathered through the NRM is not a true reflection of the extent of human trafficking in the UK. As aforementioned, the NRM is not mandatory and many victims choose not to be referred to the system.⁶¹ Without the proper identification of victims other anti-trafficking

⁵⁶ ATMG, *All Change: Preventing Trafficking in the UK* (Anti-Slavery International 2012).

⁵⁷ This is a total of trafficked victims to the UK as it excludes potential victims who refused to be referred.

⁵⁸ Lorena Arocha, *The Wrong Kind of Victim: One Year On – An Analysis of UK measures to Protect Trafficked Persons* (The Anti Trafficking Monitoring Group and Anti-Slavery International 2010) 23-25.

⁵⁹ Ibid 26.

⁶⁰ Ibid.

⁶¹ Ibid.

measures essentially suffers. According to a Met Police officer, the cultural factor attached to cases from Nigeria makes investigations difficult.⁶² It becomes important to adopt an approach that is not discriminatory of victim's nationality but yet incorporate elements tailored to understanding the nature and circumstances of their experiences. The human-centred approach is necessary towards enhancing such rapport that could lead to a more manageable identification and subsequently the victim's cooperation for better investigation. This applies to whom, how and what ways victims are interrogated which inevitably influences how they cooperate with authorities or practitioners. Nevertheless, even when some of these victims are conclusively identified as trafficked, they face the challenges of meeting the criteria to access support within the UK system.

Access to Victim Support: A High Criteria Threshold

The UK is a 'welfare state' and is, naturally equipped for basic support which victims of trafficking can take advantage of during their recovery period. In the same light, the UK also makes provisions for victim support as stipulated by the Trafficking Protocol. Despite the existence of this support, Nigerian victims tend to experience limited accessibility to support services. Until mid 2011, the Poppy Project was sub-contracted by the UK government to support victims of trafficking. The Poppy Project is a project run by Eaves Housing for women (hereafter, Eaves).⁶³ The project was funded by the British Home Office to provide shelter for trafficked women who are not minors.⁶⁴ The Poppy Project received up to 2 million pounds (GBP) a year from the UK government to

⁶² Interview with now retired Met Police Officer (Andy Desmond) in Nottingham, UK (3rd August 2012).

⁶³ See Eaves Housing website [online] available at: http://www.eaves4women.co.uk/POPPY_Project/POPPY_Project.php (accessed 20 Feb 2012).

⁶⁴ Matilde Ventrella, *The Control of People Smuggling and Trafficking in the EU: Experience from UK and Italy* (Ashgate 2010) 190.

implement the UK's anti-trafficking protection framework.⁶⁵ The Poppy Project commenced care by providing trafficked victims with short-term accommodation, health assessment, access to legal services, information, and support in liaising with the police and immigration officials.

In the second stage, victims are required to co-operate with law enforcement authorities, on which basis they could obtain further support.⁶⁶ The 2011 annual report from Eaves showed that the Poppy Project received up to three hundred and forty-four (344) referrals of Nigerian victims of trafficking which forms a significant proportion of the referrals from other countries.⁶⁷ While the positive work of the Poppy Project in supporting women that have been trafficked cannot be overlooked, NGOs are often obligated to meet the requirements of their funders. This sometimes, could come in form of restrictions as to how grants are utilised as well as the scope of the services. Consequently, these restrictions have led to the inability of the project to meet the needs of victims referred to the service.⁶⁸ This inadequacy is based on the limited scope, resources and access to the support within the project.

Firstly, the scope of the project is very limited, as it focuses mainly on women and sexual exploitation. Although statistics shows that fewer males are trafficked for sexual exploitation, many of them are trafficked for forced labour.⁶⁹ Poppy

⁶⁵ See 'Concerns about handover of care for sex-trafficking victims' Women's Views on News Posted on 13 April 2011 [online] available at: <http://www.womensviewsonnews.org/2011/04/concerns-about-handover-of-care-for-sex-trafficking-victims/> (accessed 26th of March 2012)

⁶⁶ Matilde Ventrella, *The Control of People Smuggling and Trafficking in the EU* (n. 64) 191.

⁶⁷ Eaves 2011 Annual Report, p.4.

⁶⁸ Matilde Ventrella, *The Control of People Smuggling and Trafficking in the EU* (n. 64) 190-193.

⁶⁹ Men are often missing in the statistics of human trafficking See David A. Feingold, 'Human Trafficking' (2005) *Foreign Policy*, No. 150, 32.

Project by its very nature focuses on women but as a major victim support contractor for the government, it is not gender inclusive. The complete focus on women means that men are totally missing, and limited efforts are made by the project to identify male trafficked victims or mainstream their needs in the support system. The scope of the project only supports women who have been sexually exploited, once again re-emphasizes the uneven focus on sexual exploitation in partial exclusion of other forms of trafficking.⁷⁰ Secondly, within the focus on sex, victims still have to meet certain criteria that are often hard to substantiate. These includes convincing authorities on their trafficking route to the UK; prove that they have worked as prostitutes in the last thirty days in the UK before being identified; evidence of being forcibly exploited; having come forward to the authorities; and their willingness to co-operate with authorities.⁷¹

The difficulty associated with coming forward to the authorities especially for Nigerian trafficked women often means that it may take some time before these women make up their minds to report. Some trafficked women who managed to escape from their traffickers may need more than thirty days to gain access to the project. The latter is also dependent on their awareness or their prior knowledge of the services available to them as well as overcoming the fear of dealing with law enforcement authorities. Between 2003 and 2006, 15 out of 99 women were not accepted for the project because they did not meet these criteria.⁷² Thirdly, in cases where they meet these criteria, there were limited spaces to accommodate these women. The Poppy Project has the capacity to accommodate up to 25 women victims of trafficking at a time,

⁷⁰ Robert Uy+, Symposium: 'Blinded by Red Lights: Why Trafficking Discourse Should Shift Away from Sex and the "Perfect victim" Paradigm' (2011) *Berkley Journal of Gender, Law and Justice* No. 26, 204.

⁷¹ Matilde Ventrella, *The Control of People Smuggling and Trafficking in the EU* (n. 64) 191.

⁷² *ibid.*

barely enough to meet the demand for victims support in reality.⁷³ Fourthly, the conditions for victims to access the second stage of support as highlighted earlier does not fit into the requirements of Framework Decision 2002/629/JHA. The framework specifies that the protection of victims “shall not be dependent on the report or accusation made by a person.”⁷⁴

Presently, the government protection mechanism has now been re-directed to the Salvation Army (a UK Christian NGO).⁷⁵ Although the Salvation Army is likely to take up all forms of trafficking as well as include men, it is still questionable as to how they will deal with religious conflicting issues that may arise from trafficking. For instance, it is unclear as to how they would handle situation where victims who are pregnant from being sexually exploited wishes to abort the baby; where the victims are homosexuals; or in the case of Nigeria, where victims believe in the power of supernatural forces. As the Salvation Army was not part of my interviewee, it is unclear as to how they intend to address these issues that may potentially affect the options of care made available to trafficked victims. Nevertheless, as a delivery agent for the UK government on protection of victims, they have limited power as to the extent of protection they can provide to their client beyond providing shelter and counselling. Beyond the few weeks that the victims spend in the Salvation Army shelters, some victims may lack protection due to a negative conclusion of the NRM on their case and subsequent criminalization following crimes committed due to their trafficking process. This issue of criminalization has been a pressing issue for

⁷³ Matilde Ventrella, *The Control of People Smuggling and Trafficking in the EU* (n. 64) 190-193.

⁷⁴ See Council Framework Decision 2002 /629/JHA, Article 7(1).

⁷⁵ ‘Poppy Project funding redirected to Salvation Army’, Amelia Hill guardian.co.uk, Monday 9 May 2011 05.30 BST, [online] available at: <http://www.guardian.co.uk/law/2011/may/09/poppy-project-funding-salvation-army> (accessed 26th March 2012).

anti-trafficking in the UK and one that has complicated trafficking cases from Nigeria to the UK.

Non – Criminalization of Trafficked Victims

The section on migration highlighted this element of criminality that prompts the detention of trafficked victims. As seen in many cases of cross border trafficking, victims of trafficking often commit offences against the state during the process of trafficking (mostly under duress) and as a repercussion of such offences these victims may be convicted of those crimes. The UN Working Group on Trafficking in Persons (the Conference of Parties) in 2010 insists that

Member States might consider the following points in providing for the non-punishment of trafficking victims...

Establishing the principle of non-liability of the illegal acts committed by victims of trafficking:

- Through a “duress”-based provision, whereby a trafficked person is compelled to commit the offence; or
- Through a “causation”-based provision, whereby the offence committed by the trafficked person is directly connected or related to the trafficking⁷⁶

Although the above presents yet again, another loose form of language as seen in the protection of victims in the Trafficking Protocol, the EU laws on anti-trafficking makes provisions for such non-punishment principle.⁷⁷ According to

⁷⁶ Working Group on Trafficking in Persons Vienna, 27-29 January 2010 - Non-punishment and non-prosecution of victims of trafficking in persons: administrative and judicial approaches to offences committed in the process of such trafficking - CTOC/COP/WG.4/2010/4; See also the Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, UN General Assembly, A/HRC/20/18.

⁷⁷ Council of Europe, Convention on Action against Trafficking in Human Beings,

the OSCE, punishing victims of trafficking for crimes which are “directly related to their trafficking[,] is a violation of their fundamental dignity [and] constitutes a serious denial of reality and of justice”.⁷⁸ Although the UK has signed these legal frameworks, victims lack adequate legal support and are still criminalized.⁷⁹ The UK may violate the principle of non-punishment due to wrongful identification of victims as earlier highlighted which as a result, does not give a complete picture of the circumstances at which the offence was committed. The principle could also be violated directly where the UK authorities “ought to be aware of the status of the defendant as a victim of trafficking but fail to attach appropriate significance to this fact.”⁸⁰ The criminalization of trafficked victims is not consistent with international law but in practice, it is difficult to apply. The non-criminalization of trafficked victims is acknowledged within the Crown Prosecution legal Guidance on the Prosecution of trafficked victims but hardly followed through in the Court of Justice.⁸¹ In the case of *R v O* [2008] EWCA Crim 2835, the Court failed to recognise that O was a minor.⁸²

CETS No. 197 (Warsaw, 2005), Article 26; European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (5 April 2011), Article 8.

⁷⁸ OSCE, Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking (OSCE 2013).

⁷⁹ See Rachel Witkin in Side Event Report ‘Human Rights Protection in the Return of Trafficked Persons to Countries of Origin’ Human Dimension Implementation Meeting 1 October 2009, Warsaw. ODIHR Anti-Trafficking Programme.

⁸⁰ See European Court of Human Rights, Case of *Rantsev v. Cyprus and Russia*, wApplication no. 25965/04, para. 286: States’ positive obligations towards trafficking victims begin when “the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited [...]”.

⁸¹ CPS Legal Guidance - Prosecution of Defendants (children and adults) charged with offences but also might have been trafficked, [online] available at:

Nigerian victims of trafficking are usually in breach of UK immigration rules, and therefore, the first response is usually to arrest them. One female victim from Nigeria was convicted on her plea of guilty of an offence for possessing a false identity document with intent contrary to section 25 Identity Cards Act 2006. She had been arrested at Waterloo station en route to France, presenting a French identity card belonging to someone else at the Eurostar exit barrier. She claimed that she was running away from her trafficker.⁸³ Even though the Poppy Project and the Home Office confirmed she was trafficked, the Court still refused her leave to appeal both conviction and sentence. This was on the basis that the court felt that both Poppy Project and the Home Office dealt with the matter “on her unchallenged assertion” and that her accounts were not consistent or credible to conclude that she was trafficked.⁸⁴ Based on this case, the crime against the state took precedence over the victim.

As highlighted in chapter two, sometimes victims are not able to give evidence due to fear of their oath-taking ritual and at most times the Court finds it difficult to grasp the circumstance of such traditional transactions. Of equal or if not greater concern, is the failure of the police investigators to carry out their duty to investigate allegations made by these victims which could help their cases. The latter is consistent with the case of *OOO and others v Commissioner of Police for*

http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/#a30 (accessed 26th March 2012).

⁸² See case [online] available at: <http://www.bailii.org/ew/cases/EWCA/Crim/2008/2835.html> (accessed 26th March 2012).

⁸³ See *LM, MB, DG, Betti Tabot and Yutunde Tijani v The Queen* [2010] EWCA Crim 2327.

⁸⁴ *ibid.*

the Metropolis.⁸⁵ So far, there has been no special modification of the general law for these defences.⁸⁶ A criminal lawyer in the UK who specializes in trafficking cases indicated that a significant number of people held in prison whom he visited in the course of his work have been prosecuted without being recognised as being trafficked.⁸⁷ Applications could be made to discontinue prosecution on their behalf but victims are hardly informed or proactive about their rights so, it is simply not done.⁸⁸

Nevertheless, most convictions result in automatic deportation at the end of sentence and victims of trafficking are hardly safeguarded in these instances.⁸⁹ There is also a possible conflict of interest for authorities when a person serving a criminal sentence applies for recognition as being trafficked and in need of protection.⁹⁰ The UK government recent 'opt-in' to the EU Directive for the protection of trafficked victims might bring a change to this legal problem for victims following Article 14(1)⁹¹ of the directive.⁹² Given the time limit of this study, it is still too early to conclude on the adoption of the Directive in terms of its usefulness. In a recent conference held by the Home Office in June 2013,

⁸⁵ *OOO and others v Commissioner of Police for the Metropolis* Queen's Bench Division 20 May 2011 Judgments 20 MAY 2011 *OOO and others v Commissioner of Police for the Metropolis*.

⁸⁶ See n 79.

⁸⁷ *ibid.*

⁸⁸ *ibid.*

⁸⁹ *ibid.*

⁹⁰ *ibid.*

⁹¹ Under Article 14(1) Member States have an obligation to 'ensure that in criminal investigations and proceedings, judicial authorities appoint a special representative for the child victim of trafficking...where, by national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim, or where the child is unaccompanied or separated from the family.'

⁹² UK opts-in to EU Trafficking Directive in the 22nd of March 2011) [online] available at: <http://www.care.org.uk/public-affairs-news/uk-opts-in-to-eu-trafficking-directive> (accessed 26th March 2012).

legal practitioners re-emphasized that the non-criminalization of victims is still hard to implement and that the UK Government needs to address current limitations.⁹³ The criminalization of victims often result to victims being repatriated as criminals and therefore dangerous for anti-trafficking. This is mainly because it does not only re-victimizes trafficked persons but also leads to re-trafficking. In this case, the trafficked persons relive their exploitative experiences through re-trafficking which also strains the UK anti-trafficking efforts, as they may have to deal with one case several times.

Victim Repatriation: Voluntary or Mandatory?

The repatriation of trafficked victims is one of the most visible and tangible trafficking interventions because it allows the introduction of a human face to the process.⁹⁴ It is common knowledge that repatriation occurs at the end of the trafficking chain at least from the part of the destination country, after which, rehabilitation and reintegration of the victims is taken over by the state of origin of the victims. This process is expected to be voluntary rather than forceful. It has to be done in a manner that promotes the safety of the survivor, especially avoiding the incidence of re-trafficking. According to the Council of Europe Convention Against the Trafficking of Human Beings, Article 16 states that a victim has the right to return to his or her own country.⁹⁵ It further stipulates that destination states should not forcibly repatriate victims of trafficking. In practice,

⁹³ Home Office EMN UK National Network conference, 'Identification of trafficking victims and subsequent investigative measures' 6th June 2013 held at The British Library, London, UK.

⁹⁴ Kuniko Takamatsu & Susu Thatun 'Some Reflections on the Repatriation of Trafficked Persons: Case of Myanmar and Thailand' (no date) [online] available at:
<http://www.humiliationstudies.org/documents/TakamatsuRepatriationMyanmar.pdf> (accessed 26th March 2012).

⁹⁵ Council of Europe, Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report (2005) [online] available at:
http://www.coe.int/T/E/Human_Rights/Trafficking/ (accessed 26th March 2012).

although the UK government have initiated voluntary returns schemes, for the repatriation of survivors of trafficking, it is geared towards deportation rather than the safety of the victim. As a result, the legal appeals to remain in the UK made by those who have been victimized by trafficking are often rejected. For the most part, Nigerian trafficked victims usually opt to remain in the UK under the grounds of the risk of re-trafficking or torture by their traffickers but are often refused UK residency.⁹⁶ According to Kinsella, the nature of repatriation in the UK exposes the victim to possible trauma and the risk of re-trafficking.⁹⁷

A number of assisted voluntary return schemes have been funded by the UK government and carried out by the IOM and other NGOs like the Refugee Action.⁹⁸ These included programmes like the Voluntary Assisted Return and Reintegration Programme (VARRP) or the Assisted Voluntary Return of Irregular Migrants (AVRIM).⁹⁹ Under these programmes, the IOM with its UK partners assist eligible non-EEA (EEA – European Economic Area) migrants who may prefer to return permanently to their home country.¹⁰⁰ This Programme provides financial

⁹⁶ See *R (on the application of Adebesei) v Secretary of State for the Home Department* - [2011] All ER (D) 45 (May) Queen's Bench Division, Administrative Court (London) 5 May 2011 All England Reporter 5 May 2011 *R (on the application of Adebesei) v Secretary of State for the Home Department* - [2011] All ER (D) 45 (May) Cases.

⁹⁷ Glynn Rankin, Nick Kinsella, *Human Trafficking in The Importance of Knowledge Information Exchange* (n 41) 171.

⁹⁸ UK Border Agency response to Freedom of Information request, FOI 13808 cited by Matt Carr, 'The Politics of Voluntary Returns' *The Institute of Race Relations*, November 11.2010, [online] available at: <http://www.irr.org.uk/news/the-politics-of-voluntary-returns/> (accessed 27th March 2012).

⁹⁹ UKBA, Assisted Voluntary Return of Irregular, [online] available at: <http://www.ukba.homeoffice.gov.uk/aboutus/workingwithus/workingwithasylum/assistedvoluntaryreturn/avrim/> (accessed 26th March 2012).

¹⁰⁰ See UKBA Assisted Voluntary Return, [online] available at: <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/modernised/returns/assisted-voluntary-returns.pdf?view=Binary> (accessed 26th March 2012).

help with resettlement in the home country to current and former asylum seekers, up to a total of £1,500 per person.¹⁰¹ The package is supposed to help them set up a business, a job placement, education or training in their home country. Applicants who have made a claim for asylum that is either pending or has been rejected are expected to leave the United Kingdom within three months of their application being approved. By returning, they withdraw their asylum application in the UK and may be subject to a re-entry ban to the UK for up to five years. They have to sign an indemnity declaring that IOM is not liable for personal injury or death during and/or after their participation in the IOM programme.¹⁰²

Despite these programmes (some of which have ceased to exist), there is no accurate number made available on the number of victims that have been successfully repatriated.¹⁰³ There is scarce independent assessment of these repatriations or its long-term sustainability.¹⁰⁴ The politics associated with these schemes have been deemed unsuitable, insecure, less than voluntary and lacking in available knowledge on current conditions in the countries of origin to help applicants make an informed choice. The scheme was unsustainable because assistance provided was by its very nature short-termed and in piecemeal. According to Jobe, IOM's database reveals that trafficked persons, on return to their countries of origin, are often faced with economic and social situations that rendered them vulnerable to trafficking in the first place.¹⁰⁵

¹⁰¹ *ibid.*

¹⁰² See Application form for VAARP, [online] available at: <http://www.iomlondon.org/doc/varrp/VARRP%20Application%20Form.pdf> (accessed 27th March 2012).

¹⁰³ Data analysis on trafficking from the UKHTC does not always include data on repatriation

¹⁰⁴ See Witkin (n 79).

¹⁰⁵ Alison Jobe, 'The Causes and Consequences of Re-trafficking: Evidence from the IOM Human Trafficking Database' IOM Human Trafficking Database

Rightly so, safe repatriation is all part of the right-based approach to ensuring that victims are safely reunited with their families and this should be a welcomed process of the anti-trafficking chain. However, victims in this case study rarely want to return home due to reasons that can be based on their human rights and some of which has no basis on rights. It is the latter, which is often prominent in cases of trafficking from Nigeria that warrants a human-centred approach and therefore more attention. Based on a lack of human rights protection, victims may fear the reprisal of trafficker because they do not trust the failing protection system in Nigeria which is overwhelmed by corruption. As a result, trafficked persons may encounter continuous threat from their trafficker(s) upon return. The power of the trafficker(s) when trafficked victims return to their countries of origin is a significant factor in a re-trafficking situation. This is often prevalent where there is a complete lack of police protection for victims and their families; more so, when financial “debts” are still “owed” to trafficker(s) by the victim. Due to the lack of protection from Nigerian authorities in this regard, as also indicated in chapter five, Nigerian victims deter repatriation and often choose to seek refuge in the UK.

Beyond a human right basis, Nigerian victims of trafficking detest repatriation due to socio-cultural factors that most of them often do not speak about; at least, not to the UK authorities. This is especially, because this often does not support their legal standings. Upon return to Nigeria, victims may encounter family or community rejection due to the stigmatization attached to trafficking for sexual exploitation as illustrated in chapter two and four. They are also often perceived as a failure in their community when they return ‘empty-handed’ i.e. without any material/financial gains from Europe when likened with other

diaspora persons who are deemed relatively successful. This is prominent in cases where the victim's family have invested financially in the victim's migration to the UK only to fall into the hands of a trafficking ring. Victims interviewed in Nigeria indicated that they came back to similar situation that led them to being trafficked and often see themselves as a failure to their families/community.¹⁰⁶ One of them indicated that she dropped out of school and agreed to follow her trafficker because she wanted to take care of her siblings but since being repatriated from Mali, she has been worse off.¹⁰⁷ Although these victims were not repatriated from the UK, they provide evidence as to why some Nigerian victims trafficking may not see repatriation as an option. Taking a human-centred approach in this point is not to be geared towards enriching victims upon return but recognizing the socio-cultural pressures that stem from their communities which hinders their process of recovery. As such, engaging communities in this regard as a way to ensure an enabling environment seems crucial rather than the hastiness to return victims; in this case, potentially back to their traffickers. Considering the needs of the victims as illustrated in the sub-sections above is not only important for the prevention of trafficking and protection of victims but also presents an advantage to the prosecution of traffickers.

Prosecuting Traffickers

According to Ann Gallagher, "no country can lay claim to genuine, extensive experience in dealing with trafficking as a criminal phenomenon".¹⁰⁸ Most states are either developing or adapting responses 'on the run' often under strong

¹⁰⁶ Interview with survivors of human trafficking in Idia Renaissance shelter in Benin, Nigeria (13th March 2012),

¹⁰⁷ *ibid.*

¹⁰⁸ Paul Holmes and Anne Gallagher, 'Developing an Effective Criminal Justice Response to Human Trafficking Lessons From the Front Line' (2008) 18 *International Criminal Justice Review* Number 3, 318.

political pressures, and mainly through 'trial and error.'¹⁰⁹ On a positive note, there have been a number of successful prosecutions of Nigerian cases of trafficking in the UK in the last couple of years. However, there is still relatively low prosecution rate.¹¹⁰ Investigation is one of the important aspects of combating human trafficking as it leads to the conviction of traffickers and destroying their criminal network as part of prevention. It grants justice to victims who have been exploited by these traffickers. The UK law enforcement authorities have been criticized for a number of reasons within the realm of trafficking and prosecution. These criticisms include inadequate prosecution of Nigerian traffickers; the lack of a rights-based approach in working with victims; the inadequacy of the law for criminal justice; as well as the lack of cooperation with law enforcement agencies in addressing human trafficking in Nigeria.

According to Bales, initial actions taken in investigation are crucial to the ultimate success of prosecutions.¹¹¹ These actions include protecting victims to enable more fruitful investigations. Nigerian victims of trafficking are instrumental to investigations of trafficking cases. However, an approach that does not consider their needs and circumstances as highlighted in previous sub-sections is likely to be unproductive. According to the UNODC toolkit on investigation,

¹⁰⁹ Ibid.

¹¹⁰ UNODC, *Trafficking in persons: Global patterns*, (2006) 36 [online] available at: http://www.unodc.org/pdf/traffickinginpersons_report_2006-04.pdf (Accessed 25th April 2012).

¹¹¹ Kevin Bales and Steven Lize, 'Investigating Human trafficking: Challenges, Lessons Learned and Best Practices' (2007) 76 *FBI Law Enforcement Bulletin* No. 4 (United States Department of Justice, Federal Bureau of Investigation).

“The most successful results involve agents with experience in human trafficking cases, who show more sensitivity to victims and their needs, and are aware of other sources of information to corroborate evidence.”¹¹²

For law enforcement authorities to carry out a proper investigation of Nigerian cases including rescues, they need to bear in mind the profile of these types of victims and not generalise on the nature of their victimhood through a one-size-fit-all approach. There is need to understand the MO of trafficking from Nigeria and ensure that victims are properly identified and protected to enhance confidence that will ensure a meaningful and purposeful investigation.

In 2012, London Met Police officers were criticized for their ‘heavy handed’ approach to brothel raids and of failing to find victims of trafficking.¹¹³ According to the report, ‘Silence on Violence’, the success rate of police performance in finding trafficked victims during brothel raids was less than 1%.¹¹⁴ A specialist police team within the Met – SCD9 team were criticised for looking in the wrong places for victims. According to Boff, raids were carried out with little or no evidence.¹¹⁵ Given that some trafficked victims are rarely found in brothels, it is not just a question of where the police are looking but also who

¹¹² UNODC Toolkit – Law Enforcement and Prosecution, [online] available at: http://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_5-1.pdf (Accessed 25th April 2012).

¹¹³ This was based on a recent report commissioned by the Mayor of London (Boris Johnson) for its investigation into sex trafficking in the run-up to the Olympics – ‘Silence on Violence’. See The Guardian - Met police sex trafficking investigations criticized (19th March 2012) [online] available at: <http://www.guardian.co.uk/uk/2012/mar/19/met-police-sex-trafficking-investigations-criticised> (accessed 25th of April 2012).

¹¹⁴ Andrew Boff, *Silence on Violence: Improving the Safety of Women The policing of off-street sex work and sex trafficking in London*, (2012) This report was requested by the London Mayor Boris Johnson after Mr Boff raised a number of concerns at Mayor’s Question Time in 2010/11.

¹¹⁵ *ibid.*

they were looking for. As highlighted by Nigerian victims in chapter four, they are usually taken from house to house; making the sphere of their trafficking more private than public. The current misguided nature of investigations carried out by law enforcement authorities continues to generate some concerns.

Aside from misguided investigations of Nigerian cases, there are glaring inconsistencies in statistics from the UK on the extent to which traffickers are prosecuted. This may be attributable to the inadequacies in utilising existing UK laws to prosecute traffickers in the UK due to lack of sufficient evidence. According to the Silence for Violence report, Operation Pentameter 2 claimed to have carried out 822 raids on brothels; identified 167 possible 'victims' and arrested 528.¹¹⁶ After a gruelling legal battle, the Guardian managed to obtain an analysis (marked restricted) by the UKHTC.¹¹⁷ The document revealed that after 822 raids, no sex trafficker, by international definition had been found.¹¹⁸ In defence of this misinformation, the head of the investigation asserted that one should take into account, the effect of 'attrition' in the criminal justice process.¹¹⁹ This is a situation whereby an individual was charged for one offence but may be charged for a lesser offence as a result of plea by the defence before the trial. Therefore, there seems to be a possibility that a number of traffickers may have been prosecuted but not for trafficking but rather for a lesser offence.

¹¹⁶ Andrew Boff, *Silence on Violence: Improving the Safety of Women The policing of off-street sex work and sex trafficking in London* (2012) 16.

¹¹⁷ *ibid.*

¹¹⁸ *ibid.* Interview in Guardian article, Inquiry fails to find single trafficker, 20th October 2009, by Nick Davies, [online] available at: <http://www.guardian.co.uk/uk/2009/oct/20/government-trafficking-enquiry-fails> (accessed 25th of April 2012)

¹¹⁹ Boff, *Silence on Violence* (n 116).

Given the inadequacy of the national legal frameworks to prosecute traffickers, the police and the CPS are determined to use every legitimate means at their disposal to disrupt this trade and make it difficult and unprofitable for traffickers. Law enforcement authorities have in many cases applied what is termed the 'Al Capone Approach'. This approach is used to 'trap traffickers' using other legislations when there is insufficient evidence to convict them of the crime of human trafficking.¹²⁰ A senior advocate, Alison Di Rollo, (Deputy Head of the Crown Office's National Sexual Crimes Unit) asserts "get them for something if we can't get them on the human trafficking charge".¹²¹ The dilemma of insufficient evidence has also been associated with lack of strong laws to "reel in the gangsters".¹²² While the Al Capone approach could be seen as an additional part of the work to deter and prosecute traffickers, the approach has practical disadvantage.¹²³ This is mainly because it undermines the accuracy of statistics and lessens the conviction of the trafficker, which can be detrimental for the victim. For instance, some traffickers receive short sentences and are released from prison before their victims has had time to safely re-establish her/himself into the society.¹²⁴ This calls for a more comprehensive anti-trafficking law in the UK that instils greater confidence on victims to engage with the

¹²⁰ Anti-Trafficking Laws Rethink Urged – (20th March 2012) *Hamilton Advertiser* [online] available at: <http://www.hamiltonadvertiser.co.uk/news/breaking-news/2012/03/20/anti-trafficking-laws-rethink-urged-51525-30586741/> (accessed 9th April 2012).

¹²¹ *ibid.*

¹²² Mark McLaughlin 'Crown Office: We'll use 'Al Capone' approach to nail sex traffic gangsters' *Daily Record* (21st March 2012) [online] available at: <http://www.dailyrecord.co.uk/news/scottish-news/2012/03/21/crown-office-we-ll-use-al-capone-approach-to-nail-sex-traffic-gangsters-86908-23795960/> (accessed 9th April 2012).

¹²³ The Government Reply To The Sixth Report From The Home Affairs Committee Session 2008-09 HC 23 The Trade in Human Beings: Human Trafficking in the UK, Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty August 2009.

¹²⁴ *ibid* 17.

criminal justice system. Such approach is also advantageous for preventing trafficking and addressing the demand for slaves in the UK system.

Measures for Prevention and Tackling Demand

The aspect of prevention as highlighted in chapter five is a shared responsibility of states following their different obligations. As a destination country, the UK is not only obliged to address the demands of trafficking from Nigeria but also work with Nigeria to tackle the source. The need for awareness programmes has been necessary in the UK so that people can report and victims can identify services that can support them. An NGO in the UK indicated that during periods of public awareness, they have received increased number of referrals because people become aware of indicators.¹²⁵ Prevention programmes like the 'Blue Blindfold' Campaign, sponsored by the UK Government and facilitated by NGOs like Anti-Slavery International was initiated in 2008.¹²⁶ Campaigns like this have been supplemented by the work of other NGOs like Stop the Traffik's 'Active Community against Trafficking' project which involved taking innovative steps to engage key communities in the fight against human trafficking.¹²⁷ This also follows trainings workshops, research and education that have been facilitated by other NGOs and think-tank. Specific to Nigeria, IPPR has carried out a research aimed at understanding trafficking between Nigeria and the UK, similar to the objective of this thesis.¹²⁸ Apart from this, there has been no other specific programme directly linked to preventing trafficking from Nigeria to the UK.

¹²⁵ Interview NGO Official in the London UK [September 2011].

¹²⁶ See Blue Blindfold, [online] available at: <http://www.blueblindfold.co.uk/> (Accessed 24th of April 2012).

¹²⁷ Stop the Traffik - Active Community against Trafficking, [online] available at: <http://www.stopthetraffik.org/ourwork/act/> (Accessed 25th of July 2013)

¹²⁸ Myriam C., Jenny P. and Peter G., *Beyond Borders, Human Trafficking From Nigeria to the United Kingdom* (London: Institute for Public Policy Research (IPPR) 2013)

A recent report by the AMTG concluded that preventing the trafficking of persons into the UK has been the weakest of all the 3Ps on a general note.¹²⁹ The new UK Government Strategy on human trafficking reaffirmed the political will of the state to tackle 'prevention' by committing to "tackle trafficking from end to end: from recruitment to exploitation".¹³⁰ According to the AMTG, the problem in tackling the prevention of trafficking from the UK angle is down to a lack of a coordinated approach and a prevention strategy that focuses on law enforcement and immigration action.¹³¹ While the UK Government approach is to tackle trafficking at the source, it has been interpreted in the narrow prism of dissuading vulnerable people in the source country from [illegal] migration. It does little or nothing to address the underlying socio-economic situations that make people vulnerable to trafficking in the first place as seen in Nigeria. Existing international programmes targeted at preventing human trafficking by the UK government has focused mainly on the Greater Mekong Sub-region funded by the Department for International Development (DfID).¹³²

European laws on human trafficking make provisions for a mixture of short, medium and long-term preventive measures as well as a framework for a holistic approach to preventing trafficking. Article 5(2) of the Convention requires State Parties to "establish and/or strengthen effective policies and programmes to prevent trafficking in human beings". Such measures include: research, information, awareness-raising and education campaigns, social and economic

¹²⁹ AMTG, *All Change: Preventing Trafficking in the UK* (Anti-Slavery International 2012).

¹³⁰ Home Office, *Human Trafficking: The Government's Strategy* (Home Office July 2011) foreword.

¹³¹ AMTG (n 129).

¹³² See DFID, Operational Plan 2011-2015. DFID Nigeria. Updated June 2012, [online] available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/67410/nigeria-2011.pdf (Accessed 25th of July 2013).

initiatives and training programmes.¹³³ State Parties are also required to “promote a human rights-based approach” and “use gender mainstreaming and a child-sensitive approach” in enforcing prevention measures.¹³⁴

The current UK Government's strategy includes tackling the demand side of trafficking which includes the demand for sex, cheap labour, services and goods.¹³⁵ The relationship between demand and human trafficking is direct or indirect as not all demands are illegal. However, demands concerning areas like forced marriage, child pornography require complete eradication. From a labour standpoint, this has been done through the GLA which has limited protection for undocumented/illegal Nigerian victims of forced labour as highlighted in the legal analysis. From the standpoint of the demand for sex work, the UK government continues to deliberate on attempts to regulate the sex industry in a way that indirectly criminalizes the industry. For instance, the UK Government proposed a legislation to make engaging in sexual intercourse with sex workers - “controlled for gains” to include trafficked persons, a strict liability offence – same strict liability offence that exist by law when sexual intercourse is performed with an underage person.¹³⁶ Since most people who patronise sex workers may not be able to make the demarcation between victims of trafficking and sex workers, they face the possibility of committing an offence unknowingly. Additionally, there is also an ongoing attempt by the UK Government to make the sale of sex illegal as a prevention strategy for sex

¹³³ Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report, Council of Europe Treaty Series No. 197, 2005, Article 5.2.

¹³⁴ *ibid* 5.3.

¹³⁵ Home Office (n 130).

¹³⁶ House of Commons Home Affairs Committee The Trade in Human Beings: Human Trafficking in the UK Sixth Report of Session 2008–09 Volume I, Report, together with formal minutes Ordered by the House of Commons, HC 23-I [Incorporating HC 318-i–vi, Session 2007–08] (Published on 14 May 2009) 30.

trafficking.¹³⁷ On the contrary, some feminist organisations including the Police, have rejected such proposal arguing that it would further drive prostitution underground and does not consider the protection of trafficked victims and further puts sex workers at risk.¹³⁸

Apart from the fact that the Government Strategy identifies “international action to stop trafficking happening in the first place”¹³⁹ as one of its key aims, it does not reflect the Government’s international development strategies in Nigeria. Equally, the Foreign and Commonwealth Offices (FCO), of which Nigeria and the UK are both members, has not incorporated the prevention of trafficking as part of its agenda on human rights.¹⁴⁰ According to an official from the FCO, the human rights section focuses on areas that need attention and on which, in their opinion, there is enough focus on trafficking. On the contrary, the FCO can be useful for anti-trafficking cooperation between Nigeria and the UK as would be further explored in the next chapter. In the meantime, the UK also requires the necessary national coordination mechanisms to ensure clear and effective anti-trafficking policies.

National Coordination Mechanisms

According to the UNODC, “inter-agency collaboration is a prerequisite for the success of any national or local strategy to prevent and combat trafficking in persons”.¹⁴¹ This requires key agencies from the police, policymakers to NGOs, to

¹³⁷ The Huffington Post, UK - Prostitution: Northern Ireland Bids To Ban Paying For Sex As Part Of Human Trafficking Crackdown (21st August 2012) [online] available at: http://www.huffingtonpost.co.uk/2012/08/21/prostitution-northern-ireland-sex-human-trafficking_n_1817156.html (Accessed 2nd January 2013).

¹³⁸ House of Commons Home Affairs Committee (n 136) 30.

¹³⁹ Home Office (n 130) foreword.

¹⁴⁰ Interview with FCO officer in London, UK [November 2012].

¹⁴¹ Toolkit to Combat Trafficking in Person - Tool 2.13 Developing inter-agency coordination mechanisms, [online] available at:

work in a more coordinated fashion towards the common goal of ending human trafficking. A successful cooperation mechanism as the UNODC puts it, is based on a clear delineation of the respective roles of the various agencies involved.¹⁴² According to the ATMG,

“Good coordination of all relevant actors avoids duplication and allows for efficient information and best practice sharing, early identification of emerging trends and patterns and evaluation of activities.”¹⁴³

Anti-trafficking in the UK can benefit from the experiences and expertise of a wide range of agencies relevant to anti-trafficking in order to facilitate innovative and creative response to the problem.¹⁴⁴ The UK recognises the importance of such coordination as part of its anti-trafficking strategy. This has been demonstrated through the establishment of statutory groups like the Inter-Departmental Ministerial Group on Human Trafficking (IDMG), tasked with overseeing the implementation of the Government's strategy by coordinating and monitoring the UK policy on human trafficking. The group brings together Ministers from various government departments including the Home Office, DfID and the FCO. However, the group has been criticized for its inactivity.¹⁴⁵ Other statutory groups include the three multi-agency sub-groups coordinated by the UKHTC around the 3Ps with the representation of key NGOs working around trafficking. While this has been useful for coordinated activities amongst UK stakeholders, it is uncertain as to whether these sub-groups would be retained within the new National Crime Agency.

http://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_2-13.pdf (accessed 13th August 2013).

¹⁴² *ibid.*

¹⁴³ ATMG (n 129) 40.

¹⁴⁴ *ibid.*

¹⁴⁵ Myriam C., Jenny P. and Peter G., *Beyond Borders, Human Trafficking From Nigeria to the United Kingdom* (Institute for Public Policy Research (IPPR) 2013).

Despite the aforementioned groups which are created to address the problems of trafficking, there seems to be an inconsistency in its coordination. Accordingly, some of the issues raised by interviewees include the lack of communication between UK stakeholders necessary for national coordination, clarity of responsibility and international coordination. There are so many agencies in the UK carrying out duplicated projects, and causing some confusion for coordination. According to law enforcement officials from the Met Police and UKHTC, there is hardly information exchange on cases that they both handled independently even though these cases are Nigerian cases. One official mentioned, “We do not talk to each other, sometimes within the same department”.¹⁴⁶ This often results to fragmentation and overlapping efforts that becomes confusing for international coordination.¹⁴⁷ The ATMG demonstrates an example of coordination between NGOs in the UK especially with regards to its their independent evaluation of anti-trafficking efforts in the UK which has been useful for persuading the UK Government towards fulfilling its human rights obligations.

Furthermore, organizations outside London have complained that the fight against transnational human trafficking in the UK has been rather ‘Londoncentric’.¹⁴⁸ Even though London is a major route for trafficking, people are being trafficked into cities like Manchester.¹⁴⁹ The focus on London has led to unequal resources and attention to other emerging trafficking routes within the UK. Due to the lack of specialized Police Officers within these regions for instance, trafficking cases are often addressed without taking into consideration

¹⁴⁶ Interview with Met Police in London, UK [April 2012].

¹⁴⁷ This lack of clarity is further emphasized in Boff, *Silence on Violence* (n 116) 14.

¹⁴⁸ ECPAT - Missing Out: A Study of Child Trafficking in the North-West, North-East and West Midlands (ECPAT 2007).

¹⁴⁹ *ibid.*

the special needs of the crime. As a result of this shortcoming, the protection of victims within these areas are often overlooked or misread thereby, limiting the success of anti-trafficking operations in the UK.¹⁵⁰

Conclusion

The UK has adopted different measures to address human trafficking by enacting laws and initiating policies to address the 3Ps. While these demonstrates its political will to address the problem, its approach with regards to tackling trafficking from Nigeria has been geared towards anti-trafficking strategies that has failed victims from Nigeria. Coupled with the limited understanding of the profile of trafficked victims from Nigeria, interventions remain unsatisfactory and complicated. In cases where there are clear provisions to support victims and prosecute traffickers, the criteria associated with accessing these provisions do not incorporate the contextual circumstances of Nigerian victims. This conflicts with the agenda of the current UK Coalition Government to reduce the flow of immigrant within its borders. It is on the bases of the latter that the UKBA remains the competent authority to conclusively identify victims from non-EU states. It has given fillip to the discrimination, inaccessibility and the criminalization of victims from Nigeria, which forms part of the major factors that sustains the continuous exploitation of victims.

The current anti-trafficking measures have hindered the investigation of human trafficking and unsafe repatriation of victims back to Nigeria without proper identification; victims remain at risk of being re-trafficked. In consequence, this may lead to the UK government investing huge resources to address the menace. Prevention has not only lacked the required intervention but equally

¹⁵⁰ *ibid.* Interview with NGO practitioners in Manchester, UK [January 2011].

requires the shared responsibility of the source country (Nigeria) to succeed. There are a number of areas that urgently require active collaboration between the UK and Nigeria. Although there are abundant and well funded CSOs who legitimately advocate for better anti-trafficking measures, as well as a longstanding structured welfare system in the UK, the paucity of national coordination has been the obstacle militating against the success of anti-trafficking measures. The continuous changes in anti-trafficking institutions and UK migration laws/policies are often difficult to keep up with. This has created obstacles for international collaboration on anti-trafficking. The extent to which these shortcomings affect the existing cooperative measures between Nigeria and the UK is treated in the next chapter. Candidly, the activities of these myriads of ant-trafficking institutions and agencies should be streamlined for better efficient coordination and achievement of results.

Chapter Seven - Bilateral Cooperation Against Trafficking: A Practical Assessment of Nigeria/UK

Introduction

As illustrated in previous chapters, the measures adopted by both Nigeria and the UK towards addressing the problem of human trafficking may sound good on paper but does not carry significant weight in practice in this context. Both countries have signed and ratified the required laws and have also entered bilateral/multilateral agreements with relevant countries with the intention to work together towards tackling human trafficking. Even though Nigeria and UK has taken, what seems to be the right step towards setting the foundation for implementing anti-trafficking strategies, both countries have not sufficiently fulfilled the expectations of the regime's objectives from a human-centred perspective. This was demonstrated in the last two chapters in terms of how both states have individually addressed the issue within their territories. The limitations as identified in the last two chapter shows that both countries have interpreted the problem differently and have not integrated current realities of the problem into their existing anti-trafficking operational framework. In the same light, although both countries have gone further by entering into a bilateral agreement towards working together in addressing the prevalence of trafficking across their borders, these objectives have not been operationalized and as a result reduced the bilateral agreement to a mere paper tiger.

As it stands, Nigeria remains one of the top five source countries for human trafficking in the UK. The emergence of the NRM has raised huge concerns for UK anti-trafficking stakeholders. As a result, Nigerian cases of trafficking has taken centre stage in the trafficking discourse amongst scholars, activists, practitioners and policymakers in the UK, following recent cases that have come to the public attention. Research institutes like the Institute of Public Policy Research (IPPR) amongst others have made trafficking from Nigeria to the UK

one of their major research focus, following the increasing prominence of the subject especially in the UK media. Law enforcement authorities have also had increased interest in Nigerian cases following the difficulty that they face in achieving effective investigation and prosecution. NGOs in the UK remain interested in the victims that are continually failed within the system currently in place. As a result, these various stakeholders are beginning to seek ways to collaborate with key stakeholders in Nigeria.

Conversely, Nigeria does not possess a similar sense of urgency in addressing trafficking from the UK. Such disregard stems from a lack of shared knowledge and communicative action between both countries at all levels. There is no clear establishment of partnership to enable the required interactions towards addressing trafficking between both countries. Coupled with the need for dialogue, a number of factors currently hinder cooperation between both countries. These include the socio-cultural factors and political terrain in Nigeria as well as the UK interest in controlling immigration. In the light of the existing framework set out by both countries to tackle trafficking collectively, this chapter sets out to determine the extent to which both countries have collaborated within the trafficking discourse.

The previous chapters clearly exposed the influence of the social political environment of both countries on their individual anti-trafficking efforts. The implication of this cannot be overlooked in trying to understand how these states relate with each other within these regime for anti-trafficking. This is mainly because states are more likely to cooperate when the principles enshrined in the agreement are synonymous with their identity or interest. In 2004, Nigeria and the UK signed a 'Memorandum of Understanding on Co-operation to Prevent, Suppress and Punish Trafficking in Persons' (Hereinafter, MOU), to initiate bilateral cooperation and collaboration against human trafficking. It is in the

light of the aforementioned that the first section of this chapter assesses the content of the agreement in order to elucidate the extent to which the 2004 MOU have been operationalized. There are certain requirements for international cooperation as set out by the Organised Crime Convention including information exchange and joint investigation. In assessing the agreement in line with what currently exists, this section contends that the existing agreement is nothing less than a 'political stunt', which has no real impact in addressing the problems of trafficking.

The second section gives an in-depth analysis of the current cooperative situation arguing that if both countries are genuinely interested in working together to address trafficking between their borders, their approach will have to be adjusted to accommodate the current social realities of human trafficking as previously discussed in this thesis. This chapter illustrates the importance of mutual understanding in negotiating future collaborations so as to help bring rights that are situated and contextually meaningful to Nigerians in need of protection as part of fulfilling the objectives of the anti-trafficking regime. This latter dialogue may begin to expand the ownership of state parties into putting a customized stamp on its anti-trafficking cooperative efforts beyond selfish interest of states that has merely been a façade.

General Overview of UK/Nigeria Relations

The United Kingdom reserves a place for the African region within its foreign policy and Nigeria is one of the major African countries it deals with. According to Cumming, there have been three broad phases in UK/African policy: the colonial era, the post-colonial period (1957-89) and the post-Cold War phase

(from 1990 onwards).¹ The end of the Cold War ushered in an era when Western states began to review their policies towards Africa. Subsequently, the British government under different administrations stressed the need for a 'new thinking' – under John Major and a 'new priority' under Tony Blair.²

Nigeria has historically been amongst Britain's top three commercial territories in Africa with the others being South Africa and Kenya.³ As a former colony of Britain, strong historical, social, cultural, political and economic tie binds the relationship between both countries. Britain's relations with Nigeria started with 'the scramble' for Africa in the late 1800 - 1900s when Europeans intensified their expeditionary and colonial activities in the so-called "Dark Continent".⁴ Britain established its colonial rule over Nigeria from about 1861 with the annexation of Lagos and amalgamated the southern and northern protectorates in 1914 to form what the singular entity now referred to as Nigeria. Through 'indirect rule', Britain defined the ongoing political power structures in Nigeria, which is still defined by the extent of power ascribed to the former colonies (Northern and Southern Nigeria). During the colonial era, Nigeria was primarily developed as a source of raw materials and market for British industries. Raw materials included agricultural produce and oil.⁵

As a result of the colonial experiences, Nigeria's foreign ties with Britain have been very strong. However, this has varied in recent times as this special relationship has oscillated in strength following the 1966 coup. There have been

¹ Gordon D. Cumming, UK African Policy in the Post-Cold War Era: From Realpolitik to Moralpolitik? (2007) 42 *Commonwealth & Comparative Politics* 1, 106-128.

² *ibid.*

³ *ibid.*

⁴ Helen Chapin Metz, ed. Nigeria: A Country Study. Washington: GPO for the Library of Congress, (1991) [online] available at: <http://countrystudies.us/nigeria/> (Accessed 2nd February 2012).

⁵ *ibid.*

several attempts to weaken ties with Britain following its position on the Nigerian civil war and the stance taken by Nigeria on apartheid in South Africa. For Britain, the post-colonial era was marked by a determined reluctance to intervene in Africa affairs.⁶ However, according to Chapin "At times, more verbal and symbolic damage was done to Nigerian-British relations for Nigerian popular consumption than was true in reality."⁷ Today, Nigeria remains one of UK's key international partners working closely together bilaterally and/or multilaterally on a range of domestic and international issues. This includes matters relating to trade, peacekeeping, climate change and the reform of international institutions.⁸ For instance, the UK currently accounts for 20% of Nigeria's foreign direct investment.⁹

According to the Nigerian ambassador to Britain, Nigerian's relationship with Britain is quite 'cordial'.¹⁰ These relationships cut across crucial issues that affect both countries including migration and human trafficking. Similarly, both countries have signed and ratified several important international treaties and Conventions relevant to the issue area which is of focus for this thesis. In addition to the several MOUs signed by both countries, they adopted one in 2004 to advance their commitments towards tackling human trafficking across their borders.

⁶ *ibid.*

⁷ *ibid.*

⁸ Foreign and Commonwealth Office (FCO) website, [online] available at: <https://www.gov.uk/government/organisations/foreign-commonwealth-office> (Accessed 2nd February 2012).

⁹ *ibid.*

¹⁰ *ibid.*

Nigeria/UK Anti-trafficking Bilateral Agreement: A Political Stunt?

The bilateral or multilateral cooperation of state is significantly encouraged through the Organised Crime Convention.¹¹ Specifically, Article 9(5) of the Trafficking Protocol states that “States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through *bilateral and multilateral cooperation*, to discourage the demand that fosters all forms of exploitation of persons, especially women and children that leads to trafficking”.¹² In accordance with this provision, Nigeria and the UK signed a Memorandum of Understanding (MOU) on Co-operation to Prevent, Suppress and Punish Trafficking in Persons on the 17th of November 2004. Harriet Harman (MP) signed this agreement on behalf of the UK, and Chief Akinlolu Olujinmi (Attorney General of Nigeria and Minister for Justice), signed for Nigeria.¹³

This agreement could be seen as a Bilateral Treaty according to the Vienna Convention on the Laws of Treaties.¹⁴ According to the ILO, bilateral agreements are the most effective collaboration between countries of origin and destination to ensure that the subject of the agreement takes place in accordance with agreed principles and procedures.¹⁵ Bilateral agreements can be formal or informal, on the other hand, MOU is a non-binding form of

¹¹ Organized Crime Convention 2000, articles 7, 13, 16-20, 27, 29-30.

¹² Trafficking Protocol 2000, article 9(5) [with my emphasis added].

¹³ Memorandum of Understanding on Co-operation to Prevent, Suppress and Punish Trafficking in Persons, Freedom of Information (FOI) request from the Home Office, 26 October 2011, FOI ref. - CR19858. [Hereafter, Nigeria/UK 2004 Anti-trafficking MOU].

¹⁴ A treaty is “an international agreement concluded between States in written form and governed by international law . . . whatever its particular designation.” Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331 Art. 2 para. 1(a).

¹⁵ ILO, Bilateral Agreement – [online] available at: <http://pstalker.com/ilo/i-bilateral.html> (accessed 13th August 2013).

bilateral cooperation. Similarly, the 2004 MOU is non-binding as it states, “this Memorandum is a statement of goodwill only and is not intended to impose any legal obligation whatsoever on either of the participants.”¹⁶ According to Vasuprasat, “it is a document describing the intentions of the concerned parties, expressing a desire to pursue a common line of action, rather than a legal commitment”.¹⁷

Although bilateral agreements are mostly non-binding in terms of its legal footing (soft laws), it still has something to offer to the compliance with international law.¹⁸ According to Blum, “soft law instruments do give rise to legitimate expectations regarding the implementation of legal relations even if they themselves do not create such relations”.¹⁹ In a world where diversity is more natural than uniformity, bilateral agreements can provincially arrange for agreements that are more coherent and tailored to the specific needs and circumstances of the particular dyadic relationships they intend to regulate. In other words, bilateral agreements are better structured to potentially reduce the dilemma associated with fragmentation, competing values and cultural diversity.²⁰ It allows greater room for creativity, flexibility and political

¹⁶ Nigeria/UK 2004 Anti-trafficking MOU, para. 26.

¹⁷ Pracha Vasuprasat, *Inter-state Cooperation on Labour Migration: Lessons learned from MOUs between Thailand and neighbouring countries*, ILO Asian Regional Programme on Governance of Labour Migration Working Paper No.16, (ILO 2008) 3.

¹⁸ For the challenges of soft law, see Christine M. Chinkin, *The Challenge of Soft Law: Development and Change in International Law*, (1989) 38 INT'L & COMP. L.Q. p. 851; Kal Raustiala, *Form and Substance in International Agreements*, (2005) 99 AM. J. INT'L L. p. 587.

¹⁹ Gabriella Blum, *Bilateralism, Multilateralism, and the Architecture of International Law* (2008) 49 *Harvard International Law Journal*, no. 2, p. 330.

²⁰ “Fragmentation” of international legislation, meaning the existence of different and somewhat autonomous rationales underlying a variety of regimes each proclaimed to be universal. See International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, June 30, 2005, At its fifty-fourth session, in

expediency that in turn awards its parties a sense of ownership over its provisions, thereby increasing their propensity to comply in an anti-trafficking regime.²¹ Potentially, if the MOU signed by both Nigeria and the UK were to be well-directed, it could address particular issues pertinent to trafficking between both countries as highlighted so far in this thesis.

The crux of the Nigeria/UK 2004 MOU is to promote cooperation and coordination across the 3Ps and take measures to build the capacity of both parties towards these objectives. According to the MOU,

In particular, the objectives of the memorandum are;

- i. To facilitate international co-operation, develop common goals and prevent, suppress and punish trafficking in persons;
- ii. To protect victims of trafficking, and to provide them with assistance to enable reintegration into their original environment;
- iii. To provide mutual support, capacity building and strengthening of institutional capabilities to effectively prevent, suppress and punish the offences of trafficking in persons, and;
- iv. To promote co-operation between the participants with a view to attaining the above mentioned objectives.²²

Despite the opportunities which the bilateral agreements offer, this MOU has experienced some shortcomings. Firstly, there is limited awareness of its

2002, the Commission decided that the title of the topic should be amended to read as above rather than “Risks ensuing from the fragmentation of international law”. See Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 10 (A/57/10), para. 494. Available [ONLINE] at: http://untreaty.un.org/ilc/summaries/1_9.htm#_ftnref1. [Accessed 10th January 2013].

²¹ See ILO (n 15).

²² Nigeria/UK 2004 Anti-trafficking MOU, para. 3.

existence. Secondly, it lacks any contextual characteristics that integrate the social realities of trafficking operations across its borders. As a result, the MOU could pass as generic and so far, has been an operational failure. Following its general implementation issues, the MOU as it stands cannot do very much in initiating meaningful collaboration. It seems to serve more as a political statement without substance following the extent of its operationalization.

With regards to limited awareness, most interviewees from key anti-trafficking institutions, mostly in the UK, highlighted the need for bilateral cooperation with Nigeria but were unaware of the MOU's existence. On the other hand, Nigerian officials who are aware of this MOU had not been able to take drastic measures to rekindle its existence with their UK counterpart. In 2010, there were talks between NAPTIP and a number of UK NGOs to re-establish collaboration as stated in the MOU. This was discussed as part of a roundtable meeting facilitated by a UK NGO called AFRUCA.²³ However, this was not followed through. One could associate such lack of awareness and attention to the MOU to its period of enactment. The MOU came at a time when there was insufficient understanding and attention to the problem of trafficking. In 2004, NAPTIP was still at its early stages as an anti-trafficking agency in Nigeria. For the UK, the UKHTC had not been created at the time. As a result, there was limited substantive knowledge to inform this MOU. There has been plenty of time to revisit the document but no steps have been taken towards this. The MOU made provision for its reappraisal stating,

“The participants will consult one another with the aim of making arrangements for the continuing and effective implementation of this

²³ The author was a participant during this roundtable meeting- organised by AFRUCA and supported by City Parochial in June 2010 in London.

Memorandum. They will, resolve any difficulties arising in connection with Memorandum through consultation and negotiation."²⁴

Following the ambiguity of the MOU, it does not utilise current evidence on the ground regarding the scope of trafficking, to assign responsibilities between both countries. Statistics indicates that Nigeria is a major source country for most European states including the UK and collaborations should incorporate this fact.²⁵ Additionally, although not legally binding, the content of the MOU highlights crucial areas for collaboration in order to enhance cooperation. They include information exchange, capacity building, joint investigation, prevention and protection of victims.

Scholars and activists have described information exchange as one of the pillars of cooperation for anti-trafficking.²⁶ According to Rankin and Kinsella, knowledge is the key to developing an accurate understanding of the issue of trafficking and devising measures to tackle it.²⁷ Knowledge helps develop appropriate intelligence for investigation and the protection of victims. Article 10 of the Trafficking Protocol also encourages information exchange mainly from a law enforcement perspective and in accordance with the domestic laws of State Parties. Information is required between countries and across agencies to develop an accurate understanding of the problem. This can be done formally or informally. Information exchange depends on the formal or informal nature of the cooperation. Formal cooperation involves the exchange of information through extradition and mutual legal assistance (MLA) while informal

²⁴ Nigeria/UK 2004 Anti-trafficking MOU, para. 25.

²⁵ At the very least, there is no evidence of trafficking from the UK to Nigeria

²⁶ Glynn Rankin, Nick Kinsella, Human Trafficking in The Importance of Knowledge Information Exchange, Intelligence Management Advanced Information and Knowledge Processing (Springer 2011) 159-180.

²⁷ *ibid.*

cooperation requires police-to-police and/or agency-to-agency-assistance.²⁸ It is usually faster, cheaper and easier to obtain information or intelligence on an informal basis than otherwise. UNODC specifies that MOU agreements may cover a wide range of investigative actions like intelligence development, surveillance or communication interceptions etc.²⁹ However, the MOU in scrutiny for this study, does not specify on any of these latter actions. Instead the MOU generally provides that

“The participants will, in accordance with all relevant national laws and regulations exchange relevant information with a view to preventing, suppressing and punishing trafficking in persons.”³⁰

Although the MOU makes provisions for MLA, extradition and informal exchange/sharing of information, the agreement is practically only sufficient for an informal mode of exchange.³¹ It states that:

“Participants will, subject to the laws governing the provision of mutual legal assistance within their respective jurisdictions provide such assistance, as they are able, to obtain any evidence that may be

²⁸ UNODC, *Anti-Human Trafficking Manual for Criminal Justice Practitioners* (UNODC 2011).

²⁹ *ibid.*

³⁰ Nigeria/UK 2004 Anti-trafficking MOU, para. 7.

³¹ Sotonye Leroy Wakama, *Transnational Organized Crime And The Role of Extradition & Mutual Legal Assistance Treaties*, Resource Material Series No. 57 [online] available at: http://www.unafei.or.jp/english/pdf/PDF_rms/no57/57-13.pdf [accessed 27th April 2012]; For the UK see See section 7 Crime (International Co-operation) Act (2003) [online] available at: <http://www.legislation.gov.uk/ukpga/2003/32/section/7> and section 13, [online] available at: <http://www.legislation.gov.uk/ukpga/2003/32/section/13> [accessed 27th April 2012].

³¹ Organized Crime Convention 2000, Art. 16(8).

requested in a form admissible in the jurisdiction of the requesting Participant."³²

Hitherto, there has been no practical attempt to utilise the formal channel, as UK law enforcement authorities do not consider security systems utilised in NAPTIP as sufficient enough to pass on confidential documents.³³ Even though the MOU provides that any information provided or exchanged between the participants in line with the MOU be handled in consideration of confidentiality 'and used in conformity with conditions that may be laid down by the providing participant', there are some structural concerns to fulfilling this paragraph.³⁴ These structural issues include the technical capacity/system of both states which affects the level of trust between both parties. The element of mistrust between law enforcement agencies especially stemming from the prevalence of corruption in Nigeria remains challenging. UK authorities fear the potential risk the leakage of information can pose to victims, relative or other persons.³⁵ A British officer told the IPPR that

"... When you're dealing with people's lives, it's difficult to feel comfortable sharing information when you know corruption is there, you're not going to do it. You're not going to want to give certain details of (say) family members of victims of trafficking. I don't want to be responsible for people getting their heads cut off."³⁶

³² Nigeria/UK 2004 Anti-trafficking MOU, para. 12.

³³ Interview with Criminal Justice Officer in London, UK [June 2013].

³⁴ Nigeria/UK 2004 Anti-trafficking MOU, para. 13.

³⁵ UNODC (n 28) 13.

³⁶ Myriam C., Jenny P. and Peter G., *Beyond Borders, Human Trafficking From Nigeria to the United Kingdom* (Institute for Public Policy Research (IPPR) 2013) 87.

Both countries require specific agreement to govern such formal information exchange. In addition, the Organized Crime Convention encourages states to ensure that such measure streamlines the extradition process by expediting request that simplify evidentiary procedures.³⁷ This is mainly because extradition is generally a very complicated and time consuming process that is subject to several obstacles and restrictions.³⁸ The UK under its Immigration Act 1971 and the Nationality, Immigration and Asylum Act 2002 may allow the extradition in the area of trafficking where irregular migration has been committed. However, they may create obstacles to surrendering a criminal if they do not trust a state's legal system.

From the stance of informal cooperation, the MOU specifically makes provisions for the nomination of specific persons from both countries and by both parties to coordinate information exchange. It stated that:

“Each participant will nominate agencies responsible for arranging co-operation and exchanging contacts under this Memorandum. Within three calendar months of the date this Memorandum is signed, each participant will notify the other, in writing, of the name and address of a single point of contact within the designated agencies.”³⁹

In practice, there is still an enormous gap in information exchange as there is no main point of contact.⁴⁰ This is most difficult with the UK where the designated point of contact is unclear, if at all there is any. According to a NAPTIP Officer,

³⁷ Organized Crime Convention 2000, article 16(8).

³⁸ Anne Gallagher, *International Law of human Trafficking* (Cambridge University Press 2010) 406.

³⁹ Nigeria/UK 2004 Anti-trafficking MOU, para. 9.

⁴⁰ Interview with UKHTC officials in Birmingham, UK [October 2011].

“It is always confusing who to speak to, there is COEP, UKHTC, UKBA, Met Police and many others all contacting you. You don't know whom to deal with. It is very confusing... who is the main agency?”⁴¹

Within Nigeria, NAPTIP oversees all areas of anti-trafficking making it easier to identify a vocal point of contact. It is in terms of administering its services as a point of contact that it becomes problematic. A Met Police Officer, who directly investigates cases of trafficking from Nigeria, indicated that acquiring information is often difficult, frustrating and time consuming. According to one detective, “...I sent a request to Nigeria...After six months, I still haven't received a reply...”⁴² Even with the presence of a SOCA Liaison Officer (SLO) in Nigeria, it has not made the process easier, at least in the context of human trafficking. Information through this SLO is often crime or border-control related and not specifically on trafficking. According to the officer, the office does not deal directly with cases of human trafficking, nor get involved with the investigation of cases or maintains good contacts with NAPTIP officials on a one-on-one basis as of the time of this study.⁴³

As this position (SLO) was newly occupied, it is difficult to make assumptions on its potential. While the officer confirmed that information exchange has improved, the improvement is most certainly not directed at human trafficking. NAPTIP's investigation team on the other hand, confirmed that its correspondence with the UK authorities is often related to immigration matters like smuggling. Even when it concerns trafficking, NAPTIP has not been fully involved in the cases from the UK. One NAPTIP official mentioned, “We are not

⁴¹ Interview with NAPTIP official – Research and intelligence Department in Abuja Nigeria [December 2011].

⁴² Interview with Met Police in London, [August 2012].

⁴³ Interview with UKHTC official in Birmingham, UK [September 2011].

the immigration but we keep receiving request for information on smuggling and this is not our duty but we do try to help".⁴⁴

Information exchange is key to the identification of victims and also crucial for the safe repatriation of victims from the UK to Nigeria. The MOU also lays more emphasis on the latter (repatriation). It provides that "the participants repatriating a victim of trafficking in persons will have regard to the safety, human rights and well being of such a victim and will allow the victim, subject to provisions in legislation relating to proceeds of crime, to return with their property and possessions."⁴⁵ During fieldwork in Nigeria, it was impossible to interview any survivor of trafficking repatriated from the UK for the simple fact that they had not come to the attention of the Nigerian authorities in recent time. Officials from NAPTIP highlighted that they had not received repatriated victims from the UK in the last couple of years even though they are aware of the scale of Nigerian victims in the UK. They further complained that repatriation from the UK has often happened through deportation routes. According a NAPTIP Officer,

"The UK authorities just deport these victims alongside other criminals and do not inform us of any trafficked victim before hand. We sometimes enquire with the Nigerian Immigration [services] regarding the list of deportees in order to identify victims but the list tells us nothing. Some of these victims are even brainwashed by other criminals in the process not to trust the authorities while some have not been properly identified by the UK authorities as victims of trafficking... it really makes our work difficult... they don't talk to us."⁴⁶

⁴⁴ Interview with NAPTIP official – Investigations Department in Abuja Nigeria [December 2011].

⁴⁵ Nigeria/UK 2004 Anti-trafficking MOU, para. 22.

⁴⁶ Interview with NAPTIP official in Abuja, Nigeria [December 2011].

The absence of Nigerian victims/survivors in the continuum of the anti-trafficking process specifically around repatriation remains problematic. It reduces the significance of trafficking from Nigeria to the UK, at the very least, from the Nigerian context. The hesitance to repatriation by victims as highlighted in chapter five and the unsophisticated rehabilitation programme as explored in chapter six could also serve as an explanation. However, information on the status of these victims/survivors is crucial for better cooperation and for better protection mechanisms. Without the latter, the real scale of trafficking is altered and some survivors could be at danger of re-trafficking hence, there is need to draw up repatriation mechanisms beyond the scope of the current MOU.

Additionally, as part of gathering information, countries may agree to partake in joint investigations. According to the UNODC, "in certain complex cases of human trafficking, successful investigations are usually the result of the work of joint investigation teams".⁴⁷ Article 19 of the Organized Crime Convention also encourages State parties to create such teams as a tool to combat organized crime.⁴⁸ The MOU also highlights the need for joint investigation even though up till date, both countries have not exclusively engaged in any such cooperation. A joint investigation was carried out on a multilateral capacity called 'Operation Koolvis'. Operation Koolvis' was initiated by the Netherlands authorities to jointly investigate cases of trafficking from Nigeria. The investigation was launched after a Dutch lawyer - Wilma Hompe, discovered a reoccurring pattern in the stories told by trafficked Nigerian girls in refugee centres in the Netherlands.⁴⁹ Operation Koolvis led to the arrest and prosecution of eleven suspected traffickers in the Netherlands. "With the involvement of the Dutch, Nigerian,

⁴⁷ UNODC, Toolkit to Combat Trafficking in Persons (online edition UNODC 2008)

⁴⁸ Organized Crime Protocol 2000, article 19.

⁴⁹Dutch tribunal to rule on sex trafficking case - Radio Netherlands Worldwide (3rd December 2009) [online] available at: <http://www.rnw.nl/international-justice/article/dutch-tribunal-rule-sex-trafficking-case> [Accessed 26th of April 2012].

Italian, French, Belgian, British and US investigators, it has been commended as a ground breaking model for coordinating international investigations.⁵⁰

Despite the 'success' of this investigation, it was criticized for its immense focus on the perpetrators rather than the victims. Victims were required to give evidence in exchange for a one-year visa permit.⁵¹ This did not demonstrate good practice in the protection of victims according to the UNDP 'best practice law enforcement manual for fighting against trafficking in human beings'. The manual states that:

“The investigator has a clear duty to be open and honest at all times with the victims so that they are made fully aware of the issues, responsibilities and potential consequences and risks attached to any decision that they may be called upon to make.”⁵²

In light of the aforementioned operational failures, it is crucial to establish the extent to which both countries have collaboratively built their capacity in fulfilment of Trafficking Protocol and the MOU. Capacity building is one of the core parts of the MOU even though it has only two paragraphs. This was set out to strengthen institutional capacities of both countries.⁵³ Capacity building can come in form of training, technical or financial support. The Trafficking Protocol insists that;

⁵⁰ *ibid.*

⁵¹ *ibid.*

⁵² Best Practice; UNDP, Law Enforcement Manual for Fighting against Trafficking of Human Beings, available [ONLINE] at: www.undp.ro/governance/Best%20Practice%20Manuals [accessed 26th of April 2012].

⁵³ Nigeria/UK 2004 Anti-trafficking MOU, para. 23 – 24.

“The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with nongovernmental organizations, other relevant organizations and other elements of civil society.”⁵⁴

According to officials from NAPTIP, the UK does not support the agency like other European destination countries but on occasions, they may donate technical equipment for investigation. Major capacity building programmes have mainly originated from international organisations mainly UN and EU agencies in Nigeria. The Organized Crime Convention mandated the Conference of Parties (CoP) which now operates through the UNODC to facilitate the capacity of states to cooperate through capacity building.⁵⁵ This includes enabling cooperation with relevant international organisations and NGOs.⁵⁶ Nevertheless, stakeholders in Nigeria have complained of the fact that the work on trafficking is overwhelmed with a high percentage of capacity building workshops. Due to a lack of coordination between international donors, these workshops are often repetitive mostly with the same participants. Donors find that these capacity building “starts and dies with the same participants” as, they are neither utilized nor transferrable in practice.⁵⁷

Despite their abovementioned shortcomings, international organisations have been crucial in coordination/cooperation between Nigeria and other European

⁵⁴ Trafficking Protocol 2000, article 10(2).

⁵⁵ Organized Crime Convention 2000, article 32(1).

⁵⁶ *ibid.*

⁵⁷ Interview with international donor in the Netherlands Embassy Abuja Nigeria [February 2012].

countries including the UK. The UNODC has initiated a number of programmes to enhance cooperation between (but not exclusively) Nigeria and the UK. One of such programmes is entitled 'Enhancing Multi-stakeholder Cooperation in Nigeria' aimed at understanding the roles and cooperation of the law enforcement and victim support services between Nigeria and Europe - specifically across six countries including UK, Netherlands, Germany, Switzerland excluding Italy (due to an ongoing strong focus on Nigeria/Italy trafficking).⁵⁸ Representative of each of the countries were NGOs⁵⁹ except for Nigeria where the National Agency – NAPTIP – was a major participant.⁶⁰ The project was in three phases. The first involved a study visit to Nigeria, a follow-up study visit to Belgium and then an additional visit to Vienna. The final visit to Vienna would involve a final analysis of all the visits and a debate on how subsequent projects created from this programme would be implemented. 'Enhancing Multi-stakeholder Cooperation in Nigeria' project was instrumental to the 'Na Wa Film Festival' to raise awareness on human trafficking in Nigeria with the use of films.⁶¹ This UNODC seven hundred and seventy thousand euros (€770,000) project was still ongoing while finalising this thesis, hence, it is too early to give a proper analysis of the project and how it would enhance anti-trafficking between Nigeria and the UK.

⁵⁸ Interview with UKHTC in Birmingham, UK [September 2011].

⁵⁹ International Organisation for Migration (IOM), EXIT – Organisation to combat Human Trafficking from Africa (Austria), Payoke vzw (NGO Belgium), Les Amis du Bus des Femmes (NGO France), Religiosas Adoratrices – Proyecto Esperanza (NGO Spain), Lefoe (NGO Austria), Nadeschda (NGO Germany), Slavery International (NGO U.K.), Girls Power Initiative (NGO Nigeria), NAPTIP (National Agency for the Prohibition of Trafficking in Persons (Nigeria).

⁶⁰ Enhancing Multi-Stakeholder Cooperation to Fight Human Trafficking in Countries of Origin and Destination — Nigeria, available [ONLINE] at: <http://ec.europa.eu/anti-trafficking/entity.action?id=e226e9fa-e815-417e-b813-8c5a6eae6624> (accessed 9th of April 2012).

⁶¹ Na Wa Film Festival (Restricted Document from the UKHTC) see also UNODC, *Partnership Opportunities Trafficking in Persons and Smuggling of Migrants* (UNODC 2010).

As an organisation with common membership from both countries of study, the FCO could be instrumental to anti-trafficking cooperation but does not operate on such capacity as stipulated in chapter six. The same goes for Dfid which invests a large amount of development aid in Nigeria. Furthermore, there is limited engagement of UK/Nigeria NGO coordination/collaboration. Although UK NGOs like Hibiscus, AFRUCA, and Stepping Stones have tried to establish close relations with other NGOs in Nigeria, the link is still limited and the nature of their work in Nigeria is still under-developed. The interactions of these NGOs are crucial for strengthening the existing cooperation between Nigeria and the UK. International organisations like Action Aid continue to work on trafficking prevention programmes. With the absence of diaspora groups and other formal NGOs that could be a source of strength, this area remains largely untapped. NGOs from both countries lack the resources to carry out necessary work on this level or enable the consistency of their services. As such, there is no UK/Nigeria network of NGOs but instead, major NGOs engage mainly with NAPTIP.

As it stands, both countries have not been able to effectively work together in a way that would ensure the best outcome for those affected by trafficking. Without the necessary collaboration, victims are not properly identified and protected and the investigation that could lead to convicting traffickers remains challenging, thereby enabling the business to flourish while victims remain at risk. Despite the shortcomings identified in this existing bilateral cooperation to suppress trafficking, significant attempt has not been made to review the current MOU to reflect the reality of trafficking between Nigeria and the UK. In the light of what currently stands with regards to Nigeria/UK bilateral relation in combating trafficking, there is no doubt that there is a need to reappraise this partnership at all levels. Part of this review would include addressing some challenges that may stand in the way of future collaborations, starting with a

shared knowledge on the scale and nature of the problem; negotiation migration and the rights of people they intend to safeguard as well as build the capacity to be able to deal with matters arising. In order for Nigeria and the UK to adopt a comprehensive approach to cooperating against trafficking, both countries need to integrate the shortcomings illustrated in previous chapters into their future approach. This includes considering the human-centred approach in future deliberations as part of building knowledge and negotiating better bilateral agreements for anti-trafficking. The extent of such considerations is explored in the subsequent section of this chapter.

Shared Knowledge

In devising the best way for Nigeria and the UK to cooperate, one cannot isolate the need for 'shared causal beliefs, policy agenda and notions of validity' by both states.⁶² Although the Trafficking Protocol provides for a consensus of what trafficking constitutes, the MO of trafficking between several countries possess diverse characteristics. Such unique characteristics should be acquired by cooperating states so that they may have shared knowledge and understanding of the problem trafficking presents across their territory. For Nigeria and the UK the MO of trafficking across their territory needs to be understood by both countries in order to enable an intervention that best suits the issue being addressed and the expected goals for joint gains. According to Haas, "the definition of joint gains must be based on the goals of the actors and on the... "knowledge" that influence[s] the choice of goals."⁶³ There is a need for both states to arrive at a consensus on knowledge and to give consistency to the consensus on goals.⁶⁴ Following the profound difference in the

⁶² Thanh-Dam Truong, *Governance and Poverty in Sub-Saharan Africa: Rethinking Best Practices In Migration Management* (UNESCO, 2008) 710.

⁶³ Ernst B. Haas, 'Why Collaborate?: Issue-Linkage and International Regimes' (1980) 32 *World Politics*, No. 3, p. 361.

⁶⁴ *ibid* 365.

understanding of trafficking between Nigeria and the UK, while the UK seeks to collaborate with Nigeria as a source country, Nigeria perceives itself more as a destination country from other African countries and a source to few members of European countries. At present, Nigeria considers trafficking from Nigeria to the UK as insignificant in comparison to other European countries like Italy and the Netherlands. This explains the immense focus of collaboration with southern European countries as opposed to the UK. According to IPPR, “How trafficking to Europe is conceived, as well as how mechanisms for responding to trafficking to Europe are configured, is led by this understanding.”⁶⁵

Despite the acceptance of trafficking to other parts of Europe, there is still a sense of denial of trafficking from Nigeria to the UK as expressed by both Nigerian and UK authorities. A small number of Nigerian authorities interviewed for this study felt that trafficking was just another problem coined by the West to tarnish their reputation and that, many of these victims are not truly victims. Such perception is not scarce amongst community members in Nigeria as seen in the survey carried out by UNIBEN Observatory.⁶⁶ According to a British official who tried to establish talks with key Nigerian officials,

“I get the impression that trafficking is a problem that they [many Nigerian government officials] want to push under the carpet... because it makes mother Naija [Nigeria] look bad... they dismissed trafficking as a nonentity.”⁶⁷

⁶⁵ Myriam C., Jenny P. and Peter G., *Beyond Borders, Human Trafficking From Nigeria to the United Kingdom* (Institute for Public Policy Research (IPPR) 2013) 88.

⁶⁶ UNIBEN Observatory, *Prevailing Perception of Trafficking, Prevention and Anti-Trafficking Activities among Community Leaders in Edo State, Nigeria, Survey Report* (Benin - University of Benin Observatory 2011).

⁶⁷ Interview with now retired Met Police Officer (Andy Desmond) in Nottingham, UK (3rd August 2012).

Risse and Sikkink recognise such denial by Nigerian authorities as part of the socialization process under its "spiral model" of human rights change.⁶⁸ Risse and Sikkink contend that "Governments which publicly deny the validity of international human rights norms as interference in internal affairs are at least implicitly aware that they face a problem in terms of their international reputation."⁶⁹

Whilst knowledge sharing is important, what is most crucial is the volume of knowledge that has been shared and what makes up such knowledge? Nigeria and the UK need to arrive at some consensus as to the level of trafficking, what it constitutes and how it can be tackled together. The lack of information sharing with regard to the statistics of trafficking from Nigeria to the UK or collated by international monitoring organisations has not been helpful in making clear the real nature of trafficking between both countries. For instance, the latest TIP report on Nigeria does not present an accurate reflection of the scale of trafficking from Nigeria but instead bases its estimations on the amount of victims repatriated or rescued by NAPTIP.⁷⁰ The TIP does not also aggregate the prevalence of trafficking according to source and destination countries. Given that Nigeria utilises the TIP as a benchmark of its efforts, it limits the quest for cooperation with the UK.

Although NAPTIP works on all forms of exploitation associated with human trafficking, trafficking is still understood mainly from a sexual exploitation viewpoint. Such limited knowledge on what constitutes trafficking is not limited

⁶⁸ Thomas Risse, and Kathryn Sikkink, "The Socialization of International Human Rights Norms into Domestic Practices: Introduction" in Thomas Risse, Stephen C. Ropp and Kathryn Sikkink, (eds.) *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press, 1999) 23.

⁶⁹ *ibid* 23-4.

⁷⁰ US Department of State, 2010, Trafficking in Persons (TIP) Report 2010.

to NAPTIP but also to stakeholders and the Nigerian public as noted in a research carried out by the University of Benin in Nigeria.⁷¹ According to the research, people associate trafficking in Nigeria with prostitution in Italy.⁷² Domestic servitude is one of the areas of trafficking that is prevalent from Nigeria to the UK.⁷³ However, many Nigerian stakeholders including NGOs felt that this was an area vastly misunderstood and overlooked.⁷⁴ For the UK, there is a cultural barrier to building an understanding of domestic servitude as an offence, even though it is stipulated in legislation.⁷⁵

In Nigeria, it is perceived as a charitable act rather than exploitative.⁷⁶ This is because it is viewed as a form of low-level wealth distribution where richer families offer opportunity for domestic work in exchange for support, by way of education or monetary support.⁷⁷ This construct of servitude by Nigerian communities has contributed to the pervasive nature of trafficking captured in chapter two of this thesis. Existing traditional beliefs in Nigeria acts as a smokescreen to trafficking and skews the understanding of trafficking and the interventions employed. As such, cultures that allow servitude-cum-trafficking should be challenged and altered towards the prevention of trafficking by building knowledge towards appropriate behaviour. Altering such a perception is crucial for tackling trafficking between Nigeria and the UK through cross-cultural dialogue and internal discourse of these cultural factors. The latter will

⁷¹ UNIBEN Observatory, *Why Benin City? An Assessment of Edo State and Benin City Endemic Areas in Nigeria*, (University of Benin Observatory 2011).

⁷² *ibid.*

⁷³ CEOP, *Strategic Threat Assessment: Child Trafficking in the UK* (CEOP 2010).

⁷⁴ Cherti et al. *Beyond Borders* (n 65).

⁷⁵ UNIBEN Observatory, *Prevailing Perception of Trafficking, Prevention and Anti-Trafficking Activities among Community Leaders in Edo State, Nigeria, Survey Report* (University of Benin Observatory 2011).

⁷⁶ *ibid.*

⁷⁷ *ibid.*

include building knowledge and learning in addressing key perceptions/misperceptions that may serve as obstacle to cooperation.

According to Haggard and Simmons, “Cooperation is affected by perception and misperception, the capacity to process information, and learning.”⁷⁸ Truong also adds that “Interest has moved from the learning that is received from above, to a horizontal form of learning: accumulating knowledge through experimenting and engaging with daily experiences *in situ*.”⁷⁹ In recognition of the need to build new knowledge and learning to enable states change the way they think of an issue area, some scholars have suggested Haas's notion of epistemic communities and Habermas's 'communicative action. Haas proposes that the diffusion of new ideas through knowledge sharing can lead to new patterns of state behaviour for international policy coordination and epistemic communities possess the power to ensure this.⁸⁰

Within the context of anti-trafficking and the cooperation of states with diverse identity, epistemic communities can play a role in articulating the cause-and-effect relationships of complex problems, thereby helping states to identify their interest, framing the issues for collective debate, proposing specific policies and identifying salient points for negotiation.⁸¹ These communities are necessary for the UK and Nigeria to bridge the gaps of knowledge in order to address prevention, protection and prosecution simultaneously.⁸² Their involvement is significant for an evidence-based intervention.⁸³ As Haas puts it, “Knowledge

⁷⁸ Stephan Haggard and Beth A. Simmons, 'Theories of international regimes' (1987) 41 *International Organization* No. 3, 510.

⁷⁹ Truong (n 62).

⁸⁰ Haas (n 63) 3.

⁸¹ Peter M. Haas, 'Do regimes matter? Epistemic Communities and Mediterranean Pollution Control' (1989) 43 *International Organization* 377- 403.

⁸² Truong (n 62) 710.

⁸³ *ibid*.

becomes salient to regime construction only after it has seeped into the consciousness of policy makers and other influential groups and individuals. “⁸⁴

Habermas' theory of communication action is concerned with moving a discourse towards consensus and the role of non-state, multi-sector and multilateral actors is crucial for this process.⁸⁵ This has been noted in the way state governments have been made to realise the need to take action against trafficking as seen in the way Nigeria and the UK have been persuaded by 'norm entrepreneurs' to domesticate anti-trafficking legal instruments. There is a need for the UK and Nigerian stakeholders to engage in interactive processes that would lead to mutual understanding towards arriving at a consensus on particular norms and discourses. This involves going beyond what the law provides towards building mechanisms that will tackle the reality of the problem rather than limited to what the law currently provides. This includes ensuring that both countries have a common understanding of the issue as well as surrounding socio-cultural factors to inform the design of their partnership. While changes in consensual knowledge are needed for collaboration, it equally depends on the congruence of identity and interest in the issue area.⁸⁶ The major areas of conflation between Nigeria and the UK are the aspects of migration and human rights. As part of enabling cooperation these areas of trafficking need to be addressed by both states to come to a consensus that would be beneficial for anti-trafficking and those it intends to safeguard through their negotiations in this issue area.

⁸⁴ Haas (n 63) 369.

⁸⁵ Susan Kneebone and Julie Debeljak, *Transnational Crime and Human Rights: Response to Human Trafficking in the Greater Mekong Subregion* (Routledge 2012).

⁸⁶ Haas (n 63) 371.

Negotiating Rights or Negotiating Borders?

Eradicating human trafficking may seem as a common goal for both countries but as highlighted in chapter five and six, their interest in anti-trafficking differ. For the UK, border security, minimizing the cost of anti-trafficking and criminality tends to overshadow the human rights of Nigerian victims. Wide-ranging protection mechanisms allot enormous and costly resources to destination states. This is even doubled where most survivors from Nigeria do not engage in voluntary repatriation due to the potential dangers that may await them in their country of origin. In addressing these issues through cooperation, one has to contend with the politics involved in the bargaining process to deal with this problem. The Trafficking Protocol already makes trafficking a border control issue and pushes states towards the negotiation of borders over the negotiation of rights. In negotiating borders, destination countries often direct their focus into getting countries like Nigeria to dissuade its citizens from [illegal] migration rather than negotiating for safer migration for those who choose to move. This has been seen in ongoing prevention programmes where migration is demonised so that people are discouraged from emigrating into Britain.⁸⁷

It has been estimated that Europe will need an annual number of 1.6 million migrants if they were to maintain their current economic level by the year 2050.⁸⁸ This does not however guarantee the UK's ability nor willingness to meet the demands of migration from Nigeria especially bearing in mind that Nigeria is a country with over 160 million people, most of whom are in constant need to migrate for a better life. Whilst the UK [especially during the era of the Labour Party] acknowledges the economic benefits of selective labour migration, they

⁸⁷ Myriam C., Jenny P. and Peter G., *Beyond Borders, Human Trafficking From Nigeria to the United Kingdom* (Institute for Public Policy Research (IPPR) 2013).

⁸⁸ R. Vayrynen, 'Illegal Immigration, Human Trafficking and Organized Crime' (UNU-WIDER Discussion paper no. 27, 2003) 20.

were also keen to demonstrate that they are not 'soft' on immigration. At this time, Blair insisted

"We will be neither Fortress Britain, nor will we be an open house...precisely because stopping migration altogether would be disastrous for our country and economy, it is all the more vital to ensure the system is not abused. There are real concerns; they are not figments of racist imagination; and they have to be tackled precisely in order to sustain a balanced and sensible argument about migration."⁸⁹

However, the current Coalition Government has a different agenda that is immensely anti-immigration and completely insensitive to the insecurity it breeds for those at risk of trafficking. According to Giddens, "a distinct repertoire of social and political contention associated with migration and the presence of immigrants in the UK plays a large part in structuring responses to ostensibly 'new' migration challenges such as people smuggling and human trafficking."⁹⁰ Although the UK is keen to reduce trafficking into its territory, its identity, in terms of its history since the 1960s has been directed towards 'progressive shrinking of channels' for regular immigration.⁹¹

From the context of source countries like Nigeria, negotiating borders have not been its strongest points; especially where negotiations have been with

⁸⁹ Blair, T. 'PM speech to the Confederation of British Industry on migration' (27 April 2004) [online] Available at: <http://www.number-10.gov.uk/output/page5708.asp>, [accessed 8 May 2005] cited in Christina Boswell, Meng-Hsuan Chou and Julie Smith, *Reconciling Demand for Labour Migration with Public Concerns about Immigration: Germany and the UK*, (London: Anglo-German Foundation for the Study of Industrial Society 2005) 20.

⁹⁰ Anthony Giddens, 'Chronicle of a Crisis Foretold: The Politics of Irregular Migration, Human Trafficking and People Smuggling in the UK', (2005) 7 *The British Journal of Politics and International Relations* (3) 324.

⁹¹ *Ibid* 331.

European states. In the course of this study, the Home Office refused the Freedom of Information (Fol) put in to access the document containing the migration agreement between Nigeria and the UK.⁹² This would have been useful to understand the current mutual understanding between both countries with regards to immigration across their borders and its implication for anti-trafficking. Adepoju et al, contends that;

“Up to now, Nigeria, in their negotiations about migration agreements, has not yet succeeded in getting guarantees from Italy and other countries for the protection of its nationals abroad and / or ensuring that readmissions comply fully with international standards for the protection of the rights of migrants and trafficked persons.”⁹³

The UK's migration approach reflects its general identity with its EU counterpart but does not often reflect the identity or interest of its Global South partners.⁹⁴ Woud highlights that the EU for instance applies 'pure power politics' to defend its interests.⁹⁵ This unequal power relation is not uncommon between EU countries and the Global South countries like the France/Senegal 2006 agreement negotiations.⁹⁶ Although the positions of Europeans leaders often

⁹² Christina Boswell, Meng-Hsuan Chou and Julie Smith, *Reconciling Demand for Labour Migration with Public Concerns about Immigration: Germany and the UK*, (Anglo-German Foundation for the Study of Industrial Society 2005).

⁹³ Aderanti Adepoju, Femke van Noorloos and Annelies Zoomers, 'Europe's Migration Agreements with Migrant-Sending Countries in the Global South: A Critical Review' (2010) 48 *International Migration* (3) 51.

⁹⁴ *ibid.*

⁹⁵ F. Woud "'Terugkeer in het kader van internationale handelsverdragen: het geval – Cotonou'", in Adviescommissie voor Vreemdelingenzaken, *Advies terugkeerbeleid 2004* cited in Adepoju et al. (n 93) 65.

⁹⁶ Adepoju et al. (n 93) 65.

vary across different bilateral agreements, situations are often rather 'complex and contradictory'.⁹⁷

It is clear from all indications as seen in the literatures reviewed for this thesis that migration controls do not necessarily produce the desired results but instead fuels the migration 'black market' that stabilizes Nigerian trafficking operations. The problem with agreements and cooperation between the Global North and South is that, the northern countries like the UK are still dominant architects while the southern countries like Nigeria are often persuaded to 'fall in line'.⁹⁸ According to Haas, "issue specific negotiations tend to favour the coalition of states who have long had an interest in the issue and who dominate the resource."⁹⁹ Southern countries like Nigeria on the other hand reserve the responsibility to ensure that the specific interests and concerns of its citizens is highly considered in bilateral negotiations of this nature rather than being manipulated by conditions for receiving aid. Based on the empirical data gathered through this research, it is clear that benevolent actors are still acting in the best national/self interest and thus, there remains a long way to go in achieving 'fair bilateralism' and creating 'win-win' situations between Nigeria and the UK. Although, the ongoing growing discussion in this area offers a glimmer of hope in buttressing this relationship, the current limited resources in taking this forward is discouraging.

In order to cooperate against trafficking with regards to migration, it is essential for Nigeria and the UK to negotiate the rights over migration. As long as Nigeria maintains an environment that pushes its citizens to seek survival elsewhere, people would continue to seek ways to move whether legally or illegally. It is in the interest of Nigeria to secure the rights of its citizen in line with their related

⁹⁷ Adepaju et al., (n 93) 65.

⁹⁸ *ibid* 68.

⁹⁹ Haas (n 63) 371.

concerns. However, their appalling human rights record demonstrates otherwise, thereby shifting the burden onto Britain. Consequently, it is indirectly in the interest of the British Government to negotiate the rights of Nigerian citizens with the Nigerian government to reduce push factors that lead to illegal migration-cum-trafficking. One of the ways to tackle this includes directing its international development agenda into addressing and assisting with the advocacy of human rights and people-centred concerns which is beyond dissuading people from emigrating.

Furthermore, the very nature of trafficking in Nigeria presents an enormous challenge towards conceiving a comprehensive bilateral response in this context. The causes of trafficking from Nigeria are rather many and as a result, it requires wider developmental solutions that could be perceived as unrealistic or unachievable through smaller programmes.¹⁰⁰ As there is a limit as to how much the UK Government can make a difference through international development in Nigeria, empowering non-state actors including CSOs and individuals could go a long way in expanding the promotion of human rights that addresses the concerns of those it intends to protect. Negotiating rights involves the need for UK stakeholders and the international community to put immense pressure on the Nigerian Government to fulfil its obligation in ensuring the human rights of its citizens beyond just directing intervention on human trafficking. As Obokata and Todres contend, human rights violations are both causes and consequences of human trafficking.¹⁰¹ Thus, human trafficking cannot be tackled in ignorance of human rights.

¹⁰⁰ Cherti et al. *Beyond Borders* (n 87).

¹⁰¹ Tom Obokata, *Trafficking Of Human Beings From A Human Rights Perspective: Towards A Holistic Approach* (Martinus Nijhoff Publishers 2006); Jonathan Todres, *Widening Our Lens: Incorporating Essential Perspectives In The Fight Against Human Trafficking*, (2011) 33 *Mich. J. Int'l L.* 53-75.

According to Fukuda-Parr, "in the countries of origin, prevention should start with enhanced opportunities in employment, access to education, representation in power structures and, crucially, birth registration" amongst other means that promotes socio-economic rights.¹⁰² On the other hand, destination countries need to be realistic about their migration approach, as they are not "losing control of their borders because the migrants have become more dangerous or have perfected their methods."¹⁰³ According to Anthias,

"The best way to regain control is not to crack down but to liberalize- to expand quotas, with a guest-worker program or some other method, until they line up with labor needs. (...) It does not help to pretend that (migrants) are not arriving or to fantasize that tough enforcement can undo the laws of supply and demand."¹⁰⁴

Tough enforcement laws on migration have been proved to only make matters worse for anti-trafficking. Therefore, all stakeholders in anti-trafficking have to be engaged in this discourse (including victims and their communities) in order to arrive at solutions that mainstream the reality of the issues in policies introduced by both countries. Building the capacities of these stakeholders and coordinating their collaborations is therefore also crucial in this regard.

Building Capacities

As part of enabling cooperation, there is a need to build capacities from both sides. In the UK, there is a lack of knowledge that emanates from the diverse

¹⁰² Sakiko Fukuda-Parr, *New Threats to Human Security in the Era of Globalization*, (2003) 4 *Journal of Human Development: A Multi-Disciplinary Journal for People-Centred Development*, (2) 173.

¹⁰³ Magdalena Ionescu, *A Human Security Approach to Anti-trafficking Policies in the EU: Tackling the Structural Sources of Vulnerability* (undated).

¹⁰⁴ F. Anthias, "Gendering Migration: The Case of Southern Europe" in S. Ghatak and A. Showstack Sassoon (eds.) *Migration and Mobility: The European Context* (Palgrave 2001) 62.

socio-cultural factors that underpins trafficking from Nigeria. In Nigeria, there is lack of technical capacity in dealing with investigation request from the UK as well as the resources to build the required advocacy to address root causes of trafficking and loopholes in existing domestic laws. Socio-cultural factors challenge UK practitioners in dealing with cases of trafficking from Nigeria. As seen in chapter six, it hinders the proper identification of victims and complicates their ability to access support and justice. There is need for a better understanding of this socio-cultural factors in terms of coming up with indicators that can help UK stakeholders deal with victims identification (from Nigeria) effectively. Such education through the formal engagement of survivors could help practitioners see the issue through the victim's eyes and elicit the needed rapport to better understand cases in question.

This is by no chance an easy task especially in dealing with belief systems that are ingrained in peoples' way of life. Dealing with this factor requires strong prevention programmes that demands the full cooperation of Nigeria especially because the existing socio-cultural attitude stems from its territory. Families who are disempowered will continue to look for better alternative to better their lives and as seen in chapter five some communities have made elements of trafficking as far as socially acceptable. Whilst cultural practices like traditional fostering in Nigeria has experienced some merits in empowering families and their communities as highlighted in previous chapters, the loophole it provides for traffickers needs to be addressed. Similarly, like many other religious practices, African traditional religion is neither good nor bad. People have the right to choose/practice their religion but not to the detriment of the rights of others. It is the exploitation that this factors breed that needs condemning not the traditional religion itself, which many UK practitioners unknowingly concludes as brainwashing.

Advocating for a review in laws and policies at origin states like Nigeria is constantly missing in prevention programmes. Nigeria does not have the culture of proactively initiating policies that addresses the welfare of its citizens. For instance, except for trafficking, there are limited tangible government institutions that deal with issues of social exclusions that may indirectly fuel trafficking. Instead, Nigeria takes a reactive role in only attending to those already affected by trafficking. As part of building capacities, support from the UK to Nigerian institutions towards initiating the right policies to deal with some of these issues can be beneficial. This includes developing a child protecting policy to safeguard children in general and those who engage in fostering arrangements. There is need for Nigeria to engage in internal discourse with community leaders and members to begin to address the loopholes in some of its traditions and engage in finding better ways to address the exploitation it breeds with the support of international organisations already working on this issue in Nigeria.

In addition, stakeholders for anti-trafficking cannot be relegated to just professionals. Community leaders and faith leaders have to be engaged in the dialogue for initiating better intervention programmes that truly meets the needs of community members at risk. Another key voice that is often missing from anti-trafficking prevention programmes is that of the trafficked persons.¹⁰⁵ Their experiences present an added value to the messages of prevention programmes not just in terms of their testimony but also on their input towards an effective prevention programmes that are more human-centred. According to the ATMG, the first-hand experience of the victims can be useful in developing effective responses not just for stakeholders in the UK but could offer some added value for interstate cooperation.

¹⁰⁵ ATMG, *All Change: Preventing Trafficking in the UK* (Anti-Slavery International, 2012).

Conclusion

Empirical data gathered in the course of this study shows that there is a clear evidence of need for Nigeria and the UK to cooperate to address the prevalence of trafficking across their borders. In line with assessing their existing efforts in overseeing the latter, this chapter analysed the implementation of the 2004 MOU signed by both countries in this regard. The assessment of anti-trafficking measures between both countries underscores that the MOU has not been operationalized and has remained a political statement rather than an instrument that is intended for concrete actions towards anti-trafficking. Bilateral agreements provide an opportunity to capture context-specific situations that international instruments may not apprehend. However, although the 2004 MOU included all elements of the 3Ps, it is very generic and ambiguous. It did not attempt to take advantage of the possibility to tailor its contents alongside the reality of trafficking across both countries. Taking into consideration the timing of the MOU, this chapter does not overlook the fact that limited knowledge on trafficking could also explain the limitation of the MOU. However, even though the document created space for reappraisal to accommodate future changes and developments, it is yet to be revisited by both countries.

A number of contents of the MOU could be useful if put into action including identifying designated officers in both countries in charge of ensuring easy exchange of information that will enable investigations of trafficking cases and the repatriation of victims to their country of origin. However, these points of contact do not exist in line with the MOU and information sharing remains an ongoing problem for both countries. In the quest for various agencies in their own way to seek the cooperation of Nigerian agencies, they have been hindered by the lack of trust and bureaucratic nature of government institutions. Most importantly, more obstacles stand in the way of achieving future collaborations including the lack of shared knowledge of the problem, the

conflicting identities of both countries in augmenting the political will to address trafficking especially in addressing migration and human rights. There is also the absence of required capacity that could be useful for cooperation. Nevertheless, there is still a glimmer of hope for cooperation as long as non-states actors continue to push for the need to collaborate, making both governments aware of the true nature of the problem. Such advocacy would also involve a network of non-states actors from Nigeria and the UK as a starting point for appropriate deliberations.

Chapter Eight - Conclusion

Introduction

“Ending Slavery will be humanity’s watershed, separating the time of the truth that we are one people from the millennia of the great lie that some people are subhuman. Ending slavery will free each of us.”

Kevin Bales¹

The twenty-first century has witnessed the proliferation of different measures that have been put in place to end human trafficking through laws and policies by states as well as the activism of non-state actors in form of NGOs and scholars. This phenomenon is a living testimony to the negative impact which human trafficking has had on mankind. Therefore, the need to eradicate one of the greatest social menaces of this century has gathered momentum worldwide. As Bales puts it, this is indeed the ‘beginning of the end of slavery’ and there is a pressing need to invent and adopt comprehensive measures and a holistic approach to address the menace.² This thesis contributes to such an understanding having explored ways through which trafficking can be tackled and eliminated between the supply-side and demand-side countries. Against the backdrop of international human rights law, this study has reaffirmed the obligations of states in addressing human trafficking but also pushes the boundary of the human rights-based approach to include aspects that hinders its actualisation. It is for this reason that the human-centred approach was adopted in this study to point out elements of trafficking that are often overlooked within legal bounds but yet detrimental to the actualization of human rights.

¹ Kevin Bales, *Ending Slavery: How We Free Today’s Slaves* (University of California Press, 2007) 229.

² Ibid.

The human-centred approach does not add new obligations to states or anti-trafficking stakeholders but instead proffers new ways through which we ought to look at existing obligations and anti-trafficking approaches. From the findings of this study, it was apparent that the absence of a human-centred approach in the measures employed by Nigeria and the UK has impinged on the effectiveness of their anti-trafficking objectives for diverse reasons. This has also impacted on how they have cooperated so far hence, the application of international regimes theories in exploring the extent of their cooperation. In order to clearly advance the argument of the thesis, it interrogated two main aspects constituting the inherent problem of trafficking within the context of this study; and the quest to move beyond the legal parameters to fulfil the objectives of the anti-trafficking regime.

The Inherent Problem of Trafficking Between Nigeria and the UK

One of the main issues of trafficking as identified in this study is the problem of concept and how such understanding has affected the responses of the relevant stakeholders. Chapter two of this thesis made a case for three main typologies namely, migration, labour and sex work. Migration is a predominant factor that has mainly concerned the UK and Nigerian migrants who have viewed migration as a passport to a better life. The ongoing problem of migration is the difficulty in making clear demarcations between trafficking and smuggling. Despite the legal definitions of the two concepts, both can be viewed as 'two sides of a coin' with a great deal of 'crossover'.³ For states like the UK, migration threatens its national security and as such, it has officially regarded human trafficking as an immigration problem that

³ Blanka Hancilova and Petra Burcikova, "Anti-trafficking and Human Rights" in Christien van den Anker and Ilse van Liempt (eds.) *Human Rights and Migration: Trafficking for Forced Labour* (Palgrave Macmillan 2012) 228.

requires an anti-immigration approach. Although the UK has condemned the actions of traffickers and has declared its political will to eradicate trafficking by preventing the crime, protecting victims, and prosecuting traffickers, its 'best intentions' have not been practically actualised due to the approaches adopted. Some scholars like Hathaway argue that the legal regime of anti-trafficking favours the UK's concept of trafficking as it closely relates and gives ammunition to its anti-immigration agenda in the façade of protecting persons affected.⁴

The state-centric viewpoint of migration/trafficking nexus reflects the major difficulty in pursuing anti-trafficking measures. Restrictive borders as an anti-trafficking measure employed by the UK have led to three situations; it has increased the vulnerability of those at risk of trafficking; it has led to a disproportionate negative response to victims; and it has often resulted to re-trafficking. With the level of risk that some Nigerians are willing to undertake in order to secure a better life in the UK, restrictive migration has only increased the vulnerability of migrants; leading them into the hands of smugglers-cum-traffickers. As Feingold puts it, "trafficking is often migration gone terribly wrong".⁵ The immigration approach of the UK has significantly informed the policies of the UK with regards to its NRM victims' identification mechanism and the support that follows thereto.

With the UKBA in charge of assessing and confirming victims from Nigeria and the conclusion reached so far, the NRM system has been seen by UK CSOs as an anti-immigration hot seat. The migration status of victims and the associated crimes with it often takes precedence

⁴ James Hathaway, 'The Human Rights Quagmire of "Human Trafficking' (2008) 49 *Virginia Journal of International Law* (1) p. 1 – 59.

⁵ David A. Feingold, Human Trafficking (2005) *Foreign Policy*, No. 150, 32.

over victims' protection and support. As a result, ascribing victimhood as a gateway to support has been highly disproportionate where only less than ten per cent of referred Nigerians are concluded as trafficked as opposed to over ninety per cent when the referred persons are British. As it currently stands, victims' identification remains a problem that fundamentally undermines law enforcement efforts, as they are unable to identify or prosecute traffickers without first identifying the victims.

Re-trafficking sets in where lack of identification has led to deportation and also where significant consideration of the non-refoulement principle has been difficult to apply to replace repatriation. This study observes that after deportation victims tend to be re-trafficked back to the UK with a different identity. Where these victims have been repatriated, they lacked the protection, rehabilitation and reintegration that could protect them from being re-trafficked. Preventive programmes by European destination countries in Nigeria have often taken the stance of dissuading Nigerians from illegal migration and the risks associated with that venture. However, that has not stopped people from risking their lives everyday to cross borders with hope of bettering their lives.

For many Nigerians who live in extreme poverty, their poor situation is more severe than the exploitation that may result from trafficking. How does one deal with a set of people whose appetite and penchant for taking risk for material considerations are so high? It increases their susceptibility to exploitation and therefore the likelihood to volunteer themselves to be trafficked. Following the testimonies of some trafficked victims from Nigeria, rescue could be meaningless if the push factors that made them vulnerable in the first place have not been addressed hence, many opt to go back/stay with their traffickers, while

others confirmed that they would make the journey again, despite all the dangers, risks and vices associated with trafficking.

Addressing the push factors of migration that may increase a person's vulnerability to trafficking remains the prime responsibility of the Nigerian government. Although the Nigerian state has the onerous responsibility to prevent the occurrence of wrongful acts meted on its citizens and the obligation to respect, promote and fulfil the human rights of its citizens, it has failed woefully in this regard. Despite its massive oil wealth, economic conditions in Nigeria are severe and life is brutish as a result of endemic corruption and expropriation of state resources by a privileged few. More than seventy per cent of the population live below poverty line and subsist on less than one US dollar per day. This type of environment constitutes a veritable hindrance to anti-trafficking measures. As it stands, the country does not provide significant mechanism to enable the safe repatriation of its citizens nor an enabling environment that will protect victims from possible reprisals from their traffickers or even community members.

Consequently, Nigerian victims in the UK are in constant asylum legal battles to remain in the UK because of the dire economic conditions at home and the lack of the need protection. This is a failure for human rights. The Nigerian government has failed to appreciate the huge concerns of its citizens in eradicating human trafficking but rather aims at fulfilling the expectations of external actors whose foreign policies on the issue are used as a benchmark. In the light of the foregoing, Nigerian's anti-trafficking approach cannot supplant the inherent need to enhance its human rights record. Anti-trafficking should serve as an obligation of the state towards protecting and enhancing the welfare of its citizens.

With significant concern on human vulnerability, states are considered key actors driven by plural interests and, in this era of global competition, now stranded between three regimes of managing crimes, human rights, and economic proficiency.⁶ In order to ensure that human rights do not upstage migration, it is important to treat these three regimes as three dimensions of an interconnected whole.⁷ There is absolutely no denial of the importance of migration in human trafficking. Nevertheless, there is a need for a migration management framework that addresses the interest of states and the human rights /concerns of migration in enunciating enduring anti-trafficking polices.

Secondly, despite the interest of states and their various approaches to trafficking, Nigeria/UK trafficking also has to contend with cultural factors that impinge on anti-trafficking efforts. This includes local traditions that fuel trafficking and impinges on intervention efforts whether in the process of identifying and rescuing victims or in terms of fuelling its prevalence. Culture has emerged within this study in a number of ways including; how some Nigerian communities often perceive migration as seen above; the control mechanism; and traditional fostering system. Anti-trafficking stakeholders must take these cultural elements into consideration in addressing trafficking. However, at the moment, its absence in anti-trafficking measures has been detrimental to achieving the best results for trafficked persons. The peculiarity of trafficking from Nigeria is complicated by the unique control mechanisms adopted by traffickers as demonstrated in chapter four of this thesis that explores the MO of trafficking between Nigeria and the UK.

⁶ Thanh-Dam Truong, *Governance and Poverty in Sub-Saharan Africa: Rethinking Best Practices In Migration Management* (UNESCO 2008) 80.

⁷ *ibid.*

This control mechanism in form of traditional oath taking (juju contract) does not only operate to keep trafficked persons in bondage but also hinders victim identification and the actualization of a human rights-based approach. In the light of experiences of African traditional religion, this traditional oath taking instils significant fear of reprisal on victims that often dissuades them from giving evidence that could substantiate them as victims in need of support. This is a big dilemma that reflects in many cases of trafficking observed in this case study, which makes the actualization of anti-trafficking measures very complex. With the difficulty on how to deal with this peculiarity and the recognition of this element in the UK criminal justice system coupled with its anti-immigration mandate, trafficked victims are criminalized and therefore, fail in obtaining justice. This aspect of trafficking calls for in-depth research into ways of integrating such peculiarity towards addressing the complexities it presents in resolving human trafficking cases from Nigeria.

Culture is also implicated in the aspect of child trafficking through the traditional fostering system in Nigeria. The concept that encompasses the notion of childhood in Nigeria is often shaped by the belief and norm that children are a source of wealth to their parents. Children tend to fall prey to domestic servitude which is a commonly accepted form of child labour in many Nigerian communities. Even though the laws of Nigeria condemn this notion, the practice has found commonplace in the culture of many communities through the 'house boy/girl' system, a euphemism for traditional fostering. As McGillivray puts it, "We are blinded by our context, our place in history, our socialisation from knowing not only how children are treated but how they should be treated".⁸

⁸ Anne McGillivray 'Why Children do have equal rights: In reply to Laura Purdy' (1994) 2 *International Journal of Children's Rights* p. 243 – 258.

The perceptions, ideas and attitudes toward children in pre-colonial era on fostering have been rendered impracticable by the quest for materialism and increasing level of poverty in Nigeria.⁹ This has resulted to some parents freely giving their children away for domestic servitude in the UK or in some cases, deceived into such agreement. This study does not condemn the traditional fostering in Nigeria but instead highlights the need to take account of its shortcomings in terms of the loophole it creates for trafficking and child abuse. Cultural factors create a smokescreen for trafficking and also affect how different communities have reacted to trafficking.

As the survey carried out by Uniben Observatory shows, families who have been enriched by the 'profits' of trafficking do not often support anti-trafficking projects.¹⁰ This survey identified assets like houses, commissioned by victims/survivors of trafficking alongside boreholes, second-hand vehicles claimed to be proceeds from these trafficked persons who are members of these communities.¹¹ These so-called 'profits' gained by trafficked victims have drowned the voice of reasoning in major source communities and has advertised trafficking as a contributor to community development which drives many to fall prey to traffickers.¹² In fact, some community leaders went as far as undermining the experiences of trafficked victims, saying that whatever these victims/survivors were doing was better than arm-

⁹ R.A. Okunola and A.D. Ikuomola, 'Child Labour in Fostering Practices: A Study of Surulere Local Government Area Lagos State, Nigeria' (2010) 5 *The Social Sciences*, Issue: 6, 493-506.

¹⁰ UNIBEN Observatory, *Prevailing Perception of Trafficking, Prevention and Anti-Trafficking Activities among Community Leaders in Edo State, Nigeria, Survey Report* (University of Benin Observatory 2011); 57 respondents (community leaders) were interviewed for this report.

¹¹ *ibid.*

¹² *ibid* 11.

robbery.¹³ On the other hand, some others perceived trafficking as resulting from greed.¹⁴

Arsing from the issues highlighted above and the need for shared responsibilities in addressing trafficking from the demand and supply states, it is evident that Nigeria and the UK require strong anti-trafficking collaborations/cooperation. Although Nigeria and the UK signed an MOU in 2004 to address human trafficking across their territory, no pragmatic approach has been taken to practicalize it. Whilst a bilateral agreement presents an opportunity to address the gaps in trafficking policies identified so far, the MOU can at best be described as moribund. Its content as reviewed was too vague and ambiguous in many instances and does not reflect the world and the problem it intends to change and address respectively. It is a matter for regret that both countries failed to utilise the opportunity offered by the MOU to advance positively the urgent, and burning issue of trying to whittle down the pervading problem of human trafficking across their borders.

Albeit, this study did not overlook the fact that limited knowledge due to the timing of the MOU could help explain some underling limitations of the MOU. This includes the fact that at the design stage NAPTIP had only just been established and UKHTC did not exist at all until 2006. However, the agreements made provision for occasional review, which has not taken place to date. Cooperation between Nigeria and the UK in the main, suffers from administrative problems which include information sharing, mistrust amongst law enforcement authorities, bureaucracy, limited capacity and above all a shared knowledge and absence of consensus on the norms of trafficking within its true context.

¹³ *ibid.*

¹⁴ UNIBEN Observatory, *Why Benin City? An Assessment of Edo State and Benin City Endemic Areas in Nigeria* (University of Benin Observatory 2011).

Trafficking derives most of its clout from its scope and prevalence. However, there seems to have been a lack of consensus between Nigeria and the UK on the prevalence of the issue between their borders. To the UK, Nigeria presents a strong challenge to anti-trafficking within its territory, making up to seventeen per cent (17%) of the UK's total referrals of trafficking from over seventy (70) countries.¹⁵ Hitherto, Nigeria does not perceive the UK as an urgent case for trafficking intervention in comparison to other parts of Europe. The explanation could be located on how Nigerian stakeholders perceive trafficking and the suspicion that interventions are driven by the level of aid provided by destination countries for anti-trafficking measures in Nigeria.

Nigeria conceives trafficking as a problem of prostitution thereby, overlooking other forms of trafficking like domestic servitude. Nuances of domestic servitude resonate in the cultural trends in Nigeria and many citizens including prominent anti-trafficking stakeholder hardly associate it with the semantics of trafficking as explained earlier. This conflict in the understanding of trafficking and reaching a consensus has undoubtedly undermined the importance of addressing trafficking within this case study in terms of prompting the needed cooperation. It is for this reason, amongst others that this thesis proposed the need to take broader steps towards addressing the inherent dilemma of trafficking within the context of study by adhering not just to the law but moving beyond what it provides in order to address contested norms as identified in this study.

¹⁵ Author's correlation of National Referral Mechanism Statistics Report between January and December 2012 - Serious Organised Crime Agency (SOCA).

Anti-Trafficking Regime: Beyond Legal Framing

The anti-trafficking regime has not lacked the support of international law especially in promoting international cooperation and compliance, at the very least, by setting minimum standards in addressing human trafficking. This is evident in the provisions of the Organized Crime Convention, EU anti-trafficking laws and the multilateral treaties adopted by ECOWAS. Viewing the aspirations of these international laws through the lens of rule compliance leads to insufficient analysis and understanding of the diverse complex elements inherent to trafficking and oversimplifies the relation of trafficking and socio-cultural, economic and political realities. While States and crusaders of anti-trafficking must always apply the law in their quest to eradicate this modern day slavery, they have to consider that the law is not the only significant factor in addressing human trafficking.¹⁶ In analysis of the international laws against human trafficking, some limitations were apparent. For instance, the principles of the Trafficking Protocol have aligned themselves closely to the interest of states and, as a result, have proven to be inadequate in dealing with the issues highlighted in this study. According to scholars like Todres, the failure of the anti-trafficking regime started from the design stage following the principles of the Trafficking Protocol and its law enforcement framing.

Whilst the domestication of the Trafficking Protocol by Nigeria and the UK could be seen as a positive progress towards compliance, its interpretation and implementation has remained problematic. As demonstrated in this study, the practice of trafficking are embedded in social relations and as a result remain diverse. It is difficult to generalise

¹⁶ Ryszard Piotrowicz, "Human Security and Trafficking of Human Beings: the Myth and the Reality" in Alice Edwards and Carla Ferstman (eds.) *Human Security and Non-Citizens: Law, Policy and International Affairs* (Cambridge University Press 2010) 418.

about interpretations across different states like those of this case study with diverse identity and interest. Some anti-trafficking stakeholders have insisted that trafficking in Africa do not entirely fit into the international definition.¹⁷ The trafficking Protocol does not reflect the peculiarities of trafficking from Nigeria and therefore does not set a substantial foundation for cooperation with the UK. Just as this thesis proposes the conceptualization of trafficking beyond legal parameters, it also asserts that such proposal should be integrated in the cooperation of states.

Each of the theories explored in this study namely realism, liberalism and constructivism offered an insight in explaining why and how states cooperate within the anti-trafficking regime at present. The realist regime are most relevant to the US sanction regime with a realist framing and the Trafficking Protocol, EU and ECOWAS which are consistent with the liberal approach with the assumption that states possess a common interest to combat trafficking. Without denying the points made by the realists in terms of the status quo of anti-trafficking cooperation, the constructivists' standpoint best caters for the diversity that abounds cooperating states like Nigeria and the UK. The diversity inherent in trafficking between Nigeria and the UK and the identified gaps in addressing the problem can only be achieved through a shared understanding by both states while taking into consideration their history, social, cultural and political underpinnings.

Such understanding could emerge through communicative processes that include the cross-cultural interactions between states through persuasion, arguments and knowledge building currently absent in the case study. With the inclusion of highly represented epistemic

¹⁷ UNESCO, *Human Trafficking in Nigeria: Root Causes and Recommendations* (Policy Paper Poverty Series n° 14.2 (E) Paris 2006) 74.

communities and the engagement of relevant stakeholders, both countries of study stand the chance of reaching a consensus in norms that integrate contextual gaps that transcends legality in actualising the rights of those affected by trafficking. In devising the best way for Nigeria and the UK to cooperate, one cannot isolate the need for 'shared causal beliefs, policy agenda and notions of validity' by both states.¹⁸ It is for this reason that this research proposes some policy recommendations that may enhance the status quo of cooperation between Nigeria and the UK as part of adjusting their individual policies, starting with revisiting their bilateral cooperation.

Recommendation

With emphasis on the UK, there is an urgent need to reform how immigration has been linked to anti-trafficking approaches utilised in the UK and as seen within this study. It should commence with changing how the NRM is currently managed given that at the moment, it deters victims from seeking help. UKBA as a competent authority restrictively assigned to assess third national victims relegates UK's measures to border control. So far, this has undermined the impact of anti-trafficking activities. A fair assessment would mean ensuring that all victims regardless of their nationalities are accessed indiscriminately. There is no denial that migration is a crucial factor in trafficking and the UKBA has a role to play. Nevertheless, their role should remain at the borders to intercept traffickers as well as introducing a 'bridging visa' for identified victims of trafficking as required for their protection. Its migration approach should aim at policies that address fundamental vulnerabilities and not one that drives the business underground.

¹⁸ Thanh-Dam Truong, *Governance and Poverty in Sub-Saharan Africa: Rethinking Best Practices In Migration Management* (UNESCO 2008) 710.

The identification of Nigerian victims has been recognized in this thesis as one of the core problem for the UK and the obstacles to dealing with the issue. Apart from the anti-immigration factor, there is a need to build the capacity of UK stakeholder through training programmes to better understand the indicators of trafficking from Nigeria. This includes providing various practitioners with the capacity of comprehending socio-cultural factors that form part of trafficking from Nigeria. Essentially, this will enable them to inculcate a human-centred approach in the way in which they identify, associate, recognise and actualize the rights of Nigerian victims. This cannot be achieved without the multisectoral collaborations of all stakeholders in the UK. This could be beneficial for harmonising existing anti-trafficking measures in the UK and deriving value for money in UK's current investment in anti-trafficking.

Furthermore, the UK must also ensure that it fulfils its obligations towards protecting the rights of those who have been trafficked. This includes ensuring that they are not criminalized due to crimes they committed under duress. Instead, the UK Government should take measures to ensure that the Crime Prosecution Services incorporates the non-criminalization principle in its anti-trafficking policies within its criminal justice system. In addition, criteria for accessing victim's support should reflect the experiences of victims to accommodate them rather than a select few. The UK Government must also ensure that victims are returned voluntarily and safely in a way that guarantees that they would not be exploited and re-trafficked. As this requires shared responsibilities with the source country, this measure should be well integrated into their bilateral cooperation.

The Nigerian government has a major role to play especially with regards to tackling the supply of trafficking to the UK. The Nigerian

Government has to invest more on tackling other human rights issues that increases the vulnerability of its citizens to trafficking. This includes tackling cultural practices that leads to abuse and discrimination; issues associated with social exclusion; poverty and corruption in Nigeria. While NAPTIP must be better funded, the Nigerian Government should also ensure the establishment of other institutions that would better address the aforementioned factors that undermines anti-trafficking activities. Essentially, trafficking cannot be addressed in Nigeria solely by NAPTIP but requires measures that address the concerns of its citizens. Therefore, the Nigerian government must make it its mission to restore the confidence of its citizens to its governance by taking bold and clear steps in addressing their welfare. This includes ensuring that existing laws reflect the status quo.

Specifically, the Child Rights Act 2003 must be amended to eliminate the loophole for child trafficking. Child protection and safeguarding measures must be put in place to counter child abuse and social exclusions that may lead to child trafficking. The current NAPTIP Act must also be amended to include mechanisms that protect Nigerian citizens during and after repatriation. Action must also be taken to address the aspect of 'juju contract' associated with trafficking in order to find an appropriate approach to deal with it keeping in mind the potential ethical issues. In addition, Nigerian stakeholders must also endeavour to work with the UK to address areas of share responsibility.

Firstly, both countries must create an opportunity for dialogue towards reaching a consensus on the problem of trafficking and developing appropriate measures. Such platform for dialogue could potentially lead to shared knowledge and consensus between both countries. Subsequently, the 2004 MOU between Nigeria and the UK to suppress human trafficking must also be reviewed and reinstated as a functional

document. The reviewed MOU should include concrete measures that would enable better information exchange, MLA and extradition. Specifically, there should be clearly appointed officers designated with the duty to oversee/coordinate the operationalization of the MOU. In addition to this designated officers, there is a need for the appointment of National Rapporteur in each country to oversee the independent monitoring and evaluation of trafficking and anti-trafficking beyond what currently exists. National Rapporteurs could be crucial to the continuous assessment of cooperative measures [both bilateral and multilateral] and best practices amongst states.

Secondly, with regards to the prosecution of traffickers, the UK and Nigeria need to consider engaging in joint investigations and police exchange programmes for the purpose enhancing investigations of trafficking cases. Police exchange programme enables exchange of knowledge, informal police-to-police cooperation and good police practice. Although most prominent in Europe, Nigeria and the UK may consider its usefulness in enabling better law enforcement cooperation through the platforms of Police Colleges in both countries. Both the Nigerian Police and the Met Police possess intelligence critical to dismantling trafficking networks. Although the Nigerian Police lack the technical capability and the essential ethics in practice as highlighted in chapter six, the UK can profit from their local knowledge. The Nigerian Police also needs to be critically sensitized on the consequences of its complicity to trafficking and the Nigerian Government must take the necessary steps to criminalize such actions that fuel trafficking.

The role of international actors has been crucial to addressing trafficking in both countries. Embassies, international organisations like the IOM, ILO, UNODC, UNICEF, USIAD, as well as CSOs and individuals

have all been catalyst in enhancing anti-trafficking efforts in both Nigeria and the UK. However, with ongoing duplications and limited resources, there is a need to establish an international network of all organizations tackling trafficking for the harmonisation of anti-trafficking activities through joint work and resources that would allow for projects that are both sustainable and long-term as opposed to existing projects, which are short-term, and in piecemeal. Such international network could be beneficial to UK and Nigerian agencies that are in dire need of international cooperation towards addressing the issues that trafficking currently presents. In order to make this networks inclusive, membership especially from Nigeria should go beyond CSOs handpicked by NAPTIP to including other human rights organisations working in Nigeria.

Above all, there is need for all stakeholders to adopt a human-centred approach that ensures the overall safety of persons affected without prejudice to their nationality or status in the community. Human rights should be paramount in all strategies of anti-trafficking from rescuing and rehabilitating victims, protecting them from their traffickers and granting them economic independence that is sustainable for their livelihood in order to avoid re-trafficking. Part of a human-centred approach involves sensitizing communities in Nigeria about the importance of victims' reintegration and the supportive role they can play in safeguarding and helping victims reconnect with their communities. It is only after this has been accomplished that the victims can be true survivors of trafficking. At this stage, it is pertinent that anti-trafficking agencies engage these survivors in prevention programmes, as their first-hand experiences are the key to communicating the true nature of trafficking to relevant individuals and bodies.

This thesis also presents opportunities for further research in various elements of trafficking especially in exploring the effect of culture in both constructing and addressing human trafficking; expanding the application of the human-centred approach; amongst other opportunities for research. Human Trafficking continues to destroy the lives of many and must be eradicated in maintenance of human dignity. Today, more organizations, scholars, activist and individuals have amassed to advocate for the end of today's slavery. Despite the incredible progress made so far, the war against slavery continues. As Skinner puts it, today's slavery is "a war worth fighting" and we cannot overlook the people who unfortunately, bear the brunt of it all in the process.¹⁹

¹⁹ Benjamin Skinner, *A Crime So Monstrous: Face-to-Face with Modern-Day Slavery* (Free Press 2008) 287.

APPENDIX I

Memorandum of Understanding on Co-operation to Prevent, Suppress and Punish Trafficking in Persons, Freedom of Information (FOI) request from the Home Office, 26 October 2011, FOI ref. - CR19858 [Re-typed]

**MEMORANDUM OF UNDERSTANDING
ON CO-OPERATION TO PREVENT, SUPPRESS
AND PUNISH TRAFFICKING IN PERSONS
Between
The Government of the Federal Republic of Nigeria**

And

The Government of the United Kingdom of Great Britain and Northern Ireland

Dated 17th November 2004

**MEMORANDUM OF UNDERSTANDING
ON CO-OPERATION TO PREVENT SUPPRESS AND PUNISH TRAFFICKING IN PERSONS**

Between

The Government of the Federal Republic of Nigeria

And

The Government of the United Kingdom of Great Britain and Northern Ireland

The Government of the Federal Republic of Nigeria and the Government of United Kingdom of Great Britain and Northern Ireland (henceforth referred to as the “participants”),

Recalling our commitment to, and obligations under, all relevant international legal instrument, and in particular the following legal instruments:

- i. The United Nations Convention on the Rights of the Child, of 20 November, 1989;
- ii. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, of 25 May, 2000;
- iii. The Convention adopted by the General Conference of the International Labour Organization on 26 June 1973 (convention number 138, Minimum Age Convention);
- iv. The Convention adopted by the General Conference of the International Labour Organization on 17 June 1999 (convention number 182, the Worst Forms of Child Labour Convention);

- v. The Convention on the Elimination of All Forms of Discrimination Against Women, of 18 December 1979;

Determined to work together and co-operate having regard to the United Nations Convention Against Transnational Organized Crime and its supplementing protocol to Prevent, Suppress, and Punish Trafficking in Persons Especially Women and Children;

Noting that In line with the United Nations Convention Against Transnational Organised Crime and the Protocol there to referred to above, the Government of the Federal Republic of Nigeria has enacted the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act 2003 and created a specific agency to enforce the law;

Noting further with deep concern the negative economic and social consequences of trafficking in persons and the resultant human rights abuses and the social implications to the society at large;

Realizing the urgent need to jointly tackle the menace of trafficking in persons at the source, in transit and in destination countries and to prosecute and confiscate any proceeds of crime;

Determined to deny safe haven to those who engage in trafficking in persons to co-operating on the international level, to detect and prosecute such criminal activity wherever it occurs;

Conscious of the rights of and the need to assist victims of trafficking;

Considering the resultant well-being of children and the mutual benefits from co-operation between the two participants; and

Noting the forthcoming Memorandum of Understanding “The Bilateral Policing Agreement” between the Nigerian National Police and The Commissioner of Police of the Metropolis;

Have reached the following understanding:

DEFINITION OF TERMS

1. For the purpose of this Memorandum, the following terms and expressions are defined as follows:
 - i. “Trafficking in Persons” will mean the recruitment, transportation, transfer, harbouring or receipt of persons by means of the threat, or use of the 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 purposes of sexual exploitation. The consent of the victim of trafficking in persons to the intended exploitation will be irrelevant where any of the above means has been used or where a victim is a child.
 - ii. “Child” means a person under eighteen years of age (and “Children “will be construed accordingly).
 - iii. “Competent Authority” in the context of this Memorandum means in relation to each Participant, the agencies responsible for the prevention, and suppression of trafficking

in persons or any other persons so designated by the Participant of this Memorandum.

- iv. "Exploitation" as explained in Article 3 of the UN Protocol include at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, child pornography, forced labour, or services, slavery or practices similar to slavery, servitude or the removal of organs.

OBJECTIVES

2. The Participant in accordance with the provisions of this Memorandum will co-operate with and assist one another as requested or on their own initiative while observing the laws, regulations and procedures of their own states.
3. In particular, the objective of the memorandum are:
 - v. To facilitate international co-operation, develop common goals and prevent, suppress and punish trafficking in persons;
 - vi. To protect victims of trafficking, and to provide them with assistance to enable reintegration into their original environment;
 - vii. To provide mutual support, capacity building and strengthening of institutional capabilities to effectively prevent, suppress and punish the offences of trafficking in persons, and;
 - viii. To promote co-operation between the participants with a view to attaining the above mentioned objectives.
4. This Memorandum will not prevent the participant from using other mutually acceptable forms of co-operation whilst observing the laws, regulations and procedures of their own States.

CO-OPERATION

5. The participants acknowledge that persons who commit human trafficking offences should be prosecuted wherever they may be and that where possible steps should be taken to confiscate the proceeds of such offending.
6. The participants will, in accordance with and consistent with the laws and regulations in force in their respective States and the provision of this Memorandum, establish mutual co-operation in order to prevent, suppress and punish trafficking in persons.
7. The participants will, in accordance with relevant national laws and regulations exchange relevant information with a view to preventing, suppressing and punishing trafficking in persons.
8. The participants will exchange contact telephone numbers, fax numbers and e-mail address of competent authorities with the aim of exchanging information on all matters connected with this Memorandum.
9. Each participant will nominate agencies responsible for arranging co-operation and exchanging contacts under this Memorandum. Within three calendar months of the date this Memorandum is signed, each participant will notify the other, in writing, of the name and address of a single point of contact within the designated agencies.
10. The participants will provide advice to each other relating to the law and procedure in their respective jurisdictions relating to the provisions of mutual legal assistance and the extraction of persons sought for trial punishment.
11. In relation to an offender, the extradition of whom is sought by one of the participants, the other participant will be subject to the laws

governing extradition to and from its jurisdictions, offer such assistance, as it is able, to ensure that the offender is brought to justice..

12. The participants will, subject to the laws governing the provision of mutual legal assistance within their respective jurisdictions provide such assistance, as they are able to obtain any evidence that may be requested in a form admissible in the jurisdiction of the requesting participant.
13. Any information provided or exchanged between the participants orally, or in writing for the purposes of the implementation of this Memorandum will be considered confidential and used in conformity with conditions that may be laid down by the providing participant.
14. For the purpose of further implementation of the objectives of the Memorandum, the participants will exchange relevant legislations and regulations in force in their respective states, and the results of research and studies concerning the subject matter of this Memorandum for the information of the competent authority in each participant's state.

OTHER BASES FOR CO-OPERATION

15. This Memorandum will not prevent either of the participants from co-operating and granting assistance in accordance with the provisions of any applicable international treaties and agreements or by any other means.

STATEMENT OF VICTIMS OF TRAFFICKING IN PERSONS

16. The participants will provide such assistance, as they are able to facilitate the proper identification of victims.
17. The participant will consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons and will in appropriate cases co-operate with non-governmental organizations in the provision of:
 - i. Counselling and information s regards their legal rights; and
 - ii. Medical psychological and material assistance.
18. The participants will take such measures, as they are able, to protect the privacy and identity of victims of trafficking.
19. The participants will not subject any victim of trafficking in persons to degrading ;or inhumane treatment and will to the extent, that they are legally bound to do so provide for the physical safety of victims of trafficking in persons in their respective jurisdictions.
20. The participants will apply whatever measures are available to protect victims from potential retaliation or intimidation, including in cases where the victim gives evidence in relation to the prosecution of persons for offences covered by this Memorandum.
21. The participants will facilitate and accept without undue or unreasonable delay the return of victims of trafficking in persons to their country of origin having due regard for the safety of that victim.
22. The participants repatriating a victim of trafficking in persons will have regard to the safety, human rights and well being of such a victim and will allow the victim, subject to provisions in legislation relating to proceeds of crime, to return with their property and possessions.

CAPACITY BUILDING AND STRENGTHENING OF INSTITUTIONAL CAPACITIES

23. The participants agree within their available funding capacities and in line with acceptable procedures of funding, to assist each other in strengthening their enforcement, prosecution, administrative, research, public enlightenment, and rehabilitation capacities by way of providing requisite equipment and training of personnel.
24. The participants agree that they will each promulgate the objectives of the Memorandum in the respective international organizations to which they belong and will encourage other States to co-operate in a similar manner.

CONSULTATION

25. The participants will consult one another with the aim of making arrangements for the continuing and effective implementation of this Memorandum. They will, resolve any difficulties arising in connection with Memorandum through consultation and negotiation.

STATUS OF MEMORANDUM

26. This Memorandum is a statement of goodwill only and is not intended to impose any legal obligation whatsoever on either of the participants.

FINAL PROVISIONS- COMMENCEMENT AND TERMINATION

27. The participants will take necessary measures in accordance with the procedural requirements of their respective countries to implement this Memorandum.
28. This Memorandum will come into operation on signature and will continue in operation unless terminated by either participant giving written notice to the other.
29. Any disagreement relating to the interpretation and application of this Memorandum shall be resolved by the participants according to principles of mutual understanding and respect. Nevertheless after consultation, notification and agreement the participants may in the spirit of mutual understanding amend or alter this Memorandum at any time.
30. Amendments or additions may only be made to this Memorandum with the written consent of both participants. Such amendments will be in accordance with national law and procedure.
31. This Memorandum does not establish any new international and interstate legal obligation for the participants and their States and does not affect any of their present international obligations. Co-operation within this Memorandum shall be effected through the constant willingness of the parties aimed at adopting practical decisions in combating trafficking in persons and other related organized crime and in the co-operative spirit, which characterizes this document.

The forgoing record represents the understanding reached between the Government of the Federal Republic of Nigeria and the Government of the United Kingdom of Great Britain and Northern Ireland.

Signed in duplicate in London, England on 17 November 2004.

Name: CHIEF AKINLOLU OLUJINMI
SAN, FCI. Arb

Designation: HON. ATTORNEY
GENERAL
OF THE FEDERATION &
MINISTER OF JUSTICE
For the Government of the Federal
Republic of Nigeria

Name: HARRIET HARMAN

Designation: H.N SOLICITORS
GENERAL

Signature: THE RT. HON. HARRIET, QC,
MP

HON. SOLICITOR- GENERAL AND
MINISTER
For the Government of the United
Kingdom of Great Britain and
Northern Ireland.

Appendix II – List of Interview

No	Organisation	Interviewee	Location
1.	UKHTC	Mark Walters	Birmingham, UK
2.	UKHTC	Mike Hand	Birmingham, UK
3.	UKHTC	Anonymous	Birmingham, UK
4.	UKHTC	Anonymous	Birmingham, UK
5.	Commonwealth	Anonymous	Birmingham, UK
6.	British High Commission	Anonymous	Lagos, Nigeria
7.	University of Benin	Prof. C. E. E. Okojie	Abuja, Nigeria
8.	University of Benin	Prof. Eghafona Kokunre	Benin, Nigeria
9.	Victims of Trafficking	Fosa	Benin, Nigeria
10.	Victims of Trafficking	Ada	Benin, Nigeria
11.	Victims of Trafficking	Efe	Benin, Nigeria
12.	Victims of Trafficking	Rose	Benin, Nigeria
13.	Victims of Trafficking	Mary	Benin, Nigeria
14.	Victims of Trafficking	Nkem	London, UK
15.	Victims of Trafficking	Onome	London, UK
16.	Victims of Trafficking	Taye	London, UK
17.	Nigerian Immigration Service	M. Babandede	Abuja, Nigeria
18.	NAPTIP	Head of Research	Abuja, Nigeria
19.	NAPTIP	Investigations Department	Abuja, Nigeria
20.	NAPTIP	Counselling and Rehabilitation	Abuja, Nigeria
21.	NAPTIP	Legal Department	Abuja, Nigeria
22.	NAPTIP	Anonymous	Abuja, Nigeria
23.	NAPTIP	Mrs Oguejiofor on behalf of the Executive Secretary	Abuja, Nigeria
24.	NAPTIP Enugu	Ijeoma	Abuja, Nigeria
25.	NAPTIP	Arinze	Abuja, Nigeria
26.	Social Action	Damien Ugwu	Lagos, Nigeria
27.	Cleen Foundation	Kemi Asiwaju	Abuja, Nigeria
28.	Nigerian Immigration	Emman Ogbumuo	Lagos, Nigeria
29.	Idia Renaissance	Anonymous	Benin, Nigeria
30.	Embassy of the Netherlands	Peter Jacobs	Abuja, Nigeria
31.	KOSODO, Benin	Sister Ekene	Benin, Nigeria
32.	Victoria Climbié Foundation	Mor Dium	London, UK
33.	Researcher/Journalist	Chiara Caprio	London, UK

	- Aljazeera		
34.	Hackney Council - LSCB	Leethen Bartholomew	London, UK
35.	Nigerian High Commission	Anonymous	London, UK
36.	Metropolitan Police	Lee Moreton	London, UK
37.	Crown Prosecution Service	Anonymous	London, UK
38.	Anti Slavery International, UK	Aidan McQuade	London, UK
39.	Migrant Rights Network	Don Flynn	London, UK
40.	Research consultant	Anonymous	London, UK
41.	Research consultant	Anonymous	
42.	Society for Family Health	Anonymous	Lagos Nigeria
43.	ECOWAS	Anonymous	Abuja, Nigeria
44.	Solicitor	Anonymous	London, UK
45.	Solicitor	Anonymous	London, UK
46.	Metropolitan Police	Andrew Desmond (retired)	Nottingham, UK

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