

PROTECTION OF VICTIMS OF HUMAN TRAFFICKING IN NIGERIA *¹

Abstract

Protection of victims of human trafficking is an important aspect in the fight against the menace of human trafficking. Aside from being vulnerable and traumatised by the unpalatable experiences, they are more often than not the primary source of evidence in the prosecution of their traffickers. During investigation and prosecution, victims are reluctant to cooperate because of fear of reprisals against them and members of their families. The aim of this paper is to examine the protection accorded victims of human trafficking in the criminal justice system and finds that victims of human trafficking are not adequately protected during investigation and prosecution. Consequently, they are unable to effectively reintegrate into the society and support the criminal justice system as witnesses. The paper concludes that effective protection can be achieved through increased funding, informed courts and other useful recommendations.

Keywords: Protection, Human Trafficking, Victims, Trauma, Prosecution

1. Introduction

Victims of human trafficking, whether for sexual exploitation, labour, and other insidious forms can be among the most vulnerable of witnesses, often belonging to socially excluded groups and requiring significant support. However, they are most often treated as the primary source of evidence so that securing their cooperation plays an important role in a successful prosecution.² Traffickers often go to great length to keep their crime secret and use a range of tools to intimidate their victims.³ This intimidation may involve blunt measures such as restricting the freedom of movement of victims or threatening the victims or their family should they contact the authorities. In many cases, subtle forms of control and coercion suffice to intimidate the victims and ensure that they do not report the offences that have been committed against them and talk about the exploitation they have endured.⁴

States are obliged to protect victims as part of their international obligations under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children⁵ (Palermo Protocol) and other international instruments, including international human rights conventions, and regional commitments. Victim protection is a cornerstone of an effective criminal justice response to the crime of human trafficking. Unless victims of trafficking are appropriately protected, they will not be empowered to support criminal justice action against traffickers.⁶ Effective and sustainable protection solutions can help victims regain their autonomy and reintegrate into society by becoming self-sufficient participants in the economic

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² F Laczko and A M Gramegna, '2003 Developing Better Indicators of Human Trafficking'. *10 Brown J World Affairs* 179.

³ A Schloenhardt & R Markey-Towler, 'Non-Criminalisation of Victims of Trafficking in Persons, Principles, Promises, and Perspectives'. *Groningen Journal of International Law*, vol 4(1): International Criminal Organisation.

⁴ *ibid.*

⁵ UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, available at: <https://www.refworld.org/docid/4720706c0.html>.

⁶ Policy Guide on Protecting Victims of Trafficking, The Bali Process. Retrieved November 6, 2022 <https://www.baliprocess.net/> accessed November 6, 2022.

and social life of their communities.⁷ It is against this backdrop that this paper examines the protection of victims of human trafficking in Nigeria.⁸ Including the introduction, the paper is divided into six parts. Part two is the conceptual clarification. Part three is the legal framework for the protection of human trafficking victims. Part four examines victim- based approach to protecting victims of human trafficking. Part five's focus is the challenges involved in protecting victims of human trafficking while part six concludes the paper with useful recommendations.

2. Conceptual Clarification

2.1 Human trafficking

According to the United Nations General Assembly, human trafficking is the illicit and clandestine movement of persons across national and international borders, largely from developing countries and some countries with economies in transition, with the end goal of forcing women and girl children into sexually or economically oppressive and exploitative situations, for the profit of recruiters, traffickers and crime syndicates, as well as other illegal activities related to trafficking, such as forced domestic labour, false marriages, clandestine employment and false adoption.⁹

The United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) in Article 3(a) defines trafficking as:

...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power, or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person 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.

In Paragraph 3(b) it states further: “the consent of a victim of trafficking in persons to the intended exploitation set forth in sub paragraph (a) of this article shall be irrelevant where any of the means set forth in sub-paragraph (a) have been used.”

Three interdependent elements must be cumulatively present to constitute a trafficking offence:¹⁰

- (1) Act (what is done)—the recruitment, transportation, transfer, harbouring or receiving of persons;
- (2) Means (how it is done) – the threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;
- (3) Purpose (why it is done) – to exploit the person.

⁷ Ibid.

⁸ E Mugambila and K Barrick, ‘Protection of Victims of human trafficking in Tanzania A Myth or Reality?’ *Journal on Contemporary Issues of Law (Jcil)* Vol 6, 12.

⁹ UNGA 1994. Traffic in Women and Girls UN Doc. A/RES/49/166, <https://digitallibrary.un.org/record/198241>, accessed October 18, 2022.

¹⁰ I O M. 2007. *Handbook on Direct Assistance for Victims of Trafficking*. International Organization for Migration, Geneva, Switzerland.

Exploitation is the core element of human trafficking. All three elements must be present for the situation to be considered human trafficking, except in the case of trafficking in children. Trafficking in children (under the age of 18) involves only two elements: action and purpose. The UN Trafficking Protocol regardless of the threat or use of force or other forms of coercion, fraud or deception, or even in the absence of coercive circumstances, render the consent given by a child immaterial to the liability of the offender.¹¹

In order to fully understand the crime of human trafficking, it is important to underline the characteristics that differentiate it from human smuggling. Human smuggling is defined in article 3(a) of the Additional Protocol against the Smuggling of Migrants by Land, Sea and Air¹² as ‘the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.’

Human trafficking does not imply necessarily a transnational movement because a person can be trafficked within the same nation; on the other hand, smuggling always consists of a border crossing; as its very own purpose is the entrance into another country.¹³ Smuggling entails the wish to enter into another country. The relationship between the smuggler and the persons being smuggled is characterised by general agreement, as they share the same goal. Unlike victims of human trafficking who do not give consent as they are forced to take part in the activity through various measures of coercion.

As the very purpose of human trafficking is the exploitation of the victim, after a movement the trafficked person remains in a state of lack of freedom, abuse or violence through enslavement, imprisonment, confiscation of documents, or blackmail. Conversely the relationship between a smuggler and a smuggled person is generally restricted to the movement itself essentially, the crossing of a border.¹⁴

2.2 Victim of Human Trafficking

According to the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power¹⁵ (1985), victims means

persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.¹⁶

A person may be considered a victim, under the Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term 'victim' also includes, where

¹¹ *ibid.*

¹²UNODC, 2000, https://www.unodc.org/documents/middleeastandnorthafrica/smuggling-migrants/SoM_Protocol_English.pdf, accessed October 23, 2022.

¹³UNODC.2021. Non-Criminalization of Smuggled Migrants, <https://www.unodc.org/e4j/en/tip-and-som/module-1/key-issues/non-criminalization-of-smuggled-migrants.html>, accessed October 23, 2022.

¹⁴ *ibid.*

¹⁵UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), <https://www.unodc.org/pdf/rddb/CCPCJ/1985/A-RES-40-34.pdf>, accessed October 26, 2022.

¹⁶ *ibid.* Article 1.

appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.¹⁷

The issue of who is a victim of trafficking, how we identify and count them, how we label them, and how they see themselves, has proven to be problematic. Unlike victims of more traditional crimes; such as theft, burglary or robbery; victims of human trafficking often defy categorisation and deny their victimisation.¹⁸ According to Srikantiah,¹⁹ who refers to victims of human trafficking as ‘Iconic Victims’, victims must have the following characteristics:

- female and trafficked for sexual exploitation;
- assessed to be good witnesses by law enforcement;
- fully cooperative with law enforcement investigations; and
- rescued from the traffickers rather than escaping.

Those that do not fulfill these requirements may not be seen as trafficked victims. Other types of victims are those deceived through false promises of work, or a new life through promises of marriage.²⁰ Some of the qualities that characterise trafficked victims are vulnerability arising from poverty, mental and physical disability, cultural and religious beliefs (in certain parts of the world, voodoo or juju is used to control victims), gender and sexuality (women and transgender persons) or precarious social status. Other vulnerabilities such as isolation and lack of social networks, or illegal migration status may be vulnerabilities created by the trafficker to maintain control over the victim.²¹ They also suffer physical social and psychological consequences.²²

3. Legal Framework

3.1 The Constitution of the Federal Republic of Nigeria 1999

The 1999 Constitution guarantees constitutional protection against slavery and forced labour or compulsory labour, sexual exploitation and deprivation of personal liberty of Nigerians. Trafficking in persons violates the provisions of Sections 17, 34 and 42 of the Constitution of the Federal Republic of Nigeria 1999. A trafficked person can challenge the infringement of the above mentioned rights under Section 46 of the 1999 Constitution, which states as follows: Any person who alleges that his or her fundamental human rights has been or is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.²³ Chapter IV of the Constitution 1999, establishes the Fundamental human rights which guarantees justiciable rights in sections 33-44. Section 17 provides that the dignity of the human person must be maintained and enhanced.²⁴ Section 42 states that no citizen of Nigeria shall be subjected to any disability or deprivation merely because of the circumstances of his birth.

¹⁷ *ibid.*

¹⁸ A Aronowitz, ‘Victims of Human Trafficking: A complex Issue’, < <http://cei.uniandes.edu.co/>> accessed November 16, 2022.

¹⁹ J Srikantiah, ‘Perfect Victims and Real Survivors: The Iconic Victim in Dom 87’ *Boston University Law Review*, (2007) 157-211.

²⁰ *ibid* (no.17).

²¹ *ibid.*

²² The identification of victims of human trafficking in transit and destination countries in Europe. https://www.trafficking-response.org/wp-content/uploads/2019/03/The-identification-of-victims-of-human-trafficking-in-transit-and-destination-countries-in-Europe_English.pdf, accessed June 16, 2022.

²³ S K Kigbu, ‘Legal Framework for Combating Human Trafficking In Nigeria: The Journey So Far’ *Journal of Law, Policy and Globalization*, Vol.38, 2015.

3.2 The Draft Basic Principles on the Right to an Effective Remedy for Trafficked Persons²⁵

The principles specify that victims should be treated with humanity and respect for their dignity and human rights²⁶ and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. It provides further that States should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.²⁷ Others include Victims' right to remedies²⁸ Reparation for harm suffered,²⁹ access to relevant information concerning violations and reparation mechanisms.³⁰

3.3 The Trafficking in Persons (Prohibition) Law Enforcement and Administration Act (TIPPLEA) Act 2015

The provisions of the TIPPLEA Act, 2015³¹ ensures that victims, Nigerian and non-Nigerian citizens are free from discrimination and have access to protection services. It recognises the need not to criminalise, respect victims' privacy, provide temporary residency, and appropriate housing. It protects victims and members of their families and punish those responsible for human trafficking. It also provides for civil remedies for victims through which they can obtain compensation.³² The Act provides in section 61 extensively for a trafficked person not to be subjected to discriminatory treatment on account of race, colour, gender, age, language, religion, political or other opinion, cultural beliefs or practices, national, ethnic or social origin, property, birth or other status, including his status as a victim of trafficking or having worked in the sex industry. It further provides for non-detention or prosecution of a trafficked person in certain circumstance.³³ Rights of a victim to information,³⁴ right to compensation or restitution,³⁵ establishment of transit shelter for victims, are further provided for.³⁶ Establishment of victims of Trafficking Trust Fund is provided in section 67. The minister is empowered to make regulations and issue guidelines for the management of the fund.

3.4 Administration of Criminal Justice Act, (ACJA) 2015

Under section 321 of the ACJA, the court is empowered to order payment of expenses or compensation to any person injured by the offence irrespective of any other fine or other punishment that may be imposed on the defendant or convict. The identity of a trafficked victim may not be disclosed during trial of human trafficking cases under section 232, such that where the court so determines, trial will not be held in an open court. The court can also receive evidence by video link; permit the witness to be screened or masked; receive written deposition

²⁵OHCHR. Draft, Basic Principles on the Right to an Effective Remedy for Trafficked Persons. <https://www.ohchr.org/sites/default/files/Documents/Issues/Trafficking/Consultation/ConsultationEffectiveRemedy/DraftBasicPrinciples.pdf>, accessed June 16, 2022.

²⁶ *ibid*, principle 6.

²⁷ *ibid*.

²⁸ *ibid*, principle 7.

²⁹ *ibid*, principle 9.

³⁰ *ibid*, principle 10.

³¹ TIPPLEA Act 2015.

³² B Jedy-Agba, 'Remedies Available to TPs in Nigeria, the Nigerian Experience: Good Practices Reparation and Compensation for Victims of Trafficking' - [PPT Powerpoint] (vdocument.in).

³³ TIPPLEA Act, section 62.

³⁴ *ibid*, section 63.

³⁵ *ibid*, section 65.

³⁶ *ibid*, section 64.

of expert evidence; and any other measure that the court considers appropriate in the circumstance.

3.5 National Policy on Protection and Assistance to Trafficked Persons

A National Policy on Protection and Assistance to Trafficked Persons³⁷ to guide stakeholders in providing uniform and quality assistance to victims of trafficking was developed by NAPTIP and approved by the Federal Government in 2008. The policy is a compendium of rehabilitation and re-integration processes, strategies and available opportunities for victims. It also contains the rights and privileges of the victims as well as responsibilities of government, departments and agencies in the welfare of victims. Based on its relevance in assisting trafficked persons, in 2009, the ECOWAS adapted the policy as an instrument for the region.³⁸ The policy aspires to “the restoration of the victims and exploitative/hazardous child labour to the state of physical, psychological, social, vocational, and economic well-being through sustainable assistance programmes.”³⁹ Some of the policies include:

- a victim shall comport himself or herself in a manner that will not be detrimental to the well-being of other victims and care providers;
- a victim shall subject himself or herself to the rules and regulations, as well as the daily routine while in residence at a shelter;
- a victim who has consented to rehabilitation shall complete the rehabilitation programmes designed for him or her;
- a victim shall disclose relevant information concerning his or her health status to counsellors to enhance the quality of care;
- a victim who has consented to rehabilitation shall comport himself or herself in a manner that will not jeopardize the objectives of rehabilitation;
- a victim shall make himself or herself available at all times for informal/formal education to achieve the purpose of rehabilitation/integration.

3.6 Child Rights Act (CRA)

The Childs Rights Act 2003⁴⁰ in sections 28 and 30 prohibit trafficking and a range of related offences, including slavery, debt bondage, dealing in children for the purpose of hawking or begging for alms, sexual abuse and exploitation. It also prohibits child marriage, and forced or compulsory labour.

3.7 Edo State Trafficking in Persons (Prohibition) Law.

The objective of the Edo State Trafficking in Persons (Prohibition) Law, 2018⁴¹ is to make provision for an effective and comprehensive legal and institutional framework for the prohibition, prevention, detection, prosecution, and punishment of human trafficking and related offences. The law seeks to address the scourge of human trafficking and irregular migration in Edo State.

³⁷ NAPTIP, <https://naptip.gov.ng/uploads/Guidelines-on-National-Referral-Mechanism.pdf>, accessed October, 2021.

³⁸ NAPTIP, <https://naptip.gov.ng/counselling-and-rehabilitation-department>> accessed 21 July 2022.

³⁹ *ibid.*

⁴⁰ CRA 2003.

⁴¹ Edo State Trafficking in Persons Prohibition Law. 2008, <https://etaht.org/resources/the-edo-state-trafficking-in-persons-prohibition-enforcement-and-administration-law>, accessed July, 12, 2022.

3.8 National Referral Mechanism (NRM)

The general principle of the NRM is to ensure that every trafficked person is empowered, supported and protected with a view to ensuring that he/she is effectively rehabilitated and reintegrated. Some of the guiding principles are:

- the rights of the trafficked person shall be respected and protected at all times;
- all services are to be provided within a victim-centered approach based on discussions with the victim and other relevant stakeholders;
- care plans shall be developed jointly with the victim;
- assistance to victim shall be based on informed consent and client self-determination;
- where children are involved, the best interest of the child shall be the overriding factor.
- the principles of confidentiality and non-discrimination shall apply at all times;
- cooperation with law enforcement shall not constitute a condition for providing assistance;
- gender responsiveness in all programming; and
- data disaggregation in terms of age, social status, geographical location, etc.

The Guidelines also define the roles and responsibilities of the NRM partners, and the programmes and services that should be available to victims of human trafficking. The NRM is designed to enhance service delivery to victims of trafficking.⁴²

3.9 United Nations Convention against Transnational Organized Crime (UNTOC) 2000

Article 25 of the United Nations Convention against Transnational Organized Crime (the Organized Crime Convention),⁴³ obliges States Parties to provide assistance to and protect victims, in particular in cases of threat of retaliation or intimidation, and to establish appropriate procedures that provide access to restitution and compensation for victims.

3.10 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol) 2000

Article 6 of the Palermo Protocol provides that States shall, in appropriate cases and to the extent possible, protect the privacy and identity of victims, including by making legal proceedings confidential⁴⁴ it further provides that in appropriate cases, victims should be given information on court and administrative proceedings, and assistance to present their views and concerns to the court in criminal proceedings, in a manner not prejudicial to the defense. The physical, psychological and social recovery of victims, including provision of appropriate housing; counselling and information; medical, psychological and material assistance; and employment, educational and training opportunities is provided for. It ensures physical safety of victims as well as obtaining compensation for damage suffered.⁴⁵

3.11 United Nations Convention on the Rights of the Child (UNCRC)

Article 39 of the Convention on the Rights of the Child (CRC) 1989⁴⁶ obliges States to promote the physical and psychological recovery and social integration of child victims. Article 3 of the CRC obliges States to consider the best interests of the child in all matters concerning children.

⁴² NRM, https://www.unodc.org/documents/nigeria/NRM_Guideline_final_2015.pdf

⁴³ The UNTOC, opened for signature 15 November 2000, 2225 UNTS 209, in force 29 September 2003 accessed July 12, 2022.

⁴⁴ Palermo Protocol, <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons> Article 6, accessed November 15, 2022.

⁴⁵ *ibid.*

⁴⁶ UNCRC (1989). The United Nations Convention on the Rights of the Child. Unicef UK <https://downloads.unicef.org.uk/wp-content/uploads/2016/08/unicef-convention-rights-child-accessed> September 13, 2022.

Considerations for the best interests of children should be formally integrated into procedures and guidelines for assisting and protecting child victims of trafficking. Where a victim of trafficking is reasonably presumed to be under the age of 18, he or she should be entitled to the higher standard of assistance and protection afforded to child victims without the need to prove his or her age, until his or her age can be confirmed through appropriate age assessments.⁴⁷

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

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)⁴⁸ requires States Parties to provide effective criminal justice protection for all persons, including those in irregular situations, who are subject to physical or sexual violence, whether inflicted by State officials or private actors.⁴⁹ No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.⁵⁰ In article 11 migrant workers and member of their families shall not be held in slavery or servitude, forced or compulsory labour.

4. Victim-Based Approach to Protecting Victims of Human Trafficking

A victim-based approach to trafficking means putting victims at the center of anti-trafficking policies by prioritising the protection of their rights. By taking such an approach, whether the person is trafficked for sex work or another form of forced labour becomes irrelevant, because the victim's rights are protected regardless of why they have been trafficked. Victims of trafficking are likely to require protection in three key areas:

Initial protection: protection measures that takes place at this stage are very important for establishing a relationship of trust and cooperation between the victim of trafficking and service providers. The provision of protection that is safe and adequate for the needs of victims of trafficking should not be dependent on their willingness to cooperate with authorities.⁵¹ The main objective at this point is to identify and address the immediate needs and concerns of victims of trafficking. These include:

- privacy,
- safety and security for the victim and family or close friends,
- access to basic needs such as food, clothing and safe accommodation,
- communication with family and family tracing, (where there is no reason to suspect their involvement in the trafficking, and where such communication is safe for the victim and his or her family),
- urgent medical attention,
- legal and migration advice.⁵²

It is at this point that victims of trafficking are ideally provided with detailed information about their rights, as well as the scope, nature and function of the assistance and protection program and the obligations and responsibilities it will entail.

⁴⁷ *ibid.*

⁴⁸ UN General Assembly, International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990, A/RES/45/158, Retrieved 18 December 2022 from <https://www.refworld.org/docid/3ae6b3980.html>

⁴⁹ *ibid* article 16.

⁵⁰ *ibid* article 10.

⁵¹ Policy Guide on Protecting Victims of Trafficking. The Bali Process. <https://www.baliprocess.net/regional-support-office/>, accessed December 3, 2022.

⁵² *ibid.*

The second stage where protection is required is during the criminal justice process. This entails voluntary participation of victims in the criminal justice process. Where victims are willing and able to contribute to the investigation and prosecution of traffickers, specific and appropriate protection considerations must be given. Prosecutions for human trafficking and related crimes often rely on witness testimony in the absence of corroborating evidence. If a victim is unable to give reliable evidence, or is reluctant to give evidence at all, this may adversely affect the possibility of prosecution or the outcome of a trial and jeopardise the State's prospects of securing a conviction.⁵³ A State's capacity to provide victims with access to an effective remedy may be compromised where victims are not supported to achieve satisfaction through legal processes. The victim can be encouraged by allowing the victim to give evidence by means of closed-circuit television or video link.⁵⁴

Thirdly, the victim also requires protection on a sustainable basis, including to facilitate their reintegration. This is protection on a need-to-basis. The protection needs of each victim will change throughout these stages, making it crucial for States to undertake risk assessments at each stage to ensure that protection services are appropriately tailored to their needs. Ensuring victims are provided with appropriate support and protection throughout each stage of the criminal justice process is not only key to protecting their rights as victims of crime, but is also necessary for their safe, effective and valuable contribution towards the prosecution of traffickers.⁵⁵

4.1 Protection Principles

Nigeria is obliged to protect victims of trafficking having ratified the Palermo Protocol that calls on States to adopt "measures to prevent trafficking, to punish the traffickers and to protect the victims of such trafficking in appropriate cases and to the extent possible under its domestic law..."⁵⁶ The TIPPLEA Act contains provisions that protect victims of human trafficking. These core protection principles are enshrined in the Palermo Protocol, UNODC Model Law against Trafficking in Persons⁵⁷ and the Recommended Principles and Guidelines on Human Rights and Human Trafficking. These principles are:

• Identification of Victims of Human Trafficking:

Failure to identify a trafficked person correctly is likely to result in a further denial of that person's rights. States are therefore under an obligation to ensure that such identification can and does take place.⁵⁸ The early and accurate identification of individuals as victims should be treated as a priority, to ensure that:

- they are removed from exploitation and placed in safe care, and receive protection, assistance and support;
- they are separated from suspected traffickers to avoid the risk of intimidation;
- Trafficking networks are identified and dismantled, and offenders arrested and prosecuted; and

⁵³ *ibid.*

⁵⁴ *ibid.*

⁵⁵ Palermo Protocol article <https://www.baliprocess.net/UserFiles/baliprocess/File/Policy%20Guide%20on%20Protecting%20Victims%20of%20Trafficking.pdf>, accessed September 15, 2022.

⁵⁶ *ibid.*, (no.52).

⁵⁷ UNODC Model Law, https://www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf, accessed September 15, 2022.

⁵⁸ Traffickingen.pdf (ohchr.org) guideline 2.

- trafficking patterns are monitored with a view to (1) developing effective targeted prevention programs and (2) developing effective counter-trafficking policies.⁵⁹

Identification of trafficking victims remains one of the more challenging and vexing aspects of anti-trafficking efforts. Many trafficking victims are never officially identified or recognized as victims of human trafficking and, as such, essentially “fall through the cracks” of the anti-trafficking response.⁶⁰ Article 18 of the UN Model law, guideline 2 under the Recommended Principles and section 61 (g) of TIPPLEA Act provide for identification and protection of the identities of victims. Victims who are not identified as such may face prosecution for offences committed during their exploitation, and those of them who are irregular migrants may face deportation to their home countries. Others may fall back under the control of traffickers or, for one reason or another, become inaccessible to those wishing to offer them assistance.⁶¹

• Non-Punishment of Victims

The principle of non-punishment of victims of human trafficking implies that, the victim is immune from prosecution and punishment for the acts he or she committed in his or her position as a victim of trafficking.⁶² Sometimes, as a result of their victimisation, they engage in illegal conduct such as involvement in the sex trade, involvement in drug production or trafficking, petty crime, possession or the use of fraudulent documents or entering another country illegally.⁶³

The reasons for the non-victimisation principle is to ensure that victims are not punished for conduct that they would not have otherwise committed if they had not been trafficked. Other reasons include safeguarding the rights of victims, ensuring they are provided immediate access to necessary support and services and avoid subjecting them to further trauma or victimization.⁶⁴ Therefore, the non-punishment principle is one of the most important ways of protecting victims of human trafficking, as it encourages the victim to report the crime of human trafficking, resort to courts, and not hide the crime for fear of criminal prosecution for the acts they committed because they were exposed to the crime of human trafficking.⁶⁵

The non-punishment principle is provided under principle 4 (5) of the Recommended Principles. According to the TIPPLEA Act, where the circumstances so justify, trafficked persons shall not be detained or prosecuted for offences relating to being a victim of trafficking, including non-possession of valid travel documents, use of a false travel or other documents.⁶⁶ The UN Model law provides for this in article 10 ensuring that legislation prevents trafficked persons from being prosecuted, detained or punished for the illegality of their entry or residence

⁵⁹ UNODC, Identification of Victims’ <https://www.unodc.org/e4j/en/tip-and-som/module-8/key-issues/identification-of-ictims.html#:~:text=Importance%20of%20early%20and%20accurate,denial%20of%20that%20person's%20rights>. accessed November 16, 2022.

⁶⁰ *ibid.*

⁶¹ *ibid.*

⁶² E Mugambila and K Barrick, ‘Protection of Victims of Human Trafficking In Tanzania: A Myth Or Reality?’ *Protection-of-victims-of-human-trafficking-in-Tanzania-A-myth-or-reality-5.pdf* (lsyndicate.com), accessed November 16, 2022.

⁶³ Non-Punishment of Victims of Human Trafficking < https://www.unodc.org/documents/human-trafficking/ICAT/19-10800_ICAT_Issue_Brief_8_Ebook.pdf>, accessed November 18, 2022.

⁶⁴ *ibid.*

⁶⁵ A Al-Assaf & K Cheng, ‘Protection of victims of human trafficking in the Jordanian law: A comparative study with the UK Modern Slavery Act 2015’, *Cogent Social Sciences*, (2021) 7:1, DOI: 10.1080/23311886.2021.1948185.

⁶⁶ TIPPLEA Act, section 62.

or for the activities they are involved in as a direct consequence of their situation as trafficked persons.

• **Compensation of Victims**

Article 6(6) of the Palermo Protocol, articles 28 and 29 of the UN Model Law, and the Recommended Principles under guideline 9 provides for compensation of trafficked victims. The TIPPLEA Act also contains provisions on compensation of trafficked victims. Under Section 64 of the TIPPLEA Act, the victim is entitled to compensation, restitution and recovery for economic, physical and psychological damages which shall be assessed and paid out of forfeited assets of the convicted person. In addition, the victim has the right to institute civil action against a trafficker and any other person including a public officer who may have exploited or abused his person provided that the amount awarded by the court shall be taken into consideration in the determination of the amount of compensation to be awarded in the civil suit.⁶⁷ The Act provides for victims of Trafficking Trust Fund (VTTF). Funding for the VTTF is obtained through direct grant from the Nigerian Government, voluntary contributions of NAPTIP partners and confiscated assets of traffickers.⁶⁸ Compensation serves the following purposes:

- receiving compensation is important for victims of trafficking not only because of the financial component but also because it has a symbolic meaning;
- at a societal level, awarding compensation acknowledges that trafficking is a crime;
- at an individual level, the victim's pain and suffering are acknowledged and compensation can constitute a first step towards overcoming trauma inflicted and abuses suffered.
- at a practical level, compensation can assist victims in rebuilding their lives;
- at a retributive level, compensation paid by traffickers can constitute a form of punishment and deter other traffickers.⁶⁹

• **Right of Victims to Information.**

Article 19 of the UNODC Model Law, and articles 6, (2) (a), of the Palermo Protocol requires States parties to ensure the provision of information to victims on relevant court and administrative proceeding in a language understood by the victim. The recommended Principles in guideline 9(2) also provide for information as well as legal and other assistance to enable victims access remedies.

• **Basic Benefits and Services**

Guideline 6 of the Recommended Principles provides for safe and adequate shelter that meets the needs of trafficked persons. The provision of such shelter should not be made contingent on the willingness of the victims to give evidence in criminal proceedings. Article 6(3) of the UNODC Model Law makes provision for appropriate housing; medical, psychological and material assistance, employment, educational and training opportunities. The age, gender and special needs of victims of trafficking in persons shall be considered; in particular the special needs of children, including appropriate housing, education and care for them. Under the TIPPLEA Act, section 64 established transit shelters which shall be managed and supervised as homes to cater for rescued trafficked persons particularly women and children. The transit

⁶⁷ TIPPLEA Act, Section 64.

⁶⁸ *ibid*, Section 67.

⁶⁹UNODC. Restitution and Compensation of Victims. https://www.unodc.org/documents/human-trafficking/Toolkit-fil/es/08-58296_tool_8-17.pdf accessed October 12, 2022.

shelters is primarily for protection, assistance, counselling, rehabilitation and training of rescued victims to facilitate their reintegration into the society.⁷⁰

5. Challenges to Protecting Victims of Human Trafficking

Limited Financial Resources

An inability to provide adequate victim protection, assistance and support may impede investigations and prosecutions, as victims are less willing or able to provide information and testimony to police and prosecutors when their protection and recovery needs are not satisfied.⁷¹ One of the major impediments to victim protection is funding. NAPTIP's funding is insufficient to provide specialised care and witness protection for all trafficking victims. Shelters provided by NAPTIP and even by NGO reported lack of funding as a problem.⁷² Through these shelters, NAPTIP provides access to legal, medical, and psychological services, as well as vocational training, financial empowerment, family reunification, and business management skills.⁷³ However with inadequate funding, NAPTIP is unable to effectively assist victims of trafficking. Also some of the NGOs do not put to sufficient use the UN Voluntary Trust Fund for the protection of victims of human trafficking.⁷⁴

Fear of Reprisals

Sometimes, because of fear of reprisals against victims from their traffickers they refuse to cooperate with NAPTIP, Prosecutors and NGOs.⁷⁵ Victims of human trafficking often fear retaliation by the traffickers or 'madams', especially in case of a remaining 'debt'. Some sources find it more likely for the victim to be re-trafficked than subjected to physical violence as retaliation. Reprisals include but not limited to physical violence, kidnapping, intimidation, burning of the victim's home, killing of family members, etc. Victims of trafficking may be unwilling to testify against traffickers due to fear of reprisals.⁷⁶

Penalisation of Victims

The anti-trafficking law prohibits the penalisation of trafficking victims for unlawful acts they were compelled to commit. However, due to a lack of consistent screening, authorities may arrest and deport some unidentified trafficking victims. Some trafficking victims including women and children forced to be combatants or exploited in sexual slavery are detained and subjected to criminal prosecution for unlawful acts traffickers compelled them to commit.⁷⁷

Uninformed Courts

Human trafficking cases are peculiar, complex involving a lot of emotions and bedeviled with slow pace of justice. Victims encounter and engage with the court system in a variety of different ways. Some become witnesses against their traffickers in a criminal prosecution,

⁷⁰ TIPPLEA Act, Section 64.

⁷¹ UNODC, <https://www.unodc.org/e4j/en/tip-and-som/module-9/key-issues/challenges-to-an-effective-criminal-justice-response.html>, accessed November 12, 2022.

⁷² TIP Report, <https://www.state.gov/reports/2021-trafficking-in-persons-report/nigeria/>, accessed November 12, 2022.

⁷³ *ibid.*

⁷⁴ NAPTIP to monitor NGOs' use of the Human Trafficking Trust Fund.

NAPTIP to monitor NGOs' use of the Human Trafficking Trust Fund – The Outlet Newspaper.

⁷⁵ Protection of victims of trafficking in Nigeria Report from Danish Immigration Service's fact-finding mission to Lagos, Benin City and Abuja, Nigeria, <https://www.refworld.org/pdfid/485f6b882.pdf>, accessed November 12, 2022.

⁷⁶ European Union Agency for Asylum, Victims of Human Trafficking <https://euaa.europa.eu/country-guidance-afghanistan/212-victims-human-trafficking-including-forced-prostitution> Accessed 16 October, 2022

⁷⁷ *ibid.*

others enter the system as defendants for crimes that they committed during their trafficking experience. Each interaction presents an opportunity for the court staff to support victims of human trafficking. Courts have a particular role to play in establishing processes and procedures that ensure victim's safety and apply a trauma-informed response to all victims rather than a punitive response.⁷⁸

If the courts are to be effective in their delivery of fairness and justice, they need to be aware of the underlying trauma of many individuals with whom they will interact within their courts. The vulnerabilities of the victims should be taken into cognizance. Specialised courts through the application of a trauma-informed approach may have a significant impact on how trafficking victims experience the court system, increasing their willingness to come forward as victims, cooperate with the criminal justice system, and promote their long-term recovery.⁷⁹

5. Conclusion

All victims deserve to feel safe and supported. When quality care, compassionate responses and essential services are provided, not only will they recover from their victimisation, they are usually more capable and willing to present strong evidence and testimony in the prosecution of perpetrators, thereby helping to accomplish important justice and restitution.⁸⁰ They also get reintegrated, rehabilitated; and reunited with members of their families. Adequate protection prevents revictimisation and is a strong force against human trafficking as rehabilitated victims can share their lived experiences with members of the community. Victim protection will inspire confidence in trafficked victims empowering them to bring to justice their traffickers thereby ending the cycle of impunity. Nigeria having adopted the Palermo Protocol and other human rights instruments as well as the enactment of the TIPPLEA Act 2015, victims of human trafficking should be better protected. The courts have a major role to play in protecting victims of human trafficking by being sensitive to their vulnerabilities. They should be well informed about the trauma of victims. It is only then that victims can be willing to give evidence against traffickers.

The paper recommends improved protection for victims of human Trafficking by the courts. Government should establish specialised courts where judges are familiar and equipped to handle peculiarities of human trafficking cases. NAPTIP and other stakeholders must increase awareness and advocacy on the negative effect of trafficking in persons to the society. It is imperative therefore for all anti-trafficking stakeholders to improve on their intervention. Government should increase funding for NAPTIP. NAPTIP should also ensure that the UN Voluntary Trust Fund is spent judiciously by the NGOs that work with them. Adequate protection should be afforded victims who are willing to testify in court both within and outside the court room in order to forestall reprisal attacks. Protection offered to victims should not depend on their giving evidence against their traffickers but should be victim-centered.

⁷⁸ OVCTTAC Human Trafficking E-Guide Innovative Court Responses <https://www.ovcttac.gov/taskforceguide/eguide/6-the-role-of-courts/64-innovative-court-responses/prostitution>, Accessed 16 October, 2022.

⁷⁹ *ibid.*

⁸⁰ Task Force Guide Goal. <https://www.ovcttac.gov/taskforceguide/eguide/4-supporting-victims/> if there is a trial Accessed 12 November 2022.