

Traditional “juju oath” and human trafficking in Nigeria: A human rights perspective

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SUMMARY

Human trafficking in Africa is currently on the increase due to its benefits to the perpetrators. Despite the African Union’s (AU) functional commitment and other African seminal initiatives, to combat trafficking, the menace has remained un-stemmed. Noticeably, to date, women and children are the most vulnerable groups in human trafficking across the world. Africa remains the hub of human trafficking considering the predominance of poverty and conflict within the continent. The prevalence of women and children being trafficked, mainly for prostitution, has compounded the HIV/AIDS infection rate in Africa. In Nigeria, cross-border women and children trafficking for prostitution has been on the increase, as traffickers adopt various means of obtaining slaves. One of the means of recruiting women and children is to subject them to a traditional oath of silence ceremony. This control mechanism is to silence victims and trap them in debt bondage and it has been extremely effective in its implementation. Victims are subjected to the oath prior to their departure from Nigeria to ensure debt commitment and non-disclosure of the identity of the traffickers. However, in the event of non-compliance and violation of the oath by the victims and family members, illness and ultimate death may suddenly occur. The efficacy of the oath as a control mechanism is tantamount to torture as defined by international law. In light of the forgone, this study explores the use of the Oath of Silence in human trafficking and the vulnerabilities, which cause women and children to become victims of human trafficking. Hitherto, the study gives a snapshot of the gross human rights violations that occur therein. Finally, the study proposes new ways forward in safeguarding the rights of individuals.

1 Introduction

Human trafficking refers to the process through which human beings are placed or maintained by force in an exploitative state for economic gain within a country and across borders.¹ Women and children are trafficked for various purposes, such as forced labour in factories, farms or private

1 Msuya “Tradition and Culture in Africa: Practices that Facilitate Trafficking of Women and Children” 2017 *Dignity: A Journal on Sexual Exploitation and Violence* 1.

households, forced marriages and sexual exploitation.² Some of the identified underlying causes of trafficking include inequalities within and between countries, a growing demand for cheap and disempowered labour and increasingly restrictive immigration policies.³ Violence, discrimination and poverty are considered to be amongst the factors, which also increase individual vulnerability to trafficking.⁴ Recently, there has been a widespread acceptance of the need for a human rights-based approach to human trafficking, as human rights form a central core for this new understanding.⁵ The Global Report on Trafficking indicates that 79 percent of women and girls are the predominant victims of sexual exploitation form of human trafficking.⁶ The rate of Nigerian women and children who have been trafficked to European countries for prostitution has increased in the past three years.⁷ Nigeria is considered the leading country in cross-border human trafficking in Africa.⁸ A well-organised gang has created a highly successful trafficking operation.⁹ One of the procedures they use to recruit victims of human trafficking is to subject them to a traditional oath ceremony, which is an extremely effective control mechanism to silence victims and trap them in debt bondage.¹⁰ Victims are subjected to this ritual prior to leaving Nigeria to ensure that they will pay their debt and keep silent about the identity of the traffickers.¹¹

Women and children who are trafficked under the influence of this traditional oath ceremony are uniquely vulnerable to sexual violence and forced servitude, in addition to being subjected to other conditions which render the individual predisposed to being victimised.¹² The evidence of the use of traditional oaths has come to light since early 2000s, as it largely fell outside the recognised push and pull factors that characterise

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- 2 United Nations Human Rights *Human Rights and Human Trafficking Fact Sheet No 36* (2014) 1.
 - 3 ACCORD “Nigeria: COI Compilation on Human Trafficking, Austrian Centre for Country of Origin & Asylum Research and Documentation” 2017 ACCORD 2.
 - 4 International Organisation for Migration (IOM) “Analysis: Flow Monitoring Surveys the Human Trafficking and Other Exploitative Practices Prevalence Indication Survey: May 2016 - August 2016” 2016 *IMO* 2.
 - 5 Loring, Engstrom, Tricia and Mariel “Globalization and Human Trafficking” 2017 *The Journal of Sociology & Social Welfare* 4.
 - 6 Ezeh *Human Trafficking and Prostitution Among Women and Girls of Edo State, Nigeria Possibility of Rehabilitation through Education and Prevention* (2017) 8.
 - 7 Damon, Swails and Laine “The Sex Trafficking Trail from Nigeria to Europe,” *CNN* (2018-03-21) 2; United States Department of State *2018 Trafficking in Persons Report – Nigeria* 2018 3.
 - 8 United States Department of State *2018 Trafficking in Persons Report – Nigeria* 2018 3.
 - 9 Ellis *This Present Darkness: A History of Nigerian Organised Crime* (2016) 17.
 - 10 Europol “Joint Action to Tackle West African Human Trafficking Networks” *Europol* (2014-06-12).
 - 11 Baarda “Human Trafficking for Sexual Exploitation from Nigeria into Western Europe: The Role of Voodoo Rituals in the Functioning of a Criminal Network” 2016 *European Journal of Criminology* 259.
 - 12 Damann *CNN* (2018-03-21) 3.

human trafficking for exploitation and enslavement.¹³ Subsequently, international instruments and national legislation around the globe, which criminalise trafficking and related crimes, present a gap in addressing the use of traditional and religious beliefs to assert control for trafficking and assist the victims. The surviving victims of trafficking have been silenced for too long by this oath, and they have been denied justice due to their failure to speak.¹⁴ Nevertheless, the traditional oath ceremony is not yet formally recognised as a systematic mechanism, which creates vulnerability and entrapment for human trafficking victims. Numerous human rights abuses occur at different stages of the trafficking sequence, including denial of incontrovertible rights, such as the right to life, security and liberty, and the right not to be subjected to torture and/or cruel, inhuman or degrading treatment or punishment.¹⁵

This paper seeks to provide a brief but comprehensive overview of the use of traditional “juju oath” in the human trafficking of women and children and its impact on women and girls. It aims to both identify and address ways in which human rights violations arise through the use of traditional oath in the trafficking cycle in Nigeria. It seeks to answer the following questions: What underlies the use of traditional oath of silence (OoS) ceremony in human trafficking in Nigeria? How has the trend affected women and children? What are the vulnerabilities that cause women and children to become victims of human trafficking? In addition, what breach of human rights occurs during this process? The paper, which is an exploratory case study, takes the hypothetical perspective that violations of human rights are both a cause and a consequence of trafficking in persons, making the promotion and protection of human rights particularly relevant to the fight against this.

2 Conceptualising human trafficking

What constitutes human trafficking has been agreed recently internationally in the 1990s, when states initiated the task of separating out trafficking from other practices like facilitated irregular migration, with which this practice was commonly associated.¹⁶ In 2000, the United Nations came up with the first agreed definition of trafficking and incorporated it into the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (Trafficking Protocol).¹⁷ The protocol serves as a legal framework for the domestic legislation of its member states across the globe.¹⁸ The protocol

13 Daman CNN (2018-03-21) 3.

14 Siddarth “Juju’s Control is Powerful” *BBC News* (2014-10-14) 1.

15 Ikeora “The Role of African Traditional Religion and ‘Juju’ in Human Trafficking: Implications for Anti-trafficking” 2016 *JLWS* 8.

16 United Nations (2014) 2.

17 Nigeria signed this Convention on 2000-12-13 and ratified it on 2001-06-28.

18 United Nations (2014) 3.

is one amongst three supplemental protocols to the main international instrument in the fight against transnational organised crime called The United Nations Convention against Transnational Organised Crime of 2000. The major aim of the Protocol is to ensure that trafficked persons are treated as victims instead of criminals and are entitled to specific human rights protections, such as temporary shelter, temporary resident status, medical care, psychological services, access to justice and compensation or restitution. Article 3 of the protocol defines trafficking in persons as follows:

[T]rafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used ...¹⁹

The definition therefore establishes three main components, which must be present in a situation of the existence of human trafficking, which are: (i) action or recruitment; (ii) means threat; and (iii) purpose or exploitation. In other words, the protocol defines human trafficking by stipulating how it is performed (the means), what is done (the act), and why it is done (the purpose). The definition comprehends all forms of exploitation, and not sexual exploitation alone. Other previous definitions of human trafficking referred to only women and children, but this definition recognises that all individuals may qualify as targets of trafficking. Therefore, the Trafficking Protocol is a momentous landmark on the road towards an internationally recognised, standardised definition of human trafficking.

The global legal definition set out above suggests that the level and assortment of possibly exploitative practices related to trafficking is very broad. It has set out a list of example situations in an open-ended manner for any new or additional exploitative purposes, which may be identified in the future. In addition, the definition covers both trafficking which takes place within a country and across its borders. Therefore, human trafficking does not require the crossing of an international border to take place, and it is legally possible for trafficking to take place with a domestic jurisdiction of any state, including that of its victims. The main features set out clearly the difference between trafficking and migrant smuggling. Migrant smuggling does not involve eventual exploitation, as

19 Art 3 of the Trafficking Protocol.

is the case with trafficking.²⁰ The illegal, facilitated movement across international borders for profit in smuggling may involve deception and/or abusive treatment for obtaining profit from such movement.²¹

Trafficking does not always require the movement of victims, as the definition of trafficking pinpoints movement as one feasible way in which the “action” element can be satisfied. Terms used in the definition, such as “receipt” and “harboring”, mean that trafficking does not just refer to the process whereby someone is moved into situations of exploitation, it also include the maintenance of that person in a situation of exploitation.²² The “means” element of the definition of human trafficking makes it impossible for a person to “consent” to trafficking. The consent is immaterial and cannot be used as a defense once it is established that coercion, deception, force, or other forbidden means have been used. International human rights laws have always recognised that the intrinsic inalienability of personal freedom renders consent irrelevant to a situation in which this personal freedom is taken away.²³

The Protocol elaborates further on human trafficking which involves children, in article 3(c) which states that, in trafficking cases where children are involved, “the recruitment, transfer, transportation, harboring or receipt of a child for the purpose of exploitation shall be considered trafficking in persons, even if this does not involve any improper means such as coercion, deception, etc.”²⁴ Therefore, the Protocol acknowledges that a person under the age of 18 cannot be considered to give lawful consent in any circumstance. Under this definition, the “means” component is not required. Therefore, in the situation of trafficking of children, it is necessary to establish that there is an “action” like recruitment, buying and selling, and that this action is for the specific purpose of exploitation. Child trafficking is considered extant if a person under the age of 18 is subjected to some act, like recruitment or transport, for the purpose of exploitation of that person. These definitions have been incorporated into many other legal instruments and domestic laws.²⁵

The Protocol under article 5 confers duties to state parties to criminalise any conduct as set out in article 3 in domestic legislation. The new international standards describe trafficking in terms of how the

20 Baarda “Human Trafficking for Sexual Exploitation from Nigeria into Western Europe: The Role of Voodoo Rituals in the Functioning of a Criminal Network” 2016 *European Journal of Criminology*, 258.

21 Ezeh (2017) 10.

22 United States Department of State, Office to Monitor and Combat Trafficking in Persons 2014 *Trafficking in Persons Report – Nigeria*.(2014) 9.

23 United Nations Office on Drugs and Crime. *Division for Treaty Affairs Legislative Guides for the Implementation of the United Nations Convention against Transnational Organised Crime and the Protocols Thereto* (2004) 70.

24 Art 3(c) of the Trafficking Protocol.

25 United Nations Office on Drugs and Crime (2004) 27.

victims are exploited, and in terms of the victims being in transit.²⁶ This protocol is also very helpful for the protection of victims. The implementation of the trafficking protocol is monitored within the context of regular conferences held for state parties to it. The primary purpose of these conferences is the exchange of information and experience and the improvement of international cooperation between state parties with the protocol as a controlling body, which could force a ratifying state to act in a certain manner. There are three major categories of trafficking in persons identified in Africa. These are trafficking in children, mostly for domestic work and farm labour within and across countries; trafficking of women and girls for sexual exploitation, primarily outside the African region; and trafficking in women from outside the African region for the sex industry.²⁷ Factors such as poverty, internal and external conflict, unemployment, lack of access to education, poor law enforcement, porous borders, cultural misconceptions or abuse, HIV/AIDS, and regional conflict are identified as enabling and contributing factors to human trafficking in Africa.²⁸

3 Human trafficking and human rights

Human trafficking is a crime, as well as a gross violation of human rights.²⁹ The links between human rights and the fight against trafficking are manifold. This is because, from the beginning, human rights laws have clearly proclaimed the essential immorality and unlawfulness of one person taking hold of labour, the legal personality or the humanity of another.³⁰ Human rights laws demand equality and prohibit discrimination based on race and sex; and they decry and outlaw forced labour, arbitrary detention, forced marriage, debt bondage and the sexual exploitation of children and women.³¹ They also champion the right to leave and return to one's own country and freedom of movement.³²

In reality, human trafficking and associated practices child labour, sexual exploitation, forced labour, forced marriage and debt bondage are themselves violations of basic human rights and are prohibited under international human rights law. Victims of trafficking are entitled to the

26 Harrop "Ties that bind: African witchcraft and contemporary slavery" *Liberty and Humanity* (2012-09-17) 2.

27 Adepoju "Review of research and data on human trafficking in Sub-Saharan Africa" In Laczko and Gozdzik (Eds.), *Data and Research on Human Trafficking: A Global Survey* (2005) 79.

28 Ruby & Benjamin "Anti-Trafficking Legislation in Sub-Saharan Africa: Analysing the Role of Coercion and Parental Responsibility" 2012 in *Fourth Annual Interdisciplinary Conference on Human Trafficking* 17.

29 United Nations Department of State 2017 *Trafficking in Persons Report* (2017) 3.

30 United Nations (2014) 4.

31 United Nations (2014) 4.

32 Thipanyane "Human Trafficking: African Perspective" *JURIST* (2015-03-23).

full range of human rights because human rights are universal.³³ Women and children are amongst the groups, which are specifically recognised under international human rights laws as requiring additional or special protection.³⁴ International human rights consider different human rights to be relevant at different points in the trafficking cycle. Some are particularly relevant to the sources of trafficking.³⁵ This occurs when a violation of human rights leads to an increase in the vulnerability of a person, for example a violation of the right to an adequate standard of living.³⁶ Other human rights are applicable to the actual process of trafficking. Finally, certain human rights concern the response to trafficking, such as the right of access to justice, the right to effective remedies, and the right to a fair trial.³⁷

The relationship between human trafficking and human rights is very clear, and it does not essentially follow that human rights will be at the centre of responses to trafficking; rather it places the victims at the centre of actual and credible action. The human rights-based approach extends the emphasis to the root causes, which underlie trafficking, maintaining exemption for traffickers, as well as denying justice to its victims.³⁸ For example, patterns of discrimination, a demand for goods and services resulting from exploitation, the unfair distribution of power, and the complicity of the public sector.³⁹ Likewise, human rights laws acknowledge that states are responsible for protecting the rights of all persons within their territory, even non-citizens, and have a legal responsibility to eliminate trafficking and related exploitation.⁴⁰ Victims of human trafficking are treated as a commodity, their basic rights are disregarded and they cannot make their own decisions, enjoy freedom of movement, or choose to work where they wish. When addressing human trafficking, a human rights approach is required to restore both the dignity and wellbeing of victims.⁴¹

In the human rights-based approach, the rights of a person should be central to any anti-trafficking strategy. This approach seeks to identify and redress the discriminatory acts and unequal distribution of power, which underlie human trafficking. The fundamental principles in a human rights-based approach to such trafficking include self-representation, empowerment and the participation of those affected by trafficking.⁴² It requires the surviving victims of trafficking to be free,

33 Msuya (2017) 3.

34 Msuya (2017) 4.

35 Sawadogo "The Challenges of Transnational Human Trafficking in West Africa" 2012 *African Studies Quarterly* 97.

36 Obokata "Trafficking of Human Beings as a Human Rights Violation: Obligations and Accountability of States" In *Trafficking of Human Beings from a Human Rights Perspective towards a Holistic Approach* (2016) 18.

37 Obokata (2016) 18.

38 United Nations (2014) 7.

39 United Nations (2014) 7.

40 United Nations (2014) 8.

41 Obokata (2016) 19.

42 United Nations (2014) 8.

active and empowered to reflect their opinions in relevant policies and programs. This is referred to as the participation of rights holders and is recognised in a number of international instruments.⁴³

4 Traditional oath ceremony and human trafficking in Nigeria

The International Organization for Migration (IOM) report indicates that in the last three years there has been a rapid increase in the number of girls documented at hotspots, landing sites or detention centres who are victims of human trafficking.⁴⁴ Albeit that trafficked women and children are from all West African countries, 80 per cent of them claim to have originated in Nigeria.⁴⁵ Most of the people who are trafficked from Nigeria to other parts of the world, such as Italy, Austria, Spain and Russia, are women. A significant number of them are minors who are trafficked for purposes of sexual exploitation.⁴⁶

The traditional oath ceremony has been reported as being one of the powerful means, which is used to control human trafficking victims.⁴⁷ It reaches to the depths of their psychological vulnerability, combined with other push/pull factors mentioned above which render women and children vulnerable to being trafficked. Most victims of trafficking are recruited from rural areas, specifically Nigeria’s southern regions, with a few of them being from urban areas.⁴⁸ Data exacted from 29 counties indicates that Nigerian traffickers exploit most of the victims from Nigeria.⁴⁹ It has been established that most of the victims of sex trafficking started to work for their traffickers in exchange for leaving sex trafficking themselves.⁵⁰ Victims of trafficking are subject to a popular traditional oath ceremony with a priest who is referred to as “juju priest” before departure for their work abroad.⁵¹ Traditional oaths are part of a supernatural ritual, which plays an important role in African customary practices.⁵² The role of the traditional oath is complex and needs to be understood in the context of African traditional beliefs instead of some sort of exotic practice. Some traffickers exploit this tradition and use it as a means of silencing their victims.⁵³

43 United Nations (2014) 8.

44 IOM “Human Trafficking Through the Central Mediterranean Route: Data, Stories and Information” 2017 *IOM* 3; United States Department of State *2018 Trafficking in Persons Report – Nigeria* 2018 3.

45 IOM (2017) 4.

46 Ingwe and Ugwu “Transnational Crime, Human Rights Violation and Human Trafficking in Nigeria’s oil rich Niger Delta” 2012 *RJSP* 67.

47 Ikeora, (2016) 4.

48 Nwauche “Law, Religion, and Human Rights in Nigeria” 2008 *AHRJ* 569.

49 IOM (2017) 14.

50 Nwauche 2008 *AHRJ* 570.

51 Nwauche 2008 *AHRJ* 570.

52 Ikeora, (2016) 5.

53 Ikeora, (2016) 6.

Traditional beliefs, values and morals are woven into daily life and customs through practices and rituals, which have been passed down from generation to generation-in Africa.⁵⁴ Despite the widespread practice of Christianity and Islam in Nigeria, the traditional customs, laws and practices remain a strong foundation within communities.⁵⁵ Many Nigerian citizens are either Muslim or Christian, but still live under the influence of traditional culture.⁵⁶ They believe that their traditional culture is something, which applies to everything in the universe as God in heaven delegates varying degrees of power to divinities who are referred to as gods or deities, giving them particular domains of influence.⁵⁷ It is also believed that there is the existence of two worlds: a visible one, which is earth; and an invisible one, which is heaven. Both worlds are regarded to be full of life, with humankind as inhabitants of the earth who are linked to God as the creator and part of the invisible world.⁵⁸ Humankind has a duty to turn parts of the universe into sacred objects, and to use other things for sacrifice and offerings as a system of connecting these worlds.⁵⁹ These objects are believed to contain mystical supremacies that connect the oath swearer with the divinities and represent the contract, which has been made.⁶⁰

Faith in the visible and invisible worlds is very strong in Nigeria, as it has been spread over generations, so traffickers do not need to control the way the trafficked victims think of the oath.⁶¹ Traffickers merely take advantage of an existing belief and abuse it. The traditional faith also comes with the belief in order and structure, which comprises moral order amongst the people, mystical order, the laws of nature and religious taboos.⁶² It is believed that only people who have access to the power in the universe can maintain mystical order. The belief in this order is held by many societies in Africa that there is supremacy in the universe, which comes from God, and that power is available to spirits and to particular persons.⁶³ The faith in this mystical order is shown clearly in the practice of magic, witchcraft, traditional medicine and sorcery.⁶⁴ The persons who have access to the power are capable of seeing the deceased, see certain sights, hear certain voices, have visions, receive premonitions of coming events, communicate at a distance without using physical means, foretell certain things before they happen

54 Aiyedun and Ada "Integrating the Traditional with the Contemporary in Dispute Resolution in Africa. 2016 LDD 160.

55 Welton *Belief and Ritual in the Edo Traditional Religion*, (MA Thesis, University of British Columbia (1964) 41.

56 Welton (1964) 41.

57 Welton (1964) 42.

58 Nwauche 2008 *AHRJ* 570.

59 Nwauche 2008 *AHRJ* 570.

60 Women's Link Worldwide *Trafficking of Nigerian Women and Girls: Slavery across Borders and Prejudices* (2015) 12.

61 Ikeora (2016) 4.

62 Mbiti *Introduction to African Religion* (2015) 18.

63 Ikeora (2016) 4.

64 Ikeora (2016) 5.

and perform miracles which cannot be done by other people.⁶⁵ People who have access to these powers are intermediaries in both worlds who connect the visible and invisible worlds.⁶⁶ These people include priestesses, priests, kings, medicine men, diviners, seers and oracles. Prayers, sacrifices or offerings are made to the invisible world through those powerful people as a form of respect to the deities and to the ancestors.⁶⁷

The traditional oath ceremony is applicable in many circumstances in Nigeria, including weddings.⁶⁸ Oaths and rituals for infidelity are applicable in the traditional marriage ceremony of those who adhere to traditional religious practices.⁶⁹ The oath-taking for infidelity has been reported to occur even in some independent churches in the Yoruba tribe, since certain traditional religious practices are integrated into the church.⁷⁰ There is a popular saying and belief amid Yoruba people that being a Christian does not deter one from performing rituals "*igbagbo ko ni kama soro*". In churches, the woman will be required to kneel and put her hand on the Bible in order to receive the "aura of the oath".⁷¹ It is also reported that in some churches, the ritual takes the form of a "blood oath", where one of the couple is cut and the other swears on the blood.⁷² The traditional oath is also applicable in marital faithfulness at a shrine or divinity, before a traditional medicine person, or on the bank of a river or stream. In addition, traditional oaths are sworn for a range of reasons, including proving innocence after an accusation of infidelity, the prevention of infidelity and a promise to be faithful as a newlywed wife. These oaths are usually administered by the chief priest, a traditional priest or, among Christians, by a pastor or priest.⁷³

The traditional oath is also used in the justice system, as historically an important function of oracles, priests, tribunal elders and spiritual leaders was to maintain justice. In the pre-colonial era, spiritual leaders were vital within the judicial system.⁷⁴ Resolutions and sentencing were based on morals and natural laws instead of written laws.⁷⁵ To date, despite the existence of international law, domestic law and globalisation, traditional justice and political systems are still in use.⁷⁶ These are used as a method of determining the veracity of evidence in a traditional dispute

65 Nwauche 2008 *AHRJ* 570.

66 Nwauche 2008 *AHRJ* 570.

67 Welton (1964) 57.

68 Welton (1964) 58.

69 Nwauche 2008 *AHRJ* 570.

70 Nwauche 2008 *AHRJ* 571.

71 Ekeke and Ekeopara "God, Divinities, and Spirits in African Traditional Religious Ontology," 2010 *American Journal of Social and Management Sciences* 209.

72 Ekeke 2010 *AJSMS* 209.

73 Ikeora (2016) 6.

74 Ellis *This Present Darkness: A History of Nigerian Organised Crime* (2016) 77.

75 Ellis (2016) 77.

76 Oraegbunam "The Principles and Practice of Justice in Traditional Igbo Jurisprudence" 2009 *OGIRIS: A New Journal of African Studies* 55.

settlement proceeding in Nigeria. The procedure is more applicable in customary law arbitration amongst the Igbo tribe and is commonly used in crime detection in respect to very serious crimes.⁷⁷ It is used as a last resort in adultery, land and defamation dispute settlements.⁷⁸ Traditionally, women and children were not allowed to participate in the more destructive forms of this oath.⁷⁹ The oaths in the justice system take many forms, but the common one is swearing on a dreaded “juju”, where the oath is worded in such a way that the swearer raises on themselves a conditional curse and agrees to be punished if they lie.⁸⁰ Subsequently, parties to such disputes are supposed to wait for a period of one year for the verdict of the swearer, as it is believed that false swearers die or are afflicted with grave misfortune within a year of taking the oath.⁸¹ If it happens that the swearer survives for a year after taking the oath without death or any severe illness, he or she will be considered innocent and the dispute will be settled in his or her favour.

Swearing the oath prior to leaving the country is viewed within the context of the traditional justice system as a pact with the gods and insurance that the crime of stealing will not occur.⁸² If the swearer breaches the promise, it will not only offend the gods, but also break a natural law for which there will be consequences.⁸³ The affirmative of this oath activity is all about sealing a contract. However, traffickers exploit this tradition and tell those being trafficked that they must obey every order or a curse will harm them.⁸⁴ This prevents victims from seeking assistance or cooperating with law enforcement. During the ceremony, the swearers are required to give personal items to the shrine priests to create an object; these including underpants, saliva, menstrual blood, hair or fingernails.⁸⁵ It is clear that the oath is very frightening for women and girls, ensuring their silence and obedience. Women and girls in Nigeria have been rendered entirely incapable of resisting criminal acts and human rights violations through this traditional oath ceremony.⁸⁶ In fact, even when they have been identified as victims and removed from a trafficking situation by state authorities, they do not cooperate, and hence hinder the authorities attempting to provide sufficient protection to them. Most of the victims refuse to discuss their experiences and end up making oblique references only.⁸⁷ Some of the things, which are believed to happen when the swearer does not honour the oath, include, but not limited to, the following:

77 Oraegbunam 2009 *A New Journal of African Studies* 55.

78 Ekeke (2010) 2010.

79 Ekeke (2010) 209.

80 Nwauche 2008 *AHRJ* 571.

81 Nwauche 2008 *AHRJ* 571.

82 Daman CNN (2018-03-21) 2.

83 Daman CNN (2018-03-21) 2

84 Daman CNN (2018-03-21) 2

85 Okojie, Okojie and Vincent-Osaghae *Trafficking of Nigerian Girls to Italy: Report of Field Study in Edo State Nigeria* (Masters Dissertation, University of Benin, Country (2003) 17.

86 Okojie (2003) 17.

87 Ellis (2016) 77.

- (i) Not being able to have a child, or dying in the process of giving birth by excess bleeding that would never stop;
- (ii) That the swearer or her parents will die;
- (iii) That the family of the swearer will be destroyed;
- (iv) That the swearer will become insane.⁸⁸

Mechanisms of human trafficking are countless, concealed and variable, with the common systematic feature of imposition and maintenance of order.⁸⁹ Trafficked persons are usually recruited by intermediaries, middlemen or agents who are known as madams, ma’am or masters in Nigeria.⁹⁰ Thereafter, they pass along the trafficking chain under tight control. It is distressing to note that the individual of first contact and middlemen are often family members and friends and not entirely strangers. The familiar relationship element makes it easy for a victim to accept what is happening to her, and makes it difficult for authorities to conduct investigations and bring about prosecutions.⁹¹ Other victims’ family members encourage them to obey their traffickers and endure exploitation to earn money. The relationship element also makes the imposition of traditional oaths easy, believable and readily accepted, especially when the agents of trafficking present themselves as successful within their communities. This places a premium value on wealth and emigration to a better place, regardless of the means used to achieve this.

In some accounts of the oath ceremony, the amount of debt is agreed on during or before the ceremony and is performed as a contract entered into between the trafficker and the one being trafficked for the purposes of secrecy, adherence, confidentiality and repayment of the cost of the victim’s journey, which is determined by the traffickers themselves.⁹² The victims often cooperate and take the oath voluntarily, although under deceptive promises. Most of them are usually not aware of the extent of the debt and the exploitative circumstances under which they will have to work.⁹³ Many victims are unaware of the value of exchange rates for money they are promising to pay back whilst taking the oath, as this is mostly communicated to them in Euros.⁹⁴ When the victims arrive in Europe they come to realise that the amount of money they have sworn to pay is too large and unaffordable.⁹⁵ When they are told, they will have to pay back a certain amount, they usually think in terms of the Naira, which is Nigeria’s currency.⁹⁶ They thus end up working for their traffickers for a long period. Often the traffickers give the victims false

88 Ekeke (2010) 210.

89 Nwauche 2008 *AHRJ* 569.

90 Nwauche 2008 *AHRJ* 569.

91 Nwauche 2008 *AHRJ* 570.

92 Nwauche 2008 *AHRJ* 571.

93 Nwauche 2008 *AHRJ* 572.

94 Nwauche 2008 *AHRJ* 572.

95 Okojie (2003) 18.

96 Okojie (2003) 19.

promises of legitimate employment and traditions to gain psychological control over them.⁹⁷

Victims are subjected to different types of the traditional oath ceremony. Some types of the traditional oath ceremony are specific to certain shrines.⁹⁸ There is no clear data on how many trafficked women and children from Nigeria have undergone the oath as the ceremony is meant to be secret and undisclosed.⁹⁹ It is assumed that there are more instances of the use of the traditional oath in trafficking than are currently being revealed.¹⁰⁰ It is noted that some of the victims may have made such oath covenants many times in their lives for other things that are not connected to human trafficking.¹⁰¹ It is a common practice, which they grow up with. Human trafficking cases have brought many challenges to the law enforcers in Nigeria, where victims are controlled by traditional oaths and withhold information, claim not to remember, or return to their traffickers to fulfil their agreements.¹⁰²

5 Traditional oath, and violation of human rights in trafficking

Many practices associated with human trafficking are undoubtedly outlawed under human rights laws. The use of traditional oath ceremony as a control mechanism in trafficking goes against numerous human rights instruments, apart from the Trafficking Protocol. The Universal Declaration of Human Rights of 1948 (UDHR) was the first international human rights instrument to acknowledge in its preamble that the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world”.¹⁰³ Article 1 of the UDHR declares that everyone is born free, with equal dignity and rights. The Declaration prohibits, amongst other things, all forms of slave trade, servitude and slavery or slave-like practices.¹⁰⁴ Article 13(1) guarantees the right to freedom of movement and residence in any state to all, while the right to freely choose employment and to obtain just and favourable conditions of work is declared under article 23(1) of the UDHR.¹⁰⁵ There are numerous other relevant human rights treaties, which inform responses to trafficking in persons at a global level, which include:

- (i) Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW).

97 Okojie (2003) 19.

98 Okojie (2003) 19.

99 Welton (1964) 78.

100 Welton (1964) 78

101 Nwauche 2008 *AHRJ* 572.

102 Siddarth *BBC News* (2014-10-14).

103 First Paragraph of the Preamble of UDHR of 1945.

104 Art 4 of UDHR of 1945.

105 Art 23(1) of the UDHR.

- (ii) Convention on the Rights of the Child, 1989 (CRC).
- (iii) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2000.
- (iv) United Nations Convention against Transnational Organised Crime, 2000 (UNCAOC).
- (v) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990.
- (vi) International Covenant on Civil and Political Rights, 1966 (ICCPR).
- (vii) International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR).
- (viii) Convention on the Elimination of All Forms of Racial Discrimination, 1965 (CERD).
- (ix) International Labour Organisation Convention No. 29, 1930 (ILOC).
- (x) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1981 (UNCAT).
- (xi) Protocol to prevent, suppress and punish trafficking in Persons, especially in Women and Children, 2000 (UN TIP Protocol).

The two major international human rights instruments, CEDAW,¹⁰⁶ and CRC contain substantive reference to trafficking,¹⁰⁷ while others prohibit practices associated with trafficking, including slavery, child sexual exploitation, servitude, enforced prostitution and the exploitation of prostitution resulting from traditional oath practices. Article 6 of CEDAW is specifically dedicated to trafficking in women. It provides that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.”¹⁰⁸ This article enjoins parties to CEDAW to take all legislative and other measures to deal with all forms of traffic in women and the exploitation of the prostitution of women. CEDAW establishes that which constitutes discrimination against women and sets up an agenda for state parties to act to end such discrimination. Countries, which have ratified CEDAW, are required to commit themselves to undertake a series of measures to domesticate the principle of equality of men and women and abolish all discrimination against women.

The CRC also dedicates itself to the abolition of trafficking in children, although this form of exploitation is already contained in the Declaration on the Rights of the Child.¹⁰⁹ The instrument banning the illicit transfer of children abroad, and their exploitation and trafficking establishes various measures to safeguard children from such practices. The instrument defines a “child” as “every human being below the age of eighteen years unless, under the law applicable to the child, majority is

106 Nigeria signed CEDAW on 1984-04-23 and ratified it on 1985-06-13 respectively.

107 Nigeria signed this instrument on 1990-01-26 and ratified it on 1991-04-19.

108 Art 6 of CEDAW

109 The Declaration was adopted by the UN General Assembly on 1959-11-20.

attained earlier”.¹¹⁰ Although the declaration does not establish a relationship between trafficking and forced prostitution, it does acknowledge that children may be subjected to various forms of exploitation. The declaration confers duties to state parties to prevent child exploitation, to protect and recover children in case where they are or have been exploited or abused, and to combat their illicit transfer.¹¹¹

Various human rights are contravened at different points in the trafficking cycle. Some instances of trafficking breach the right to an adequate standard of living. Many human rights, such as the right to be free from slavery, exploitation and torture are breached in the actual process of trafficking. Other rights, such as the right of suspects to a fair trial are a response to trafficking. Human trafficking is regarded as a modern form of slavery, which frequently involves physical, psychological and sexual abuse. The psychological abuse aspect is linked to the use of traditional oath ceremony. It is connected to the superstitious beliefs of victims, which are imbued in their psychology as part of their culture. The traditional oath is used as a coercive technique and a push factor in trafficking. Most of the survivors establish that they were lured by the false dream of a new life abroad.¹¹² Traffickers have been using duplicitous approaches to influence victims into believing that the potential rewards are greater than the risks along the trip.¹¹³ Traffickers usually do not discuss the risks at all, and if they do, these are discussed in a minimal manner.¹¹⁴ Many victims are promised to be taken to school or given jobs, such as hairdressers, nannies, designers, restaurant workers or housekeepers, which is an enticing offer to vulnerable women and girls, many of whom are just school dropouts and struggle to survive by hawking petty items on the streets.¹¹⁵ The bondage is used as a means of controlling and exploiting victims. Debt bondage is forbidden in human rights law, though the pledging of personal services as security for a debt, where the value of such services is not applied towards the liquidation of a debt, or its period or nature, is not delimited and defined. Recruitment through duplicity or false promises violate an individual’s right to liberty and security, which are guaranteed under article 9 of the ICCPR.¹¹⁶ This also, in many cases, involves women been deprived of their liberty to be treated with humanity and the right not to be subjected to cruel, inhuman or

110 Art 1.

111 Art 35 of the Convention on the Rights of the Child of 1989, which states that “States Parties shall 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”.

112 Elbagir and Leposo “Smuggled by Nigeria’s Pushermen” *CNN* (2018-02 27).

113 Daman *CNN* (2018-03-21) 2.

114 Daman *CNN* (2018-03-21) 2.

115 Africa Faith and Justice Network (AFJN) “The Challenges of Human Trafficking in Nigeria” *AFJN* (2017-07-28) 2.

116 Art 9 of the ICCPR.

degrading treatment, both of which are guaranteed by articles 10 and 7 of the ICCPR.¹¹⁷

The free will of most of the trafficked victims participating in the traditional oath ceremony is infringed in three different stages. The first is when they make the decision to migrate from Nigeria. Secondly, where they make the choice to participate in the oath ceremony, and finally, while they are determining to abide by the oath or break the promise. The concept of free will is well analysed in the UDHR, which was the first document to address the concept of free will. Article 1 of the declaration provides that, “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. The right to self-determination is safeguarded by a number of international instruments, including the CEDAW,¹¹⁸ ICESCR¹¹⁹ and CERD.¹²⁰

The right to freedom of movement of victims is also largely infringed upon by the seizure of their documentation upon arrival in the destination country, with the understanding that if they did not comply with what is demanded of them, they will be threatened and beaten. It is also sad to note that victims of this traditional oath for trafficking purposes not only experience pressure and abuse of power from traffickers, but also from their own families. Nigeria, like many other African countries, conforms to a patriarchal system where males usually exercise authority over females.¹²¹ Men heavily influence family directives. Men are the ones who most often make decisions for women and girls. Parents have a tendency to make decisions and coerce their daughters too.¹²² Some of the victims interviewed alleged to pressure by their family members to abide by their oaths to avoid misfortune.¹²³

The efficacy of the oath as a control mechanism in trafficking is tantamount to torture, as defined by international law UNCAT. Article 1(1) of the UNCAT defines torture as follows:

[a]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or

117 Art 10 and 7 of the ICCPR.

118 Art 2 of the CEDAW 1979.

119 Art 1 of the ICESCR of 1966.

120 Art 5 of the CERD.

121 Aiyedun (2016) 156.

122 Aiyedun (2016) 157.

123 Baarda “Human Trafficking for Sexual Exploitation from Nigeria into Western Europe: The Role of Voodoo Rituals in the Functioning of a Criminal Network” (2016) *European Journal of Criminology* 258.

other person acting in an official capacity, it does not include pain or suffering arising only from, inherent or incidental to lawful sanctions.¹²⁴

The definition of torture contains three collective elements, which are: (1) The intentional infliction of severe mental or physical suffering; (2) by a public official, who is directly or indirectly involved; (3) for a specific purpose. Although element 2 is not pertinent to the study at hand, as torture in trafficking is most likely not inflicted by a public official, the remainder of the definition remains highly relevant. The application of a traditional oath ceremony in trafficking subject victims to extreme physical and psychological torment, and the things which subsequently happen to them, as listed below, are also considered torture:

- (i) Aggressive and often violent oath-taking ceremony;
- (ii) Threat of death to oath-takers and their families during the ceremony;
- (iii) Entrapment through excessive debt bondage and manipulation to believe there will be a dream life thereafter;
- (iv) The shock of the deception and realizing the dream is really a nightmare and the awareness of being sold into slavery;
- (v) Witnessing horrific violence, such as murder, rape, beatings, and other forms of death;
- (vi) Repeated rape, physical abuse, and starvation; Threats from traffickers, madams, and family members to prevent escape or reports to authorities;
- (vii) Intense feelings of humiliation, shame and guilt;
- (viii) Isolation in a foreign country, unable to speak the language, confiscated documents and no way to earn a legitimate income;
- (ix) Physical restriction of movement;
- (x) Degradation to the level of passivity; and
- (xi) Begging on the streets for survival.¹²⁵

The proscription of torture and other forms of ill-treatment has a special prominence in the international protection afforded by human rights. It is encompassed in numerous international and regional treaties, and forms part of customary international law binding all states. Other international human rights instruments, including the UDHR, prohibit torture. Article 5 of the UDHR states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.¹²⁶

Another fundamental human right, which is largely infringed upon by the application of the traditional oath ceremony, is the right to freedom of speech and expression. It is one of the human rights, which is protected by several key international human rights instruments,

124 Art 1(1) of the UNCAT.

125 Baarda (2016) *European Journal of Criminology* 259.

126 Art 5 of the UDHR.

including the ICCPR,¹²⁷ CERD,¹²⁸ and the UDHR.¹²⁹ The Government of Nigeria has also incorporated the right to free speech into their Constitution, which states that “Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference”.¹³⁰ The fundamental reason for making trafficked victims undergo the traditional oath ceremony is to force them to remain silent in an effort to prevent authorities from tracing the identities of the traffickers and to ensure that traffickers’ orders are obeyed.

The gods are summoned to frighten the victims from speaking, and therefore prevent them from acting in the future.¹³¹ While traditionally the oath was used to detect crimes, its purpose has now been transformed into an instrument whereby to commit crimes. Some women survivors of trafficking are at times subject to serious human rights violations while in the hands of foreign governments as well.¹³² This is because many governments have policies, which prioritise the enforcement of immigration laws and other domestic offences, such as prostitution or begging.¹³³ They end up detaining, prosecuting and deporting victims of trafficked persons for offenses relating to their status.¹³⁴ Survivor victims experience isolation from foreign governments’ support systems and are kept under constant control.¹³⁵ Some of them are subjected to police victimisation, which leads to additional vulnerabilities and human rights violations, which may eventually result in re-trafficking.¹³⁶

Human rights laws also prohibit forced labour under the International Labour Organisation Forced Labour Convention of 1930 No. 29. Forced labour is defined under article 1 as, “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself [herself] voluntarily”.¹³⁷ Forced labour is also prohibited under article 11 of the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990, which explicitly prohibits both slavery and forced labour.¹³⁸ Trafficking is included amongst the worst forms of child

127 Art 19(2).

128 Art 5(d) viii.

129 Art 19.

130 Art 39 of Constitution of the Federal Republic of Nigeria of 1999.

131 AFJN (2017-07-28).

132 European Support Asylum Office (ESAO) “EASO COI Meeting Report: Nigeria,” EASO Practical Cooperation Meeting, Rome, (2017-06- 12-13) 2.

133 Europol “Joint Action to Tackle West African Human Trafficking Networks.” Europol (2014-06-12) 2.

134 Europol (2014-06-12) 2.

135 Europol (2014-06-12) 3.

136 Europol (2014-06-12) 3.

137 Art 1 of The International Labour Organisation Forced Labour Convention of 1930.

138 Art 11 of the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990.

labour, defined by the Worst Forms of Child Labour Convention No. 182 of 1999, which specifically deals with the abolition of these forms of child labour.¹³⁹ It is an international instrument, which primarily deals with child labour exploitation, such as child trafficking and the sale of children for sexual or other forms of exploitation. Other international instruments, which protect individuals against forced labour, include the CRC,¹⁴⁰ CEDAW,¹⁴¹ and UDHR.¹⁴² Other rights of trafficked victims guaranteed in CEDAW which are typically violated include the rights to freedom of movement,¹⁴³ to free choice of profession,¹⁴⁴ to equal remuneration,¹⁴⁵ and to choose a spouse and to marry.¹⁴⁶ Victims of trafficking are deprived of their right to liberty of movement and freedom to choose their employer and the kinds of work they wish to perform.

Additionally, the African region has joined international human rights efforts to combat human trafficking by adopting the African Charter on Human and Peoples' Rights (ACHPR) since 1981.¹⁴⁷ Though the ACHPR does not specifically refer to human trafficking, it is more directly relevant to human trafficking as it prohibits slavery and all acts which impair the right to liberty and security of a person. Article 5 provides that, "all forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited".¹⁴⁸ The ICHPR includes what is apposite to labour trafficking, the right to work under, "equitable and satisfactory" working conditions and the principle of equal pay for equal work.¹⁴⁹ The ACHPR also includes numerous human rights, which are naturally violated when a person is trafficked, such as the rights to equality, life, non-discrimination, liberty, privacy, integrity and security of the person, dignity and freedom of movement.¹⁵⁰

Additionally, the African Union (AU) has adopted two instruments which make specific provision for the protection of women and children against slavery, which are: the African Charter on the Rights and Welfare of the Child of 1990 (ACRWC) and the African Charter on Human and People's Rights on the Rights of Women in Africa of 2003 (Maputo Protocol). Given the essentials of tradition in the structure of women's entitlement to enjoy their human rights in Africa, the Maputo Protocol

139 Ratified by Nigeria on the 2002-10-02.

140 Art 34.

141 Art 11.

142 Art 4.

143 Art 15(4).

144 Art 11(1). These rights are relevant to human trafficking, because they are often violated in labour trafficking.

145 See footnote 20.

146 Article 16(1)(a) and (b). These rights are often not adhered to in trafficking for the purposes of forced or child marriages.

147 Nigeria ratified the ACHPR in 1983.

148 Art 5 of the ACHPR.

149 Art 15.

150 These rights are under Art 2-6 and 12 of the ACHPR.

incorporates article 5(a) of CEDAW in its article 4(b), which specifies parties to the protocol should embark to:

... [m]odify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.¹⁵¹

The Maputo Protocol requires state parties to prohibit and condemn all forms of harmful practice, such as the use of traditional oath ceremony in trafficking, which negatively affects the human rights of women and which is in conflict with recognised international standards. Further, article 17 of the Protocol requires states to ensure the right of women to live in a positive cultural context.¹⁵² The Maputo Protocol also places African cultural values into a filter under paragraph 2 of its Preamble, which states that: "Women shall enjoy, on the basis of equality with men, the same rights and respect for their dignity and contribute to the preservation of those African cultural values that are positive and are based on the principles of equality, dignity, justice, and democracy".¹⁵³ These words in the Preamble not only give some meaning to positive African values, but also state clearly that in invoking these values, care needs to be taken not to permit the kinds of culture, which will disrespect the dignity of women.

Likewise, the ACRWC confers obligation on state parties to prevent, "(a) the abduction, the sale of, or traffic of children for any purpose or in any form, by any person including parents or legal guardians of the child; (b) the use of children in all forms of begging".¹⁵⁴ Albeit that the difference between the trafficking and sale of children is not elucidated in the ACRWC, it does reinforce international human rights laws, and the implied obligation that the protection of fundamental rights, especially those affecting children, is an integral part of domestic anti-trafficking responses. The ACRWC reaffirms general fundamental human rights and includes specific obligations on child labour, a phenomenon that is often prevalent in human trafficking. It gives state parties a broad obligation to protect children from all forms of economic exploitation, including work, which is hazardous, or work that interferes with, "the child's physical, mental, spiritual, moral, or social development".¹⁵⁵ Under article 15(2) of the ACRWC it is added that minimum wages, appropriate working conditions and relevant provisions from International Labour Organisation Conventions relating to children must be adhered to.¹⁵⁶ The ACRWC explicitly provides what is overlooked by the CRC, that

151 Art 4(b) of The Maputo Protocol.

152 Art 17 of The Maputo Protocol.

153 Paragraph 2 of the Preamble of The African Charter on Human and People's Rights on the Rights of Women in Africa of 2003.

154 Art 29 of the ACRWC.

155 Art 15(1) of the ACRWC.

156 Art 15(2) of the ACRWC.

restrictions on the economic exploitation of children apply to both formal and informal sectors of the economy. This is substantial because children are normally trafficked for forced labour into the informal and unregulated sector, such as sexual exploitation, where they are easily exploited because they are not protected by labour rules.

The African Union further adopted the Ouagadougou Action Plan to Combat Trafficking in Human Beings, especially women and children in 2006. Both instruments reconfirm international conventions on human trafficking and encourage African states to adopt administrative, legislative and institutional measures to combat trafficking of human beings within the region. The Ouagadougou Action Plan encourages the invention and implementation of both domestic and regional action plans by states in Africa toward achieving extensive and harmonised interventions.¹⁵⁷

6 Measures taken by Nigeria to combat the use of traditional oath in human trafficking

6.1 Legislative and policy measures

Though Nigeria has taken several legal measures in ensuring that human trafficking is ended, the number of successful convictions for human trafficking offences is very low.¹⁵⁸ The application of traditional oath ceremonies in trafficking ensnares victims and makes it incredibly difficult to detain, prosecute, and ultimately stop traffickers.¹⁵⁹ Another problem is the silence, which surrounds the rituals. While the traditional oath ceremonies are widely believed in and practiced, they are rarely spoken about publicly. People think that even talking about “juju” might lead to something bad happening to them.¹⁶⁰ Although the traditional oath has legal recognition and is used in the justice system, there is a need to subject it to a test to remove superstitious and harsh elements as it has turned out to be a major hindrance in the enforcement of human trafficking offence laws. It should be noted that customary law is recognised in Nigeria as part of its legal system, although it does not have constitutional recognition and protection.¹⁶¹ The Constitution of Nigeria is silent about what is to happen in the event of conflict between customary laws and constitutional provisions, which guarantee human rights. A national Constitution is the law of the highest authority; therefore, it should be unambiguous in ensuring that tradition and customs do not infringe upon the rights of individuals. For instance, the

157 Ruby and Benjamin (2012)17.

158 Sawadogo (2012) 98.

159 Sawadogo (2012) 98.

160 Sawadogo (2012) 99.

161 The 1886 Charter of the Royal Niger Company provides that in the administration of justice, the customs and laws of the people in its territory must be respected and upheld.

Constitutions of Uganda and Ghana contain provisions, which protect women from harmful customary practices. Section 26(2) of Ghana's Constitution of 1992 provides that: “All customary practices which dehumanize or are injurious to the physical and mental wellbeing of a person are prohibited”.¹⁶² More absorbing is the Ugandan Constitution of 1995 in section 33(6), which establishes that: “Laws, cultures or traditions which are against the dignity, welfare or interest of women or which undermine their status, are prohibited by this Constitution.”¹⁶³ However, the Nigerian High Court has jurisdiction under the Evidence Act to observe and enforce the observance of every customary rule of the people in the country to test and remove superstitious and harsh elements. The Act states that: “Provided that in case of any custom relied upon in any judicial proceeding, it shall not be enforced as law if it is contrary to public policy and is not in accordance with natural justice, equity and good conscience”.¹⁶⁴ The High Court needs to invoke the above provision to nullify the use of traditional oath in human trafficking.

6 2 International measures

Nigeria has launched various initiatives at an international level. It has signed and ratified many international, regional which are directly or indirectly related to trafficking as discussed above. Nonetheless, for any international treaty to be applicable in Nigeria it must be incorporated into its domestic law by the process of specific adoption. The Nigeria Constitution under section 12(a) provides that no treaty between Nigeria and any other country shall have the force of law, except to the extent to which the National Assembly has enacted any such treaty into law.¹⁶⁵ Therefore, all international treaties signed and ratified by Nigeria are only persuasive. This is to the effect that victims of human trafficking cannot rely on the provisions of international human rights, as discussed above, to enforce their rights in Nigerian courts except to the extent that those rights are provided for under the Constitution or other relevant domestic Nigerian laws. Nigeria must domesticate international human rights treaties relating to human trafficking, as it has already ratified these treaties, which should now be rendered enforceable internally. The incorporation of international treaties into domestic legislation is of paramount importance, because if the national court is left in a position where they can only consider ratified instruments, the rights of many trafficking victims will continue to be denied.

6 3 Establishment of institutional framework

Apart from legislative measures taken by Nigeria to compact human trafficking, the country also established The Inter-Ministerial Committee on Human Trafficking in 2001. The committee aims to bring together

162 S 26(2) of Constitution of Ghana, 1992.

163 S 33(6) of Ugandan Constitution, 1995

164 S 18(3) Nigeria Law of Evidence, 2011.

165 S 12(a) of The Constitution of the Federal Republic of Nigeria, 1999.

representatives of Federal Government Agencies and Ministries to combat trafficking of persons and form Nigeria's response to the phenomenon.¹⁶⁶ The committee includes the Immigration service, the police, the Federal Ministry of Justice, the Ministry of Justice, the Federal Ministry of Women Affairs, the National Planning Commission, the Customs Service, and the Office of the Secretary to the Government of the Federation.¹⁶⁷ However, the absence of legislative guidance and a lack of effective coordination, the presence of rivalry amongst members, along with competing demands of the agencies, are factors, which have placed the committee under critique.¹⁶⁸

To address human trafficking issues, Nigeria established a National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP) in 2003.¹⁶⁹ The agency has wider mandates, including monitoring, investigation and prosecution of human trafficking. The law also confers jurisdiction to the agency to deal with the counselling and rehabilitation of the victims of trafficking, and also to deal with public enlightenment on matters pertaining to human trafficking.¹⁷⁰ It has established a National Referral Mechanism for Protection and Assistance to Trafficked Persons in Nigeria in 2013, which offers guiding principles for immigration officials, law enforcers and other service providers to advance protection and support trafficking victims.¹⁷¹

The NAPTIP is involved in monitoring cross-border movements, the investigation of human trafficking cases and the prosecution of human trafficking cases in the courts of law. NAPTIP has successfully conducted 282 convictions and prosecuted 337 persons between December 2004 and December 2017.¹⁷² A total of 5,496 cases of human trafficking and other related matters have been reported to NAPTIP since its inception.¹⁷³ The agency collaborates with other agencies at regional and international levels, which ensure the eradication and prevention of human trafficking in the country and in bordering countries. The few successful prosecutions and convictions of traffickers described above indicate that there is still ineffectiveness in the criminal justice systems

166 Morka "National Rapporteurs on Trafficking in Persons and Equivalent Mechanisms in Addressing Trafficking in Person (NREMs): Institutional Framework – Nigeria's Perspective' *NAPTIP* 2014 7.

167 The work of the Committee is coordinated by the Office of the Special Assistant to the President on Human Trafficking and Child Labour.

168 Morka 2014 *NAPTIP* 18.

169 The agency was established by The Trafficking in Persons (Prohibition) Law Enforcement and Administration Act of 2003.

170 S 9(3) and (4)(a) of the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act of 2003.

171 United States Department of State: Office to Monitor and Combat Trafficking in Person "Trafficking in Persons Report – Nigeria" (2014) 17.

172 NAPTIP *Data-Analysis-Final Report 2017* (2017)14.

173 NAPTIP (2017)15.

and related institutions in combating human trafficking.¹⁷⁴ Reports show that some law enforcers harass rather than help the victims, particularly those engaged in prostitution. Hence, law enforcers must be able to recognise trafficking when they see it otherwise; they may ignore a case or take unsuitable measures.

7 Concluding remarks

The trafficking of women and children in Nigeria is a serious human rights infringement, which can only be curbed by the proper enforcement of national and international trafficking laws and the eradication of cultural traditions that are harmful to women and children. This is necessary to protect those who are vulnerable and being harmed by traditional belief practices. The inadequate implementation of these laws constitutes a major challenge in Nigeria. Traditions and culture should not be obstacles to the realisation of human rights, but rather a means of paving the way for individuals to obtain their rights. In this context, the right to take part in cultural activities and practices and in traditional life includes the right not to participate in traditions and customs, which infringe on human dignity and human rights. Nigeria needs to strengthen its laws and policies protecting women and children from harmful traditional beliefs, such as traditional oath.

Given the unique social dynamics of traditional oath ceremony, the enactment of comprehensive, stand-alone legislation to regulate its applicability is recommended. Additionally, it is important that the recommended legislation provides for punishment and remedies in instances where traditional oath ceremony practices and crimes are planned and committed across borders. To counter these phenomena, the principle of extraterritoriality in respect to traditional oaths must be applied. This would allow for the extradition of perpetrators for their harmful beliefs and for them to stand trial, and would eliminate diplomatic protocols, which may hinder a victim’s access to assistance. The principle of extraterritoriality is found in various European legislations pertaining to harmful African practices, such as Female Genital Matriculation (FGM) and forced marriages. The most promising example in this regard is Spain, which under its Constitutional Act 3/2005, provides that FGM committed abroad is a crime.

The focus on the available international human rights laws to eradicate the use of a traditional oath in human trafficking may appear as being western pressure for change. This is because the focus on international

174 The 2014 Global Report on Trafficking in Persons of the UN Office on Drugs and Crime indicates that only four in 10 countries reported having 10 or more yearly convictions, with nearly 15 per cent having no convictions at all. According to the US Trafficking in Persons Report of 2014, the Sub-Saharan African region had only 574 human trafficking prosecutions and 341 convictions in 2013 (United States of America Department of State, 2014).

human rights is sometimes criticised as being heavy-handed and insensitive, and is often perceived as culturally imperialistic in most African countries. This paper argues that efforts to change the use of the traditional oath in human trafficking are most effective when they originate from within the culture, which practices them. In Africa, traditional and religious leaders have a huge influence on customs and practices and are therefore vital in the struggle to change society's attitudes. The government needs to empower and enable local leaders in advocating for correctly using traditional oath. This is likely to be an effective way of affecting change. It is a strong argument that, if traditional leaders support the abolition of the use of traditional oath ceremony for women and girls, then people in their communities are likely to do the same. The cooperation and understanding of policymakers, local community leaders and the people who have experienced or witnessed the hardships caused by traditional oaths within societies is also vitally required.

Positive traditional methods and practices must also be employed to alleviate the abuse of traditional oath ceremonies for a better understanding of rural social realities. For instance, traditional dances and rituals can be used to discourage the misuse of traditional oaths in human trafficking. Dialogue can be encouraged in different traditional systems, which comprise different cultures and religions to challenge negative aspects of the use of traditional oath ceremonies in human trafficking. The upholding of human rights must be conducted in such a way that communities do not feel that the integrity of their traditional practices and beliefs is being compromised. Traditional beliefs should adhere to the values of the right to human dignity. It is important to be culturally sensitive, but this does not mean that respect for culture warrants uncritical and insensitive adherence when cultural, traditional or religious practices are invoked. Traditional beliefs as a rationale for harmful practices to a vulnerable group should not to be accepted; rather, both society and the government should look for opportunities to counteract prejudice and its consequences. The assumption that cultural values are static and inalienable ignores the reality that they are in conflict with human rights and require urgent change.